



FEOSO OIL MARINE BUNKER FUELS SUPPLY
STANDARD TERMS AND CONDITIONS
(referred to as "Standard Terms 2012")

1. DEFINITIONS

Unless the context otherwise demands:-

- 1.1 "SELLER" means FEOSO OIL TRADING LIMITED and/or any person, firm or company appointed by FEOSO OIL TRADING LIMITED as supplier and authorised by it to make deliveries of Marine Fuels.
- 1.2 "BUYER" means both jointly and severally (i) the party requesting SELLER to arrange for delivery of Marine Fuels to specified vessel(s) and (ii) the owner(s) and/or bare-boat charterer(s) of the vessel(s) to which the Marine Fuels are supplied.
- 1.3 "Marine Fuels" mean marine fuel oil, marine diesel oil and marine gas oil as offered to SELLER's customers by SELLER.
- 1.4 "Nomination" means the written offer from BUYER to SELLER requesting for the supply of Marine Fuels which shall contain the following details:-
 - (a) quantity and grade of Marine Fuels required;
 - (b) price and payment terms;
 - (c) the time and date of delivery; and
 - (d) name of local agent, if applicable.
- 1.5 "Confirmation" means the written acceptance by SELLER of the offer contained in the Nomination.
- 1.6 "Contract" means the contract of sale and purchase of Marine Fuels concluded between SELLER and BUYER pursuant to the Nomination and the Confirmation incorporating the Standard Terms 2012.

2. GENERAL

- 2.1 The Standard Terms 2012 shall apply to and govern all offers, quotations, agreements, services and deliveries in respect of Marine Fuels otherwise contracted for between BUYER and SELLER to the entire exclusion of any other express or implied terms or conditions. In the event of an inconsistency between the particular terms of (i) the Nomination and/or the Confirmation and (ii) the Standard Terms 2012, the Standard Terms 2012 shall prevail for the purpose of that particular transaction.
- 2.2 The Standard Terms may not be varied or modified in any way save by a variation in writing signed on behalf of SELLER by a Director thereof.
- 2.3 The Contract shall constitute the entire agreement between SELLER and BUYER in respect of the sale and purchase of Marine Fuels and supersede any prior arrangements or understandings whatsoever.
- 2.4 Unless written notice to the contrary is provided by BUYER to SELLER, SELLER shall be entitled to assume that any servant or agent of BUYER acting or purporting to act in relation to the Contract is duly authorised by BUYER so to act.
- 2.5 Any changes in the Standard Terms 2012 shall not prejudice or limit in any way the validity of the rest of the terms of any Contract between SELLER and BUYER. Failure by either party at any time to enforce any of the Standard Terms 2012 shall not be considered as a waiver by such party of such provisions or in any way affect the validity of the Standard Terms 2012. If any provision of the Standard Terms 2012 is invalid, void, or unenforceable, it will not affect the validity, legality, or enforceability of any other provision of the Standard Terms 2012.

3. PRICE

- 3.1 Subject to Clause 3.2 hereof, the price to be paid for Marine Fuels shall be the price as agreed between BUYER and SELLER pursuant to the Contract.
- 3.2 SELLER reserves the right to increase the price of Marine Fuels in accordance with the provisions of Clause 8.4 hereof.
- 3.3 In addition to the price payable for Marine Fuels, BUYER shall pay the following charges to SELLER:-
 - (a) all charges for delivery by barge or lighter, including mooring/unmooring expenses and port dues;
 - (b) all customs or other duties, taxes, impositions, charges, freights, premiums or other costs incurred by SELLER for which SELLER is accountable, in respect of deliveries of Marine Fuels hereunder.

