

A. GENERAL INTRODUCTION

A-1 This is a statement of the terms and conditions according to which O.W. BUNKER MALTA LTD., will sell marine bunkers.

A.2 These conditions apply to all offers, quotations, orders, agreements, services and all subsequent contracts of whatever nature, except where expressly agreed in writing by O.W. BUNKER MALTA LTD.

A.3 General trading conditions of another party shall not apply, unless expressly accepted in writing by O.W. BUNKER MALTA LTD.

A.4 In case of whatever reason one or more of the (sub)clauses of these general conditions are invalid, the other (sub)clauses remain valid.

B. DEFINITIONS

B.1 Throughout this document the following definitions shall be applied:

- "Seller" O.W. BUNKER MALTA LTD.,

- "Buyer" Any party asking offers or quotations for or ordering bunkers and/or services and any party on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made.

- "Bunkers" The commercial grades of bunker oils as generally offered to Seller's customers for similar use at the time and place of deliver and/or services connected thereto.

C. OFFERS, QUOTATIONS AND PRICES

C. 1 An agreement shall only be binding on the Seller upon written confirmation by the Seller thereof.

C.2 Agreements entered into by brokers or any other representative on behalf of the Seller will only bind the Seller upon written confirmation by the Seller.

C.3 The Seller's prices are based on taxes, duties, costs and charges and on the price level of components for bunkers existing at the time of the conclusion of the agreement. Any later or extra tax, assessment, duty or other charge, or whatever nature and however name, or any increase thereof, or any price increase of components for bunkers or any costs borne by the Seller whatsoever caused by any change in the Seller's contemplated source of supply or otherwise, coming into existence after the agreement has been concluded, shall be added to the agreed purchase price, provided that the Seller shall give the buyer prior notice to this effect within a reasonable time after the Seller becoming aware of the relevant circumstances.

C.4 All prices and/or tariffs are exclusive VAT, unless specifically mentioned otherwise.

D. SPECIFICATION (QUALITY - QUANTITY)

D.1 The Buyer shall have the sole responsibility for the nomination of the quality and quantity of the bunkers, which shall correspond to written confirmation from Seller.

D.2 The quantity and quality shall be as agreed between the Seller and the Buyer and

correspond to Seller's written confirmation.

D.3 Where standard specifications are being given, tolerances of 5% in quality are to be accepted without compensation or other consequences whatsoever.

D.4 In respect of the quantity agreed upon, the Seller will be at liberty to provide, and the Buyer will then have to accept, 5% more or less, with no other consequences than corresponding invoicing.

E. MEASUREMENTS

E.1 The quantities of bunkers shall be determined from the official gauge or meter of the bunkering barge or tank truck delivery or of the shore tank in of delivery ex-wharf.

E.2 The chief engineer or his representative shall jointly with Sellers representative measure and verify the quantities of bunkers delivered from tanks from which deliveries are made.

E.3 Should said chief engineer or his representative fail or decline to verify quantities, measurements of quantities made by the Seller as aforesaid shall be final, conclusive and binding as to quantities sold and delivered, and in any such event the Buyer shall be deemed to have waived all claims for variance.

F. SAMPLING

F. 1 The Seller shall arrange for three (3) identical representative samples of each grade of bunker to be drawn throughout the entire bunkering operation (if this possible) in the presence of both the Sellers and the Buyers or their representatives.

F.2 In case that drip sampling is not available onboard barge or tank truck nor shore-tank, samples shall be as a composite of each tank divided with 1/3 from each top/mid/bottom of tanks.

F.3 The samples shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, product name, delivery date and place and seal number, authenticated with the Vessel's stamp and signed by the Seller's representative and the master of the vessel or his representative.

F.4 One (1) sample shall be retained by the Seller for ninety (90) days after delivery of the bunkers, or on being requested in writing by the Buyer, for as long as the buyer requires, and the other two (2) samples shall be retained by the Vessel or less, with no other consequences than corresponding invoicing.

F.5 In the event of a dispute as regards the quality of the bunkers, samples as per above shall be deemed to be conclusive and final evidence for the quality of the product as delivered. No samples subsequently taken shall be allowed as (additional) evidence.

F.6 Any analysis of such samples should be regarded void unless done jointly by Sellers and Buyers at a mutually agreed and properly certified independent laboratory at the port/Country where the supply was effected. In case such a laboratory is not available in the particular port, Buyers and Sellers should agree for an alternative mutually accepted.

