

## 1. DEFINITIONS

**1.1 "THE BUNKERS"** means all and any grades of intermediate marine fuel oils, marine diesel oils and marine gas oils.

**1.2 "THE CONTRACT OF SALE"** means the General Terms And Conditions and the particular terms, which may have been agreed in writing between the parties. Each delivery constitutes a separate contract of sale.

## 2. INTRODUCTION:

These Terms And Conditions are the Standard Terms And Conditions For The Sale And Supply Of Bunker Fuels And Other Products under which **OIL MARKETING AND TRADING INTERNATIONAL FZC, P.O. Box 5170, Fujairah, United Arab Emirates** (THE SELLER) is prepared to enter into an agreement with another company (THE BUYER) to sell and supply to the Buyer, who has agreed to buy, Bunker Fuels, as described above and or other products and shall override any other or different term or conditions stipulated, incorporated or referred to by Buyer, whether in its purchase order or in any negotiations, unless otherwise agreed to in a subsequent writing. These Standard Terms and Conditions define the rules regulating the agreement between the contracting parties with regard to ordering, delivery, price and payment.

## 3. CONTRACT OF SALE

**3.1** The Buyer shall notify his order to the Seller in writing (hereafter called 'THE NOMINATION' ') The Seller shall acknowledge the Nomination by a Confirmation telex/fax/e-mail setting out the terms of the contract of sale with regards to the Bunkers and their price.

**3.2** These terms and conditions, together with Seller's Confirmation telexes to the Buyer constitutes the entire agreement and shall apply from the time and date of the Seller's offer.

**3.3** Failing a written declaration to the contrary by the Buyer by return, the sale is final and binding.

**3.3** Deliveries of Bunkers made hereunder are delivered not only on the credit of Buyer, but also on credit of the vessel receiving delivery of The Bunkers and it is agreed and Buyers warrant that Seller will have and may assert a lien against the receiving vessel for the amount of the purchase of said Bunkers.

**3.4** Should Bunkers be ordered by an agent, who prior to the dispatch by the Seller of the Confirmation telex/fax/e-mail has not specifically declared to the Seller that the party with whom the Seller is corresponding is not the Buyer and at the same time does not provide the Seller with full name and address of the Buyer, then such an agent, as well as the principal, shall be bound by and be liable for, all obligations as fully and as completely as if he were himself the principal whether such principal be disclosed or undisclosed and whether or not such agent purposes to contract as agent only.

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

**4.1** Deliveries here under shall be made in accordance with Instructions given by the Buyer or representative or the Master of the vessel commencement of delivery by the Seller.

**4.2** Buyer shall nominate to the Seller/Supplier by written notice of requirements, for each receiving vessel at least seven (7) days prior to the expected date of vessel's arrival with further notice at least forty-eight (48) hours (excluding local/international non-business days) prior to the time of requested delivery. Such notices and confirmations shall specify the Buyer, the port, the name of the vessel to be supplied, expected date and time of arrival, delivery period, method of delivery and type, grades and quantity of marine fuels to be supplied and the name and address of the agent of the vessel to be supplied.

**4.3** Buyer shall ensure that the vessel and/or the agent of the vessel, gives Seller/Supplier 72, 48 and 24 hours notice of vessel's readiness to receive the delivery. Deliveries shall be made during regular business hours observed in the port unless required at other times and permitted by local regulations, in which case Buyer shall pay the extra expenses incurred.

#### **5. DELIVERY**

**5.1** Before delivery, the Master of the receiving vessel shall confirm the quantity and description of the bunkers to be delivered by countersigning the Bunker Oil Supply Form presented to him by the Seller/Supplier and/or his agent/ representative.

**5.2** The Master shall also state whether or not he wishes to be present or be represented at the time of determination of quantities. Delivery shall commence only after this document is returned to the Seller or his agent, the representative of accordance with his accredited if agreed before the Bunker barge making the delivery, duly countersigned by the Master.

**5.3** The vessel will be bunkered as promptly as circumstances permit but Seller/Supplier or his agent shall not be liable for any loss, damage, delay or demurrage incurred by Buyer the receiving vessel or any other party, or for loss or damage of any nature whatsoever and however caused, due to or resulting from (but not limited to) delays in availability of bunkering pier, weather, barge, difficulties in performance of the program for supply of barges, late delivery of fuel, refusal of Buyer's vessel to follow Seller's/Supplier's or his Agent's instructions, directions or orders, congestion of port installations, non-compliance by the receiving vessels crew and/or other person present on board the vessel and/or representative or agents of the ship with safety rules and environmental protection rules applicable at the time of bunker delivery operations, etc.