4. PAYMENT

- 4.1 Payment terms shall be mutually agreed in advance in writing between SELLER and BUYER.
- 4.2 In the absence of such mutual agreement payment shall be made against SELLER's invoice, by no later than thirty (30) calendar days following the day of completion of delivery of Marine Fuels to the specified vessel(s).
- 4.3 Payment shall be made for the quantity of Marine Fuels delivered to the vessel(s) in accordance with Clause 7 hereof.
- 4.4 Payment shall be made in United States Dollars in cash or by telegraphic transfer (bank charges for BUYER's account) to the following account:-

Quote

Beneficiary Bank : BNP Paribas, Hong Kong Branch
59-63/F., Two International Finance Centre, 8 Finance Street, Central, Hong Kong
(SWIFT ID : BNPAHKHH)
For account of : FEOSO OIL TRADING LIMITED (A/C NO. 00001-202319-008-04 USD)

Unquote

- 4.5 Payment shall be deemed to have been made on the date the relevant funds are credited to SELLER's account and unconditionally cleared.
- 4.6 All late payments shall bear interest at the rate of two (2) per cent per calendar month.
- 4.7 All payments shall be made in full without any deduction, set-off or counterclaim.
- 4.8 In the event of late payment, BUYER shall bear all reasonable expenses incurred by SELLER in the recovery of the amounts due including but not limited to all legal costs and costs associated with enforcing a lien pursuant to Clause 5.1 hereof.
- 4.9 Notwithstanding any agreement to the contrary, payment by BUYER to SELLER shall immediately become due in case of BUYER's bankruptcy, liquidation, suspension of payment, arrest of assets and/or third party claims brought against BUYER. Payment will also become due immediately in any other situation which SELLER reasonably considers to adversely affect BUYER's financial position.

5. LIENS

5.1 SELLER shall have a lien upon :-

- (a) any vessel(s) to which Marine Fuels are supplied under the Contract;
 - (b) any Marine Fuels supplied and remaining on board the vessel(s);
 - (c) in the event that Marine Fuels are mixed or blended with other bunkers on board, any such mixed or blended bunkers remaining on board the vessel(s); and
 - (d) freight payments for that particular voyage of the vessel(s) during which the Marine Fuels are supplied and freights on all subsequent voyage(s) and demurrage payable as a result of or during those voyage(s);
- for any amounts due under the Contract, including claims for damages arising out of or in connection with BUYER's breach of Contract.

6. QUALITY

- 6.1 Marine Fuels supplied to BUYER shall be SELLER's regular commercial grade offered generally to its customers at the time and place of delivery.
- 6.2 BUYER shall have the sole responsibility for the selection and acceptance of Marine Fuels for use in vessel(s) supplied.
- 6.3 SELLER shall draw three (3) dripping samples at manifold of each grade of Marine Fuels supplied. These continuously dripping samples shall be drawn throughout the whole bunker delivery time. Two (2) sealed samples shall be handed to the officer on duty on board the vessel(s) receiving Marine Fuels. One (1) sealed sample shall be retained by SELLER for a period of twenty one (21) calendar days following delivery. Thereafter, unless BUYER has given notification of a claim under Clause 13 hereof, SELLER may dispose of the sample.
- 6.4 Samples of Marine Fuels drawn by BUYER's or their appointed representatives without SELLER's knowledge and presence shall not be recognized as representative of Marine Fuels supplied and shall not be admissible as evidence of quality in any arbitration or court hearing arising under Clause 20 hereof.

7. QUANTITY

- 7.1 The quantity of Marine Fuels delivered shall be determined either (i) from the gauge or meter of either the shore tank or the barge/lighter effecting delivery or (ii) by sounding of barge/lighter tanks before and after delivery, at the option of SELLER.
- 7.2 Such determination of quantity as certified correct by signature of the engineer on board the vessel(s) receiving Marine Fuels on the Barge/Lighter Delivery Receipt shall be conclusive evidence of the quantity delivered, and shall be final and binding upon SELLER and BUYER. Should the engineer fail or decline to certify the quantity for whatever reasons, the determination of quantity made by SELLER shall be final, conclusive and binding and BUYER shall be deemed to have waived any and all claims in regard to the variance.
- 7.3 BUYER may be present or represented by accredited agent when determination of quantity is performed in accordance with Clause 7.1 but if BUYER is not present or represented SELLER's determination shall be deemed to be conclusive as per Clause 7.2 hereof.
- 7.4 Determination of quantity shall be by prevailing ASTM-IP Petroleum Measurement Tables or methods of other internationally recognised standards authorities, at the discretion of SELLER.

