



MALAKITA TRADING SA

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GENERAL TERMS



Of  
SALE

For  
MARINE FUELS



CONDITIONS

Edition 2002

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## Malakita General Terms & Conditions of sale for Marine Bunker

Except as otherwise expressly agreed on in writing, all sales and supply of Marine Fuels as defined in article 1 shall be subject to the following terms and conditions.

### **1. Definitions**

|                    |   |
|--------------------|---|
| Marine Fuels       | Bunker fuel, marine diesel and gas oils.  |
| Seller             | Malakita Trading S.A.   |
| Buyer              | Means the vessel supplied and jointly and severally her Master, Owners, Managers/Operators, Disponent Owners, Time Charterers, Bareboat Charterers and harterers or any party requesting offers or quotations for or ordering Bunkers and/or Services and any party on whose behalf the said offers, quotation, orders and subsequent agreements or contracts have been made. |
| Buyer's vessels    | All and any vessel owned by Buyer even if operated, time chartered, managed or controlled by third parties and/or by any affiliate of Buyer or by any sister company.   |
| Phisical Suppliers | Any company which is effecting supply.  |

### **2. Scope**

Seller shall sell and Buyer shall buy the Marine Fuels as defined in article 1 to be delivered at one or more ports at the conditions indicated herebelow and in the confirmations of bunker.

### **3. Entire agreement**

The clauses herein contained regulate the terms and conditions of the sale of Marine Fuels as defined in article 1. These terms and conditions have been given to Buyers or made known to them Malakita Trading S.A. general terms and conditions will apply to any and all sales of Marine Fuels even if not referred to in telexes, faxes, e-mails, and can be modified or integrated by the parties only in writing.

### **4. Delivery**

(4.1) For deliveries by barge where Seller is charterer of the barge, the risk and title will pass onto Buyer at the vessel's permanent hose connection. Connection and disconnection of delivery hoses are at the risk of Buyer.

(4.2) For deliveries by barge where Seller is not charterer of the barge, the risk and title will pass onto Buyer FOB, to be intended at the barge's permanent hose connection at the loading of the barge.

(4.3) For deliveries by truck, the risk and title will pass onto Buyer at the loading of the truck, unless it has been expressly agreed that they will pass at destination.

(4.4) Any deliveries are subject to weather permitting, vessels' priority, if any, and working hours. If vessel arrives out of working hours, all extra costs are for Buyer's account. Working hours are the one indicated in the port regulations and, in the lack of such regulations, 8.00 am 5.00 pin

(4.5) Seller shall not be liable for any loss or demurrage due to congestion of the terminal or to lack of availability of barges for the product to be delivered.

(4.6) Deliveries off shore are in any case also subject to the barge's captain confirmation that weather conditions permit delivery in conformity to port regulations on off shore bunker. In case Marine Fuel cannot be delivered because of the Captain determinations, Seller will not be responsible for non delivery or delay in the delivery.

## 5. Obligations of the parties

### (5.1) *Buyers shall.*

(5.1.1) Procure a safe berth. All costs due to terminal or berth congestion shall be for Buyer's account.

(5.1.2) Pay all costs and port expenses.

(5.1.3) Ascertain and guarantee that vessel tanks are clean and cargoworthy under all respects.

(5.1.4) Verify that bunker which might be already onboard is consistent with the one ordered to Seller. Seller not to be liable or anyhow responsible for any problems due to the incompatibility between the two products.

(5.1.5) Communicate to Seller the day and the exact time of delivery of the bunker.

(5.1.6) Notify to Seller timely ETA and communicate to Seller at least five working days prior to the ETA the exact quantity and quality of Marine Fuel to be delivered and the name of the ship agent in the port.

(5.1.7) Give to Seller, at least 48 hours before the delivery date, notice of readiness to receive delivery or such earlier notice as may be required to enable Seller to make any necessary arrangements with, and secure any necessary permission of, Port Authorities prior to making delivery.

(5.1.8) Take prompt delivery of the bunker and withdraw vessel from the terminal. Buyer to indemnify Seller of costs and expenses of barge demurrage or truck overtime due to its delay in taking delivery or in vacating berth.

(5.1.9) Pay the price of bunker and the costs indicated in article 9.

(5.2) Buyer to pay for all costs and reimburse to Seller all expenses and charges due to its unfulfilment of any of the obligations set forth in paragraph 5.1.

(5.3) The failure of Buyer in giving any of the communications provided for in paragraphs 5.1.5, 5.1.6 and 5.1.7 shall free Seller of its obligation to deliver the Marine Fuel and shall make the **order** of bunker be deemed cancelled.

(5.4) Should the vessel for any reason arrive later than 3 days after ETA has been notified to Seller, the latter to be freed of its obligation to deliver bunker. Buyer to reimburse to Seller all costs and expenses due to the late arrival of the vessel.

