

MERSEY BUNKERING
(a division of Frank Armitt & Son Ltd.)

CONDITIONS OF SALE OF MARINE BUNKER OILS

Where Mersey Bunkering ("the Seller") agrees to supply any petroleum products (other than under the terms of a written Supply Contract) the following Terms and Conditions alone shall apply and shall constitute the contract between Mersey Bunkering and the Buyer.

1) General.

- (i) All orders are placed under these Terms and Conditions only to the exclusion of any other Terms and Conditions which the Buyer might seek to impose at any time through any offer, acceptance, counter offer, order or invitation or other documentation or by being otherwise brought to the attention of the Seller.
- (ii) Acceptance of any product by the Buyer shall constitute acceptance of these Terms and Conditions.
- (iii) No variation of these Terms and Conditions shall be permitted unless expressly agreed in writing by an authorised representative of the Seller.

2) Price.

- (i) The price for each product shall be the price notified by the Seller to the Buyer (the Notified Price) for a product from time to time exclusive of VAT and inclusive of Duty as applicable.
- (ii) In addition to the Notified price for a product, the Buyer shall pay to the Seller any load surcharge or delivery charge as notified by the Seller dependent on the place, method and amount for delivery to the Buyer.
- (iii) A Notified Price, Load Surcharge or Delivery Charge may be altered at any time prior to delivery of a product to the Buyer without prior notice.
- (iv) Any rebates to a Notified Price shall be as provided to the Buyer by the Seller in writing subject to variation by the Seller without prior notice.
- (v) Whereas the Seller quotes a net price to the buyer that price shall be subject to terms and conditions as provided in 2 (i.) to (iv.) above.

3) Payment.

- i. All sums become due and payable under these terms and conditions not later than 30 days after date of delivery (or 20th of the month following delivery if expressly agreed).
- ii. Time for payment shall be of the essence.
- iii. The company reserves the right to charge interest at 1.5 % per month pro rata on all overdue accounts, such interest being deemed to accrue on a day to day basis from the due date for payment under subclause (i.).
- iv. The purchaser shall have no right of set-off, statutory or otherwise.
- v. The Seller reserves the right at any time at its discretion to demand immediate payment or other security for payment before continuing with or delivering any order.
- vi. The Seller reserves the right to vary any of the terms and conditions set out in 3 (i) to (v) above provided it gives not less than 60 (sixty) days notice to the Buyer.

4. Customs and Excise.

All products controlled under the provisions of the Customs & Excise (General Reliefs) Act 1979, the Customs & Excise management Act 1979, the Hydrocarbon Oil duties Act 1979 and any subsequent legislation are sold exclusively for use by the Buyer in accordance with those provisions and if so required by the Seller shall provide evidence of the use of such products.

5. Delivery.

- (i) All products to be delivered to the Buyer shall be delivered to the address of the Buyer as notified in writing to the Seller.

- (ii) The Seller (or its sub-contractors) measurements of quantity shall be accepted by the Buyer who may at their own cost have an opportunity of verifying the measurements.
- (iii) The buyer shall ensure that during delivery all necessary safety precautions are taken at all times including without prejudice to the generality of the foregoing (a) safe and adequate access and site for the Seller's (or its subcontractors) vehicles and personnel, (b) storage tanks and reception equipment of safe and adequate construction for pumped delivery, properly vented, with all inlets clearly identified and each having adequate free capacity for the amount of product to be delivered, (c) adequate supervision throughout the delivery.
- (iv) Time of delivery is not of the essence but the Buyer shall ensure that delivery can take place without undue delay.
- (v) The Seller shall not be liable for any loss whatsoever or howsoever arising caused by its non-delivery or by the failure to make a product ready for collection on the due date.
- (vi) The Seller reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.
- (vii) When delivery is to be by instalments or the Seller exercises its right to deliver by instalments under sub-clause (vi) hereof or if there be delay in the delivery of any one or more instalments for whatever reason this will not entitle the Buyer to treat the contract as repudiated or to damages.