8. NOMINATION AND CONFIRMATION

- 8.1 All Nominations shall be given by BUYER to SELLER not less than forty-eight (48) hours (exclusive of Saturdays, Sundays and Public Holidays in Hong Kong) prior to the time of actual delivery of Marine Fuels to the vessel(s).
- 8.2 If a Nomination is to be accepted by SELLER, SELLER shall send a Confirmation to BUYER within twenty-four (24) hours from receipt of Nomination by SELLER. The Contract shall be binding on BUYER and SELLER upon receipt of the Confirmation by BUYER pursuant to this Clause 8.2 and Clause 19.1 hereof.
- 8.3 BUYER, or its local agent, shall keep SELLER fully informed in connection with the exact time and location at which delivery is required. In any case BUYER, unless otherwise agreed in writing, must give not less than seventy two (72) hours' approximate notice of delivery, which is to be followed by forty eight (48) hours' notice and twenty four (24) hours' notice, where the last notice must specify the exact place of delivery. The notices of delivery must be given to SELLER and/or SELLER's representatives/agents.
- 8.4 If the vessel(s) fails to arrive within seventy two (72) hours from the Nomination, SELLER shall be entitled to revise the selling price and/or to amend the Contract and/or amend any and all other contractual terms or terminate the Contract.
- 8.5 BUYER shall be liable for any damages, costs and/or expenses incurred by SELLER arising from or in connection with BUYER's failure to accept delivery of the Marine Fuels in accordance with the Contract.

9. CANCELLATION

- 9.1 SELLER shall have the option to immediately cancel the Contract in full or in part and, or to store or procure the storage of the Marine Fuels in whole or in part for the account and risk of BUYER and to charge BUYER the expenses thereby incurred, or to hold BUYER fully to the Contract or, to take any other measure SELLER deems appropriate, without prejudice to its rights to indemnification, in any (but not limited to) one of the following cases:-
 - (a) When BUYER, for whatever reason, fails to accept the Marine Fuels in part or in full at the price and time designated for delivery;
 - (b) When BUYER fails, in part or in full, to comply with its obligations to pay any amount due to SELLER;
 - (c) When, before the date of delivery, it is apparent that the financial position of BUYER, in SELLER's judgment, entails a risk for SELLER.
 - (d) When, in case of force majeure (as defined in Clause 14 hereof), SELLER is of the opinion that the nature of the duration of the circumstances is such that the execution of the agreement is no longer feasible.
- 9.2 In the event that SELLER exercises its option as granted by BUYER under Clause 9.1 above to cancel the Contract, SELLER shall, without prejudice to any other rights it may have, be entitled to receive from BUYER a payment equivalent to the amount of the difference between the prevailing market price of the Marine Fuels ordered on the date the Contract is cancelled and the invoice value of the Marine Fuels ordered, or a payment of US\$5,000, at SELLER's sole discretion.

10. DELIVERY

- 10.1 Deliveries hereunder shall be made ex-wharf or ex-lighter/barge at SELLER's option.
- 10.2 The vessel(s) will be supplied with Marine Fuels as promptly as circumstances permit, but SELLER shall in no circumstances be liable for any loss, damage or demurrage of whatsoever nature incurred by BUYER arising from or in connection with any congestion at the delivery location or at SELLER's facilities howsoever caused.
- 10.3 Any delivery date shown in the Contract or otherwise indicated to BUYER by SELLER is given in good faith to indicate the estimated delivery date but shall not amount to any contractual obligation to deliver Marine Fuels by the time stated.
- 10.4 Delivery of Marine Fuels hereunder is at all times conditional upon the availability to SELLER, at the port where delivery is requested, of the particular grade/type of Marine Fuels requested by BUYER.