### (5.5) *Sellers shall.*

(5.5.1) Verify that the product to be delivered meets the requested specifications. (5.5.2) Deliver the bunker to Buyer timely.

(5.5.3) Deliver to Buyer the quantity requested according to paragraph 6.1.1, being in any case binding the determination referred to in paragraph 6.1.3 or 6.1.4.

(5.5.4) Issue formal invoice after bunker has been delivered.

## **6. Quantity**

### *(6.1) Quantity determination*

(6.1.1) The quantity to be sold is that indicated in Buyer's request communicated to Seller directly or through an agent/broker and confirmed by Seller to Buyer or to the agent/broker.

(6.1.2) Should Buyer require a different quantity to be delivered after confirmation has been sent by Seller, Seller will make reasonable efforts to satisfy Buyer's request but with no obligation whatsoever to deliver the quantity exceeding that indicated in the confirmation of the order.

(6.1.3) Quantity shall be the one determined by the gauge or meter of terminal or barge tank. Such determination shall be binding upon the parties unless a specific remark is written by Buyer's representative on the bunker receipt.

(6.1.4) Should bunker quantity be subject to determination by local custom authorities, it is understood that the quantity binding upon the parties shall be exclusively the one resulting from such determination, and afterwards indicated in the pertinent document delivered by the authority mentioned above.

(6.1.5) Buyer has the right to be represented at the time of measurements.

(6.1.6) Should a dispute arise on the quantity delivered, the parties shall immediately appoint an Independent Surveyor which shall ascertain the quantity actually delivered and whose determination shall be final and binding upon the parties, unless Independent Surveyor's wilful misconduct is proven. Costs for inspections shall be equally shared between the parties.

## **7. Quality**

(7.1) Quality shall be determined by the parties in the confirmation of the order and shall be the one generally offered and available to Seller at the place of delivery for similar use. The grades which are available to Seller at each port will be indicated on Seller's Marine Bunkering Services or other publication by Seller made known to Buyer and that the latter shall verify before entering the contract.

(7.2) Should the above quality not be available, Seller will advise Buyer and offer the grades and quantities available at that time without any liability whatsoever to Seller.

(7.3) Three samples of the bunker to be delivered shall be taken, all to be kept for three months: one for Seller, one for Buyer and a third to be delivered to an Independent Laboratory. Samples shall be taken from the barge tank or at the barge's hose connection. No other sample shall be representative for Seller. All samples shall be sealed and signed by both parties.

(7.4) Should a dispute arise on the quality delivered, the parties will proceed to their own ascertainments on the samples. Should the results of the tests of quality differ, the parties will appoint an Independent Laboratory which will analyse the third sample and whose ascertainments shall be final and binding upon the parties, unless Independent Laboratory's wilful misconduct is proven.

## **8. Prices**

Prices shall be Seller's current prices at **time and place of delivery** as set forth in Seller's telex of confirmation of bunker.

## **9. Charges**

In addition to the prices of Marine Fuel, Buyer shall pay the following charges:

- a) current barge and/or lighterage charges, for any delivery by barge and/or by lighterage;
- b) current truck charges, for any delivery by truck;
- c) any mooring or unmooring charges, booms charges, agency fees or port dues which Seller may incur in connection with any vessel Marine Fuel is delivered to;
- d) any duties and/or taxes incurred by Seller or for which Seller is accountable in respect of deliveries of Marine Fuel;
- e) any additional cost incurred by Seller in respect of payments for overtime.

## **10. Payment**

(10.1) Payment to Seller for Marine Fuel delivered shall be made in US Dollars or, at the option of Seller, in Euro or other equivalent currency within 30 days after bunker has been delivered, unless a different period of time is indicated in the confirmation of bunker.

(10.2) Should such payment be made in other currency than US Dollars; the amount to be paid shall be calculated referring to the Financial Times quotations of the opted currency selling rate on the London Exchange at the close of the business day previous to the date on which payment is effected by Buyer.

(10.3) Payment to Seller shall be made to Seller's bank through telegraphic transfer of payment.

(10.4) Should payment by Buyer not be made within 3 days after the period of time referred to in paragraph 10.1, Seller shall charge Buyer with default interests at the rate permitted under applicable law.

## **11. Taxes**

(11.1) The amount of taxes, duties and any other governmental exaction, of whatever kind and however denominated (hereinafter called "taxes", directly or indirectly applicable with respect to Marine Fuel or raw materials from which they are manufactured, shall be for the account of Buyer, except the following:

- a) taxes on imports, except as provided, if at all, in Seller's Marine Fuel bunkering service;
- b) taxes on net income;
- c) taxes on ownership by others than Buyer.