G. DELIVERY

- G.1 The time of delivery as given by the Seller will have been given approximately, unless specifically agreed otherwise in writing by the Seller.
- G.2 The time of delivery will only be binding upon the Seller when all information necessary for the Seller to comply with its obligations, has timely come into possession of the Seller.
- G.3 In any case Buyer must give not less than 48 hours approximate and 24 hours definite notice to the Seller or the Sellers agents at the place of vessel's readiness to receive delivery.
- G.4 The Seller shall be entitled to deliver the bunkers in part deliveries, in which case each part delivery shall be construed as a separate agreement.
- G.5 Seller shall not be required to deliver any bunkers for the export of which any Government permit is required and has not been obtained.
- G.6 If the Seller at any time for any reason believes that there may be such shortage of supply at any place that it 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 in its sole discretion determine.
- G.7 The vessel in question shall be bunkered as promptly as circumstances permit, Seller shall not be liable for demurrage paid or incurred by the Buyer or loss or damage or delay of the vessel of any nature whatsoever due to the congestion at the loading terminal, prior commitments of available barges or tanktrucks or for any other reason.
- G.8 The Buyer shall provide a free side to receive the bunkers and shall render all necessary assistance which may be required by the Seller or Sellers representative.
- G.9 Receiving vessel shall moor, unmoor, hoist bunkering hose(s) from the barge(s) respectively lower hose(s) whenever required by Seller or sellers representative, free of expenses, and in any way assist barge equipment to a smooth supply. Buyer shall make and be responsible for all connections and disconnections between the delivery hose(s) and the vessel's intake pipe and ensure that the hose(s) are properly secured to the vessel's manifold prior to commencement of delivery.
- G. 10 In Case the Buyers vessel is not able to receive promptly and smoothly, Buyers to be responsible for and to pay reasonable demurrage claims to the barging facilities.
- G.11 Delivery shall completed and all risk, including loss damage, deterioration, depreciation, evaporation, or shrinkage as to bunkers so delivered shall pass to Buyers as the bunkers reaches the flange connecting the pipe lines or delivery hoses with the delivery facilities provided by the Seller.
- G.12 If Buyer for whatever reason is unable to receive the full quantity ordered and tendered, Seller shall have the right to invoice Buyer for the loss incurred by having to transport the fuel back to the storage or by having to sell the fuel in a degraded form at a lower price than that applicable to the grade originally nominated by Buyer without prejudice to the Seller's other rights under this agreement for damages or otherwise.
- G.13 If possible, the vessel shall provide segregated tankage to receive the contracted quantity of bunkers.

H. TITLE

- H.1 Title in and to the bunkers delivered and/or property rights in and to such bunkers shall

remain vested in the Seller until payment has been received by the Seller of all amounts due in connection with the respective delivery.

H.2 Until full payment of any amounts due to the Seller, for whatever nature, has been made, the Buyer shall not be entitled to use the bunkers other than for the propulsing of the vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the bunkers to any third party.

H.3 In case of breach of agreement by the Buyer the Seller is entitled to take back the Bunkers without prior judicial intervention, without prejudice to all other rights or remedies available to the Seller.

H.4 In the event that the bunkers have been commingled with other bunkers on board the vessel, the Seller shall have the right of lien to such part of the commingled bunkers as corresponds to the quantity of bunkers delivered.

H.5 In case the bunkers, in part or in full, are no longer (definable) present, the Seller has the right to attach the vessel and/or sister ship and/or other assets of the Buyer wherever situated in the world without prior notice.

H.6 Where title in and to the bunkers delivered has passed to the Buyer and/or others the Buyer grants a pledge on such bunkers. The Buyer furthermore grants a pledge on any other bunkers present in the respective vessel, inclusive of mixtures of the delivered bunkers and other bunkers. Such pledge will be deemed to have given for any and all claims, of whatever origin and of whatever nature, that the Seller may have against the Buyer.

I. PAYMENT

I.1 Payment shall be made by the Buyer as directed by the Seller within the days agreed as per written confirmation.

I.2 Payment shall be made in full, without set-off, counterclaim, deduction and or discount, free of bank charges to the bank account indicated by the Seller on the respective invoice.

I.3 Notwithstanding any agreement to the company payment will be due immediately in case of bankruptcy, liquidation or suspension of payment or comparable situation of the Buyer, or arrest upon assets and/or claims of the Buyer, or in case of any other situation, which in the sole discretion of the Seller, adversely affects the financial position of the Buyer.