- 10.5 If SELLER at any time for any reason believes that there may be a shortage of supply at any place and that it as a result thereof may be unable to meet the demands of all its customers, SELLER may allocate its available and anticipated supply among its customers in such a manner as it may determine to be most reasonable in its sole discretion.
- 10.6 If a governmental or port permit of any nature is required as a condition of delivery, no delivery shall be made until such permit has been issued to BUYER or SELLER (as required).
11. **RISK AND TITLE**
- 11.1 Title in and to Marine Fuels delivered and/or all property rights in and to such Marine Fuels shall remain vested in SELLER until payment has been received in full by SELLER of all amount due, and of all claims, of whatsoever nature, which SELLER has or may have against BUYER. Although the Marine Fuels remain SELLER's property until paid for, they shall be at BUYER's risk from the time of delivery pursuant to Clause 11.2 hereof and BUYER shall insure them against loss or damage accordingly.
- 11.2 Delivery shall be deemed complete upon the Marine Fuels passing the permanent hose connection(s) of the vessel(s).
12. **INDEMNITY**
- 12.1 BUYER shall indemnify SELLER against all or any claims, demands, losses, damages, liabilities, suits, fines, penalties and expenses incurred or sustained by SELLER by reason of or in connection with the act, omission, neglect or default of BUYER, its servants or agents, in nomination, delivery, receipt, use, storage, handling or transportation of Marine Fuels delivered hereunder.
- 12.2 BUYER further undertakes to hold SELLER harmless in case of any third party claims of whatsoever nature brought against SELLER whether the same is or are directly or indirectly related to any agreement or Marine Fuels delivered hereunder.
13. **CLAIMS**
- 13.1 Claims by BUYER against SELLER arising from or in connection with short delivery of Marine Fuels shall be deemed waived by BUYER unless written notification of such claim, particularising the full extent thereof, is delivered to SELLER immediately upon completion of delivery and prior to departure from vessel of lighter/barge.
- 13.2 Claims by BUYER against SELLER arising from or in connection with quality of Marine Fuels shall be deemed waived by BUYER unless written notification of such claim, particularising the nature and extent thereof, is delivered to SELLER with twenty one (21) calendar days from the date of delivery.
- 13.3 If Buyer submits a claim against SELLER with respect to the quantity or quality of Marine Fuels supplied, SELLER shall be entitled and BUYER shall allow, or where BUYER has chartered the vessel(s), shall obtain authorization from the owner(s) of the vessel(s) to allow, SELLER, to board the vessel(s) and investigate the records of the vessel(s) and to make copies of documents which SELLER may consider necessary for its investigations. Failure to allow boarding and/or to produce copies of documents shall constitute a waiver of BUYER's claim.
- 13.4 BUYER shall be obliged to make payment in full and fulfill all other obligations hereunder notwithstanding any dispute arising between the parties or claim made by BUYER.
14. **FORCE MAJEURE**
- 14.1 SELLER shall not be liable for any loss, damage, claim or expense or have the right to terminate the Contract for any delay or default in performance or non-performance of any obligation hereunder if such should arise as a result of any cause or causes beyond the reasonable control of the BUYER or SELLER whose performance is affected. Such cause or causes shall be considered as force majeure and are specified in Clause 14.2 hereof.
- 14.2 Force majeure includes (without limitation) Acts of God or the public enemy, hostilities, conditions of war (declared or undeclared), mobilization insurrections, riots and civil commotions, perils of navigation, government measures, expropriation, confiscation, requisition, or of blockades, embargoes, labor conflicts, strikes, shortage of labor, fire, flood, storm, snow, frost, swell and other catastrophes of nature, accidents, prohibition of manufacturing and supply, non-observance of obligations and/or breach of contract by (sub) suppliers, prohibition of export or import, failure to obtain export of import licenses, unforeseen economic conditions, market disturbing governmental measures of national or international nature, quarantine, epidemics, contagious disease, veterinary measure, as well as circumstances which aggravate any disturbance, including all other circumstances considered as force majeure in the trade. Non-provision by BUYER of relevant data for SELLER in connection to the fulfillment of SELLER's obligations will also be deemed to constitute force majeure.
- 14.3 In case of force majeure, SELLER shall not be required to make any deliveries omitted in accordance with this clause at any later time.
- 14.4 In order to invoke force majeure, SELLER shall immediately notify BUYER in writing of the occurrence and cessation of any circumstances as aforesaid. If BUYER exercises reasonable diligence, BUYER shall not be liable for failure to receive any particular delivery if prevented therefrom by force majeure.
- 14.5 In the event that SELLER as a consequence of force majeure does not have sufficient quantities of Marine Fuels available to supply all its customers, including BUYER, SELLER shall have the right to choose which obligation(s) to meet and in which order, and/or to pro-rate the quantity of Marine fuels available between its customers, including BUYER, whereby SELLER shall not be required to purchase Marine Fuels to replace its supplies so curtailed or to make use of other than its normal transportation and/or other facilities.
- 14.6 Nothing in this Clause 14 shall excuse BUYER from its obligations to make payment to SELLER in respect of all amounts due and owing hereunder.
15. **ENVIRONMENTAL PROTECTION**
- 15.1. If any escape, spillage or discharge of Marine Fuels occurs during delivery to the relevant vessel(s), BUYER will promptly take such action as is reasonably necessary to remove the oil and mitigate the effects of the escape, spillage or discharge. Notwithstanding the cause of such escape, spillage or discharge, SELLER is authorised in its full discretion and at the risk and expense of BUYER, upon notice to BUYER or the operator of, or the agent for the relevant vessel(s) take such measures, either in cooperation with BUYER or by itself, and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonably necessary in the judgment of SELLER to remove the oil and mitigate the effects of such escape, spillage or discharge. If SELLER exercises such option, BUYER shall cooperate and render such assistance as may be required by SELLER. BUYER shall indemnify and hold SELLER harmless against any damages, expense, claims or liability arising out of any such spillage or removal unless such spillage or removal shall be proven to be wholly caused by SELLER's negligence. Any expense, damage, costs, fine or penalty arising from escape, spillage, discharge or pollution of oil shall be paid by the party causing the same by a negligent act or omission.
- 15.2. BUYER also agrees to disclose to SELLER immediately following such escape, spillage or discharge all documents and other information concerning such escape, spillage or discharge or any standing instructions or programmes for the prevention thereof, which are requested by SELLER or required by law or regulation applicable at the time and place where Marine Fuels are delivered to BUYER.
16. **DISCLAIMER OF WARRANTIES**
- 16.1. All warranties (whether express or implied) as to title, merchantability and fitness of Marine Fuels to a particular purpose, of whatsoever nature,