**5.4** If Seller/Supplier has agreed in writing to a time period for delivery of bunkers, his only responsibility is to use the best of his efforts and ability to comply with such time period. If Seller/Supplier exceeds an agreed time period for delivery the Buyers are not entitled to claim dissolution of the agreement and/or compensation of any damage whatsoever. Buyer's obligation remains binding. If the Buyer's vessel fails for any reason to arrive at the agreed time for delivery or is unable to receive whole quantity as ordered, Buyer shall automatically be in default, without any notice served or required. In such case Seller/Supplier has the option to consider the agreement cancelled in whole or in part, without any requirement for judicial intervention and without prejudice to Seller's or his Agent right to claim further damage's from Buyer.

**5.5** Seller or its Supplier will arrange deliveries based on the principle of "First Come-First Served" but reserve the right to arrange bunkering sequence following his logistics, prior engagements, priorities, obligations and deliveries.

**5.6** Seller/Supplier or his Agent has always the right to deliver 10% more or less.

**5.6** The responsibility for connecting the delivery facilities provided by the Seller /Supplier to the receiving facilities provided by the Buyer shall lie with the Buyer. Buyer's vessel shall render all necessary assistance and provide a clear and sufficient tankage and equipment to receive each delivery promptly. Buyer is responsible for ensuring the delivery is conducted at a safe rate and pressure and that all equipment utilized is in a safe and satisfactory condition.

**5.7** Seller or its Supplier has the right to deliver the agreed quantity in one consignment or in part lots, each lot deemed to represent a separate contact. Buyer shall promptly receive deliveries and withdraw vessel from delivering barge. In the event of delay by Buyer for any reason in the use of delivery or barging facilities, Buyer shall reimburse Seller/Supplier for any expense incurred due to such delay.

## **6. QUANTITY AND QUALITY**

**6.1** Quantity of product delivered shall be determined at Seller's/Supplier's or his sub-contractors option by one of such generally recognized methods of measurement as is appropriate in the circumstances. In case of delivery from shore terminal, the quantity of Bunkers delivered shall be determined from ullages taken in the shore tanks before and after the Bunkers are pumped out. In the case of delivery by barge, the quantity of Bankers delivered shall be determined from the ullages or soundings of the Barge tanks before and after the Bunkers are pumped out. The Buyer will be charged on these measurements made in accordance with ASTM-IP Petroleum measurement tables.

**6.2** Such determination shall be conclusive, but Buyer shall have the right to be represented at the time of measuring and sampling and the representative may inspect the Bunkers delivered before they are pumped out of the shore or barge tank, but if the buyer is not represented then the Barge's determination of quantity shall be deemed to be correct and Buyer shall thereby waive any claim against seller with respect thereto.

**6.2** Buyer shall have sole responsibility for the selection of proper marine fuels for use in the vessel being supplied.

**6.4** The Quality of each grade of marine fuel shall be the usual quality of that grade offered for sale or being sold by Seller/Supplier at the time and place of delivery.

**THERE ARE NO GUARANTEES NOR WARRANTIES, EXPRESSED OR IMPLIED, OF MERCHANTABILITY, FITNESS OR SUITABILITY OF THE MARINE FUEL FOR ANY PARTICULAR PURPOSE OR OTHERWISE, WHICH EXTEND BEYOND THE DESCRIPTION CONTAINED HERE.**

**6.5** Complaints and or claims as to quality must be based on tests made as soon as possible by an independent laboratory from samples taken at time of delivery from the shore tank or barge from which delivery is made. A representative 0 Seller/Supplier shall take, by continuous drip or through an automatic sampling devise where applicable, seal and identify three (3)such samples of each grade

of marine fuel delivered, giving one to the Master of the Receiving vessel and giving the other two samples to Seller/Supplier to be retained for thirty (30) days following delivery. Buyer shall be entitled to have his representative present when such samples are taken. In the event of a discrepancy between test results of samples submitted by the Buyer and corresponding samples submitted by the Seller/Supplier, then the third sample will be submitted for analysis to an independent laboratory, the results of which shall be conclusive for the quality of product delivered.

**6.6** It is the duty of Buyer to take all reasonable actions, including retention and burning of fuel, to eliminate or minimize any costs associated with an off-specification or suspected off-specification supply. To this end Buyer shall co-operate with Seller in achieving the most cost-effective solution. In any event Seller's obligation hereunder shall not exceed direct expenses incurred for removal and replacement of fuel and shall not include any consequential or indirect damages, including without limitation, demurrage claims and loss of contract or loss of profit. If Buyer removes such fuel without the consent of the Seller then all such costs shall be for Buyer's account.

## **7. CLAIMS**

**7.1** Complaints as to quantity must be made to Seller/Supplier or his Agent at time of delivery by notice on the Bunker Delivery Receipt signed by Buyer and/or by Letter of Protest addressed to Seller/Supplier before departure of the vessel from alongside, and shall be confirmed in writing not later than fourteen(14) days from time of delivery. Within that time period Buyer must furnish necessary details required by Seller/Supplier to satisfactorily evaluate a claim. Failure to make any such complaints or claim as to quantity within the time periods and manner specified above shall be deemed to be a waiver of any such complaints or claims.