6. Title and Risk.

- (i) Risk in any product shall pass to the Buyer as soon as that product leaves the Seller's (or its subcontractor's) delivery coupling or loading arm (where the Buyer collects the product) and enters any equipment, road or other vehicle or storage tank of the Buyer but title thereto shall remain with the Seller until all sums owing by the Buyer to the Seller for whatever reason have been paid in full.
- (ii) Until title to any product passes the Buyer will hold that product as fiduciary agent and bailee for the Seller. Then if
- the Buyer is in default for longer than 14 days in the payment of any sums whatsoever due to the Seller whether in respect of the products most recently supplied or any other products supplied at any time by it to the Buyer or
 - the Company has bona fide doubts as to the solvency of the Buyer or
 - the Buyer has a petition presented for its winding-up or passes a resolution for voluntary winding-up otherwise than for the purposes of a bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver or administrator appointed of all or any part of its assets or permits distraint thereon or becomes bankrupt or insolvent or enters into any arrangements with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceeding under foreign law
- the Buyer shall place any products supplied by the Seller in its possession or under its control and unsold at the disposal of the Seller and the Seller shall be entitled to enter upon any premises of the Buyer for the purpose of removing such products.
- (iii) The Seller shall at any time be entitled to appropriate any payment made by the Buyer in respect of any product in settlement of such invoices or accounts as the Seller may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Buyer.

7. Claims.

- (i) No claim shall be maintained by the Buyer against the Seller for any shortage, defect in, loss or damage to product unless the Seller shall receive within seven days of the date shown on the delivery note a written complaint giving details of the shortage, defect, loss or damage alleged by the Buyer.
- (ii) In all cases where shortage, defect in, loss or damage to a product is alleged the Seller shall be under no liability therefore unless an opportunity to inspect the product as delivered without alteration or modification is provided to the Seller.

8. Warranty.

- (i) The Seller warrants that it has title to and the unencumbered right to sell its products.

- (ii) No representation or warranty is given as to the suitability or fitness of any product for any particular purpose and the Buyer shall satisfy himself in this respect and shall be totally responsible therefor.

9. Consequential Loss.

The Seller shall not be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises from breach of a duty in contract or tort or in any other way including loss arising from negligence on the part of the Seller save for death or personal injury resulting from such negligence.

10. Force Majeure.

- (i) The parties' obligations hereunder shall be suspended to the extent that either party is hindered, prevented or delayed in fulfilling this contract in whole or in part by reason of circumstances beyond their reasonable control which shall include but not be limited to acts of God or of State, fire, lightning, severity of weather, war, riot, labour disturbance or industrial dispute, breakdown of plant or machinery, of storage or transmission facilities, of transport or import or export embargoes, compliance with an order or request of a national or local public or port authority or of any person purporting to act on behalf thereof or shortage of petroleum or petroleum feedstock as a result of market conditions beyond its reasonable control.
- (ii) For the avoidance of doubt it shall be understood that if by reason of any of the above
- (a) the Seller is hindered, prevented or in any way delayed in fulfilling delivery of any products ordered by the Buyer, he shall be entitled to require the Buyer to take delivery of such amount of product(s) as he is able to deliver
- (b) the Buyer suffers such a shortage in his requirements for the product(s) ordered that it becomes necessary to remedy such shortage, he is at liberty to make the remedial purchases necessary from other suppliers.

11. Determination.

- (i) In the event of a breach of any of the Buyer's obligations hereunder or if in the reasonable opinion of the Seller the Buyer is or is about to become insolvent the Seller may suspend or cease deliveries or vary the payment terms
- (ii) if either the Seller or the Buyer become insolvent or allow any of the matters referred to in Clause 6.2 (c) of these Conditions to occur the contract will thereby be deemed repudiated by that party and if the Buyer shall be that party all sums due to the Seller shall notwithstanding what may have been provided hereby or agreed elsewhere become immediately due and payable.

12. Waiver.

No waiver of a breach of any of these Terms and Conditions or failure to enforce any of the provisions hereof shall operate as a waiver of any other or subsequent breach or constitute departure from the strict terms herein set out.

13. Proper Law and Jurisdiction.

The contract shall be governed by and construed in accordance with English Law and all disputes arising in connection with the contract shall be submitted to the jurisdiction of the English Courts.

14. Indemnity.

The Buyer hereby agrees to indemnify the Seller against all loss, damage, cost or expense whatsoever or howsoever arising from any failure to comply with any of the conditions of sale herein contained.

(NB / June 1997)