I.4 Payment shall be deemed to have been made on the date designated by the Seller as the date which the Seller has received the payment. If payment falls on a non-business day, then payment shall be made on or before the business day nearest to the due date. If the preceding and succeeding business day are equally near to the due date, then payment shall be made on or before the preceding business day.

I.5 Any delay in payment shall entitle the Seller to interest at the rate of 2.00% (presently) per month or any part thereof without prejudice to any rights or remedies available to the Seller.

I.6 Payments made by the Buyer shall, notwithstanding the description, be credited with costs, subsequently with interest, and thereafter with invoices in the order of their ages, also if not yet mature.

I.7 All costs borne by the Seller in connection to the collection of overdue payments, whether made in or out of court and in general all costs in connection with breach of this agreement by the Buyer, shall be for the Buyers sole account.

I.8 The Seller shall at all times be entitled to require that the Buyers shall give, in such matter as shall be deemed sufficient by the Seller, security for the proper performance of all its obligations under the agreement. Failing immediate provision of such security, the Seller shall inter alia be entitled to stay further execution of the agreement(s) until such time as the Buyer will have provided the required security.

J. CLAIMS

J.1 Any dispute as to the quantity delivered must be noted at the time of delivery in the receipt or in a letter of protest. Any claim as to short delivery shall be presented by the Buyer immediately upon completion of delivery, failing which any such claim shall be deemed to be waived and absolutely barred.

J.2 Claims concerning quality shall have to be submitted to the Seller in writing within 15 days after delivery, failing which the rights to complain or claim compensation of whatever nature shall be deemed to have been waived and absolutely barred for all times.

J.3 The Buyer shall be obliged to make payment in full and fulfil all other obligations in accordance with the terms hereof, whether or not they have any claims or complaints.

J.4 In any case, claims will be timebarred unless legal proceedings have been instituted before the competent court as per clause P. hereof within 12 months after the date of delivery or the date that delivery should have been made.

K. LIABILITY

K.1 The Seller shall not be liable for damages of whatever nature, including physical injury, nor for delay in making deliveries or rendering services, even when such damages or delay have been caused by faults or negligence on the side of the Seller. The Seller shall furthermore not be liable for damages or delay as described above when such damages or delay have been caused by faults of its personnel or (sub)contractors.

K.2 Liability of the seller for consequential damages is excluded. In any event and notwithstanding anything to the contrary herein liability of the Seller shall not exceed the invoice value of the bunkers supplied under the relevant agreement for the relevant vessel.

K.3 The buyer shall be liable towards the Seller and herewith undertakes to indemnify the Seller for any and all damages and/or costs suffered or otherwise incurred by the Seller due to a breach of contract and/or fault or neglect of the buyer, its agents, servants, employees and officers, crews and/or other people whether or not on board of the respective vessel(s). The Buyer furthermore undertakes to hold the Seller harmless in case any third party institutes a claim of whatever kind against the Seller in connection to an agreement under the terms of these conditions. Third party shall mean any other (legal) person than the Buyer.

K.4 No servant or agent of the Seller (including independent (sub)contractors from time to time employed by the Seller) shall be under any liability to the Buyer for loss, damage or delay, while acting in the course of or in connection with its employment and/or agency. Without prejudice to the above every exemption, limitation, condition and liberty herein contained, and every right, exemption from liability, defence immunity of whatever nature

applicable to the Seller or to which it is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the Seller acting as aforesaid.

L. FORCE MAJEURE

L.1 The Seller or the Seller's supplier shall not be liable for loss, damage or demurrage due to any delay or failure in performance (a) because of compliance with any order or request of any government authority, or person purporting to act therefore, or (b) when the supply of the bunkers or any facility of production, manufacture, storage, transportation, distribution or delivery contemplated by the Seller or the Seller's supplier is interrupted, unavailable or inadequate for any cause whatsoever which is not within the immediate control of the Seller or the Seller's supplier, including (without limitation) such causes as labour disputes, strikes, governmental intervention, wars, civil commotion, fire, flood, earthquake, accident, storm, ice, adverse weather or any act of God. The Seller or the Seller's supplier shall not be required to remove any such cause or replace any effected source of supply or facility if doing so shall involve additional expense or a departure from the Seller's or the Seller's supplier's practices. The Seller or the Seller's supplier shall not be required to make up any deliveries omitted in accordance with this Clause.