(whether statutory or otherwise) are expressly excluded and disclaimed.

17. BUYER'S POSITION

17.1. If the delivery or supply of Marine Fuels is contracted for by an agent or by BUYER on behalf of its principal(s) (disclosed or undisclosed) or by BUYER on behalf of itself and as agent on behalf of another principal(s) (disclosed or undisclosed), such agent or BUYER, as the case may be, shall be jointly and severally liable with such principal(s), or other principal(s) as the case may be, for the due and proper performance of the Contract.

18. ASSIGNMENT

18.1. BUYER shall not assign any of its rights and obligations arising hereunder without the prior written agreement of SELLER.

19. NOTICES

19.1. Any notice referred to herein must be given in writing and shall be duly given by either party if delivered by hand, sent by registered mail (airmail in the case of any notice posted from or to an address outside Hong Kong) or transmitted by facsimile or telex to the address of the recipient shown in the Contract or to such other address as that party may notify to the other for that purpose. Any notice delivered by hand shall be deemed duly served on delivery; any notice sent by registered mail shall be deemed duly served forty eight (48) hours after despatch when posted in Hong Kong to an address in Hong Kong and seven (7) days after despatch in any other case and any notice sent by facsimile or telex shall be deemed duly served as at the time of transmission to a current facsimile or telex number of the recipient

20. LAW JURISDICTION AND RESOLUTION OF DISPUTES

- 20.1 The laws of the United States shall apply with respect to the existence of a maritime lien, regardless of the country in which SELLER takes legal action. Save for the foregoing, the Contract shall be governed by and construed in accordance with laws in Hong Kong.
- 20.2 SELLER may sue anywhere in the world and BUYER shall submit to any jurisdiction chosen by SELLER and shall not apply to stay the action and/or suit for any reason whatsoever.
- 20.3 Any dispute or claim arising out of or relating to the Contract, including the validity, invalidity, breach or termination thereof, may, at SELLER's option, be resolved by arbitration in Hong Kong under the Hong Kong International Arbitration Centre Administered Arbitration Rules in force when the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be three (3) and the arbitration proceedings shall be conducted in English.
- 20.4 SELLER may serve any process and/or writ on any vessel owned, managed, chartered, operated or otherwise controlled by BUYER or her sister ship (anywhere in the world) and/or local agents of BUYER or may send a copy of such process to BUYER's registered office or principal place of business and such service shall be accepted by BUYER and deemed to be good service.