(11.2) Whenever any amount of taxes for the account of Buyer is collectable from any person other than Buyer, it shall be paid by Buyer on demand.

## **12. Indemnity**

Buyer shall hold Seller harmless from any and all consequences and/or responsibilities arising out of any and all uses of the product by Buyer after the product itself has been delivered.

### **13. Bunker usage**

Being in any case understood Seller's indemnity as referred to in paragraph 12, Buyer guarantees Marine Fuel supplied by Seller to Buyer shall not be used by the latter in any way other than for the bunkering requirements of Buyer's vessel.

### **14. Agency**

(14.1) Being in any case understood Buyer's responsibility under these general terms and conditions, if the agreement is entered into by an agent of Buyer, whether such agency is disclosed or undisclosed, then such agent shall be liable not only as agent but also for Buyer's obligations under this agreement.

(14.2) Should delivery be made not directly by Seller, rather by a third party as an agent of Seller, it is understood the applicability of the provisions under this agreement at any effect.

### **15. Communications**

(15.1) Commercial communications to be given to Seller under this agreement, except those which for general custom are addressed only to Seller's local agents and/or representatives, shall be addressed to MALAKITA TRADING S.A.- BELLINZONA.

(15.2) Should a different address be indicated in Seller's bunker confirmation, such communications shall be addressed to both the address indicated above and that referred to in paragraph 15.1.

(15.3) Should the agreement be entered into by an agent and/or a broker of Buyer, then any commercial communication to be given to Buyer shall be addressed to such agent and/or broker, who is assumed. to act as a representative of Buyer, at its own address as specified in the agreement, unless Buyer specifically requests to be made known of such communication, in which case the latter shall be also addressed to Buyer's registered office.

(15.4) Commercial communication to be given under the provisions of this agreement shall be delivered or sent by registered or ordinary post or by wireless or cable or other telegraphic mean or by electronic data exchange.

(15.5) All such communications shall be deemed given upon receipt.

### **16. Claims**

(16.1) Any and all claims arising out or in connection with Marine Fuel supplied shall be null and void if not submitted by Buyer to Seller within 8 days after Marine Fuel has been delivered.

(16.2) Being understood the above, the claim shall be null and void if not supported by the documentation indicated herebelow and if the following procedures are not followed:

#### Quantity

- a) formal written remarks by the Captain on the bunker receipt, prior to the ship's sailing, indicating the assumed different quantity loaded;
- b) request to Seller of the joint ascertainment, the different quantity claimable being only the one ascertained by the Independent Surveyor referred to in paragraph 6.1.6.

#### Quality

- a) formal request by Buyer indicating and describing the claim;
- b) written request to Seller of ascertainment referred to in paragraph 7.4.

## **17. Force Majeure**

(17.1) None of the parties shall be liable for breaches of its obligations due to case fortuit or to force majeure, meaning such expressions any cause beyond the reasonable control of the parties themselves among which, by mere example, strike, whether involving the employees of Seller and/or Buyer or otherwise, shortage in sources of supply and/or in means of transport, exceptional weather conditions, closing or limitations of functioning of power plants and/or reception facilities.

(17.2) Should such a contingency prevent or delay one of the party's performance, it shall be made known to the other timely.

(17.3) The party whose performance is delayed shall make the other know the approximate lasting of such a contingency and shall make any reasonable efforts to remove or to mitigate the effects of such event timely.

(17.4) Should the performance be prevented, or delayed for more than 5 days, the parties to be deemed freed of their obligations.

(17.5) Quantities not sold or purchased due to the occurrence of such a contingency need not to be made up later.

(17.6) Seller shall not be liable for demurrage due to such a contingency.

## **18. Friendly Composition.**

(18.1) The parties undertake to come to a friendly composition for the settlement of any dispute, other than the ones arisen as to quantity and/or quality to be delivered which are already regulated by paragraph 16, based on or arising out of this agreement within 90 days after such dispute arises.

(18.2) In order to come to the composition referred to in paragraph 18.1, the claimant shall communicate to the other party the object of its claim within 15 days after claim arises and shall ask for a meeting with the other party's representative.

(18.3) Within 15 days the communication mentioned in paragraph 18.2 has been made, the party to which the claim has been communicated shall accept or object such claim and, in the latter case, shall appoint a representative of its own.

(18.4) The representatives of the parties shall meet within 40 days after such dispute arises and make any reasonable effort to settle the dispute, letting in any case each other's party know in writing the outcome of the meeting within the next 20 days.

## **19. Applicable Law and Jurisdiction.**

(19.1) The place of exclusive jurisdiction shall be Bellinzona – CH.

## **20. Supplementary clause.**

(20.1) Physical supplier's sales terms & conditions enforce and integrated our terms.