**7.2** All complaint or claim as to quality must be received by Seller as soon as possible, but in no event later than fourteen (14) days from the date of delivery. Within that must furnish necessary details required by Seller to satisfactorily evaluate a claim. Failure to make any such complaints or claim as to quality within the time periods and manner specified above shall be deemed to be a waiver of any such complaints or claims. Seller/Supplier shall not be responsible for any claim arising in circumstances where there is or has been commingling of fuel delivered by Seller/Supplier with other fuel aboard Buyer's vessel.

## **8. PRICE AND PAYMENT**

**8.1** The price to be paid for the marine fuels to be delivered shall be the price specified in the confirming telex 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.

**8.2** 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, Seller's written notification of quantities delivered and amount due, in a format of telex invoice. 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.

**8.3** 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.

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

- 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.
- 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.

## **9. RISK, TITLE AND INDEMNITY**

**9.1.** Deliveries of bunkers shall be deemed to be complete and title and risk shall pass from the Seller to the Buyer, as the marine fuel passes the flange connecting Seller's/Supplier's delivery hose to the vessel's permanent in-take facility. Buyer's risk includes loss, damage deterioration, contamination, evaporation and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties.

**9.2** Buyers shall indemnify and hold Seller/Supplier and his Agents harmless from any and all losses, damage, demands, claims, suits or liability for damage to property for injury or death caused to any person arising out or connected with an action or omission on Buyer's part, their officers, crew, servants or third parties acting on their using, Fuels delivered hereunder.

## **10. SPILLAGE AND ENVIRONMENTAL PROTECTION:**

Buyer warrants that each vessel will be properly equipped, maintained and operated so as to avoid leakage, spillage, overflow or water pollution. In the event of a spillage during delivery, Buyer shall assist and cooperate with Seller / Supplier and/or his Agent / sub-contractor in taking any necessary action to remedy or mitigate spillage and its consequences. Buyer shall indemnify and hold Seller/Supplier and his Agent harmless against any losses, damages, (including damages to the vessel), costs and expenses, including reasonable attorney's fees, which Seller/Supplier or his Agent may incur either as a result of any claim, action, suit, assessment, fine, levy, penalty imposed by

reason of any such alleged leakage, spillage, overflow, or water pollution, except to the extent that such losses, damages, costs and expenses arise out of the wrongful or negligent act or omission of Seller/Supplier or his Agent. Buyer shall supply Seller/Supplier with all documents and information related to any escape of oil required by Seller/Supplier or as required by law or regulations applicable at the delivery place.

**11. 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.

**12. FORCE MAJEURE:**

The Seller and Seller's Agent shall not be liable for any loss, damage or demurrage from any breach, delay or nonperformance to the extent such is caused by:

- (i) Any governmental act or compliance by that party with any order, request, or control of any governmental authority or person purporting to act therefore whether or not such order or request is later determined to be invalid (including compliance with or implementation of any order, request plan or program of any authority created by governments; or
- (ii) The interruption, unavailability, or inadequacy of marine fuels, or any facility of production, manufacture, storage, storing or transporting Marine transportation, distribution or delivery, because of wars, hostilities, public disorders, acts of enemies, sabotage, strikes, lockouts, labor or employment difficulties fires, acts of God, accidents, breakdown, weather conditions, or any other case whatsoever which is not within the control of Seller or his Agent including, but not limited to, the failure, cessation, termination or curtailment in whole or in part of any existing or contemplated sources of supply of Seller of marine fuels or the crude oil or petroleum products from which such marine fuels are delivered. 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 and marine fuels at the port where Buyer desires to purchase marine fuels, then Seller has the right to
  - a. 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; or
  - b. Allocate such quantities of marine fuels to the Buyer as Seller may determine to be appropriate; or
  - c. Cancel any further commitments to make deliveries under these terms.

**13. LAW:**

The agreement made in accordance herewith, its performance and enforcement (inclusive of maritime liens arising hereunder) shall be governed by the English Law, regardless of the law of the forum in which any proceeding is instituted relating to such agreement or to any vessel to which deliveries are made in accordance herewith. All disputes arising hereof shall be referred to either a single arbitrator mutually agreed by parties or to the exclusive jurisdiction of the High Court of Justice in London. Nothing herein contained shall prevent Seller from commencing proceedings either by way of arrest or otherwise against vessel owned and/or chartered by the buyer and/or against any Buyer's property in any state or jurisdiction. Seller has the privilege to choose a convenient jurisdiction for securing their claims and such choice is not to consist a waiver of the agreed jurisdiction of the High Court of Justice in London. Should any provision hereof be finally determined to be inconsistent with or contrary to applicable law, such provisions shall be deemed amended or omitted to conform therewith without affecting any other provision hereof or the validity of such agreement.