

# **John W Stone Oil Distributor, LLC**

## **TERMS OF SALE – BUNKERS AT PORT OF NEW ORLEANS**

### **1. Application of Terms of Sale**

These Terms of Sale (subject to Section 2 below), including any revisions at the date of delivery, apply to any delivery contracted for other than under a term agreement. Each such delivery shall be a separate contract.

### **2. Price**

Prices quoted for delivery are:

- (a) Applicable for delivery made no later than two days after the day nominated by the Buyer for delivery; and
- (b) Unless otherwise stated, for delivery f.o.b. ex tank in bond at Seller's installation and are inclusive of taxes, dues and other charges, leviable in respect of oil bunkers (with the exception of duties and sales taxes which, if incurred, are for the Buyer's account) as in force at the date of quotation; in the event of any subsequent increase in such taxes, dues or other charges, or any subsequent further charges, the price quoted shall be increased accordingly.

### **3. Nominations**

- (a) Unless otherwise agreed by the seller, the Buyer shall give the seller at least 7 days notice of the delivery required.
- (b) The Buyer shall be liable for any expenses incurred by the seller resulting from the Buyer's representative rejecting in part or in full any quantity ordered by Buyer.

### **4. Notice to Port**

The Buyer shall give the local representative of the Seller at least 48 hours notice of the delivery required.

### **5. Barging**

In the event of any vessel requiring delivery by barge, the Seller undertakes to provide this service within normal harbour limits where and when it has the necessary facilities available, the vessel to provide a free side to effect such delivery and the Buyer to pay the Seller the amount due according to its current barging rates at the port concerned, also other charges if incurred, such as for mooring and unmooring and port dues.

### **6. Extra Charges**

Work in connection with delivery outside normal working hours or on public or dock holidays or Sundays or Saturday afternoons shall be paid for by the Buyer at the rate then applicable for such work at the port concerned in addition to the price.

### **7. Delays**

The Seller shall not be liable for any demurrage or loss incurred by the Buyer due to congestion affecting the Seller's delivery facilities or to the prior commitment of bunkering barge, or for any other reasons.

### **8. Holidays**

Where agreements with employees' organizations apply, the Seller shall not be liable for inability, as a consequence, to deliver on public, customary or dock holidays.

### **9. Measurement of Quality and Complaints**

The Seller's measurement shall be accepted as conclusive, but the Buyer is at liberty to be represented at the measuring. Complaints of short delivery shall only be admissible if made to the Seller's representative and noted on the delivery receipt at the time of delivery and confirmed in writing received by the Seller within 21 days. All invoice quantities are based on shore tank meter reading from loading terminal. Complaints of defect in quality shall be admissible only if made in writing received by the Seller within 21 days of delivery.

#### **10. Payment Terms (unless otherwise agreed)**

- (a) Payment for delivery and of other payable shall be made in full (without any deductions) in U.S. Dollars in New Orleans. Payment shall be due and shall be made by means of wire transfer quoting the Seller's invoice number and the Buyer's name, to **Capital One Bank, N.A., New Orleans, Louisiana (ABA# 065000090 or swift code HIBKUS44), for the account of John W. Stone Oil Distributor, LLC (account number 882130312)**, within 30 days of the date of invoice.

The Buyer shall notify (or instruct its bank to notify) the Seller as soon as payment has been made, quoting the date on which payment was made, the amount, the name of the bank effecting payment and details of the invoice(s) to which the payment related. Such notifications shall be sent to John W. Stone Oil Distributor, LLC, Gretna, Louisiana, by email ([bunkers@stoneoil.com](mailto:bunkers@stoneoil.com)) or facsimile (504-392-2865).

- (b) The Seller's invoice (which may be sent by email or facsimile) shall be based on the email, facsimile or other advice of the quantity delivered and of other charges if incurred, and payment made pursuant to 10(a) above shall be subject to subsequent adjustment as may be necessary on receipt by the Seller of further details or as may be agreed by the parties to be necessary after detailed checking of the invoice.

#### **11. Force Majeure**

No failure or omission by either party to carry out or observe any of the terms or conditions of the contract shall, except in relation to obligations to make payments under it, give rise to any claim against the party in question or be deemed a breach of the contract if such failure or omission arises from any cause reasonably beyond the control of that party.

#### **12. Liability for Obligations**

- (a) If the delivery is contracted for by an agent or by the Buyer on behalf of a principal or principals, disclosed or undisclosed, or by the Buyer on behalf of itself and as agent on behalf of another principal or principals, disclosed or undisclosed, such agent or the Buyer as the case may be, shall be jointly and severally liable with such principal or principals, or other principals, as the case may be, for the due and proper performance of the contract.
- (b) Whilst the Seller warrants that each grade of marine fuel supplied hereunder shall be of merchantable quality, there is no implied condition or warranty that the marine fuel supplied hereunder shall be reasonably fit or suitable for the purpose intended by the Buyer.
- (c) Except as expressly provided in the contract, the Seller shall not be liable for consequential, indirect or special losses or special damages of any kind arising out of or in any way connected with the performance of or failure to perform the contract.

#### **13. Assignment and No Waiver**

The Buyer shall not assign the contract or any of its rights and obligations thereunder. No waiver by either party of any provision of the contract shall be binding unless made expressly and expressly confirmed in writing. Further, any such waiver shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

#### **14. Law and Arbitration**

- (a) The construction, validity and performance of the contract shall be governed by United States law.
- (b) Any dispute between the Buyer and the Seller arising out of or in connection with the contract shall be submitted to three arbitrators, one appointed by the Buyer, one by the Seller, and one by the two so chosen. Their decision, or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court.