L.2 If the Buyer exercises reasonable diligence, the Buyer shall not be liable for failure to receive any particular delivery if prevented therefrom by force majeure. The Buyer shall indemnify the Seller or the Seller's supplier for any damage caused by the Buyer, the Buyer's agents or employees in connection with any deliveries hereunder.

L.3 In the event that the Seller, as a result of force majeure, can only deliver superior grade of bunkers, the Seller is entitled to offer the said grade, and the buyer must accept delivery thereof and pay the applicable price.

M. BREACH /CANCELLATION

M.1 The Seller shall have the option to immediately cancel the agreement in full or in part, or to store or procure the storage of the bunkers in whole or in part for the account and risk of the Buyer and to charge the Buyer the expenses thereby incurred, to amend nominated prices or to hold the Buyer fully to the agreement at buyers sole discretion, or take any other measures the Seller deems appropriate, without prejudice to its rights to indemnification, without any liability on the side of the Seller, in any (but not limited) one of the following cases;

- a) when the Buyer, for whatever reason, fails to accept the bunkers in part or in full at the place and time designated for delivery;
- b) when the Buyer fails in part or in full to comply with its obligations to pay any amount due to the Seller and/or provide security as set out herein;
- c) when, before the date of delivery, it is apparent in the opinion of the Seller that the financial position of the Buyer entails a risk for the Seller;
- d) when, in case of force majeure, the Seller is of the opinion that the nature or the duration of the circumstances is such, that the execution of the agreement shall be cancelled.

M.2 The Seller may terminate this contract in whole or in part, at its own discretion, upon the

breach of any of provisions hereof by the Buyer.

N. SPILLAGE, ENVIRONMENTAL PROTECTION

N.1 If a spill occurs while bunkers are delivered, the Buyer shall promptly take such action as is necessary to remove the spilled bunkers and mitigate the effects of such spill. Without prejudice to the generality of the foregoing the Seller is hereby authorised as its option on notice to and at the expense of the Buyer to take such measures and incur such expenses (whether by employing its own resources or by contraction with others) as are necessary in the judgement of the Seller to remove the spilled bunkers and mitigate the effects of such spill. The Buyer shall co-operate and render such assistance as is required by the Seller in the course of such action. All expenses, claims, losses, damages, liability and penalties arising from spills shall be borne by the party that caused the spill by a negligent act or omission. If both parties have acted negligently, all expenses, claims, liability and penalties, shall be divided between the parties in accordance with the respective degree of negligence. The burden of proof to show the Sellers negligence shall be on the Buyer. The Buyer shall give the Seller all documents and other information concerning any spill or any program for the prevention thereof, that are required by the Seller, or are required by law or regulation applicable at the time and place of delivery.

O. ARREST OF THE VESSEL

O.1 Notwithstanding anything to the contrary herein and without prejudice to any rights or remedies otherwise available to the Seller, the Buyer by its acceptance of these conditions expressly authorises the Seller to arrest the vessel in question, or any other vessel owned or operated by the Buyer under any applicable jurisdiction as security for the obligations of the Buyer vis-à-vis the Seller in every respect should the buyer fail to make any payment to the seller immediately when due. The Seller may dispose of such arrested Vessel whether by sale or otherwise as applicable under any relevant jurisdiction. Any costs or expenses of whatever kind incurred by the Seller in respect of such arrest shall be for the sole account of the Buyer and shall be added to the claim for which arrest is made,

O.2 If the Buyer is not the registered owner of the vessel in question the Masters (or any authorised representative) signature any bunker request, receipt or other document shall be deemed to be an unconditional and irrevocable acceptance of the terms hereof and an unconditional confirmation that the bunkers supplied for the purpose of the Vessel and for the benefit of the Vessel and the registered owners with the effect inter alia that the Seller may proceed against the Vessel as set forth in O.1 above should the Buyer fail to make timely payment of any amount due to the Seller.

P. LAW AND ARBITRATION

P.1 This agreement shall be governed in all matters by the laws of Greece.

P.2 All disputes arising in connection with this agreement or any agreement resulting hereof

shall be finally settled by arbitration in Piraeus in accordance with the Greek Arbitration Act as in effect from time to time.

P.3 For the sole benefit of the seller it is further agreed that the seller may proceed against the Buyer, any third party or the Vessel in such jurisdiction as the seller in its sole discretion sees fit inter-alia for the purpose of securing payment of any amount due to the Seller from the Buyer.

Q. THE TEXT OF THESE CONDITIONS

Q.1 The text of these conditions being valid as from January 1st 1997.

[back to top](#)

[back to terms & conditions](#)