

GENERAL TERMS AND CONDITIONS OF SALE

GTCs applicable to sales of Marine Fuels Nov 1st 2009

It is agreed on the date shown in the Sale Contract between the party named as Seller and the party named as Buyer, that the Seller shall sell and deliver or arrange for delivery to the nominated Vessel and the Buyer shall purchase, take delivery of and pay for the Marine Fuels (as defined below) under the following General Terms and Conditions, (the "GTCs"). Headings in these GTCs are for identification purposes only and shall not be deemed to be part, or be taken into consideration in the interpretation or construction, of the GTCs. Unless the GTCs expressly require otherwise, any words denoting the singular shall include the plural and vice-versa.

These GTCs shall supersede any earlier terms and conditions issued by the Seller and shall override and prevail over any other terms and conditions, including, without limitation, any terms and conditions stipulated, incorporated or referred to by the Broker (if any) and/or by the Buyer whether in its Order or with its signature/seal/stamp on documentation or anywhere else.

1 – DEFINITIONS

Throughout the GTCs and the Sale Contract, the following definitions shall apply:

- "Marine Fuels" means products derived from crude oil, delivered or to be delivered to the Vessel for consumption.
- "Seller" means Total Raffinage Marketing Marine Fuels Division or the party contracting to sell and deliver or to sell and to arrange to deliver Marine Fuels.
- "Buyer" means the Vessel supplied and jointly and severally her Master, Owners, Managers, Operators, disponent Owners, Charterers and any person(s) who contract(s) to purchase, take delivery of and pay for the Marine Fuels.
- "Supplier" means a person requested by the Seller to deliver the Marine Fuels to the Buyer.
- "Seller's Quotation" means the response of the Seller to the Buyer's invitation to tender for the sale and supply of Marine Fuels.
- "Buyer's Order" means the Order for Marine Fuels placed by the Buyer based on the terms of the Seller's Quotation.
- "Seller's Written Acceptance" means the Written Acceptance by the Seller of the Buyer's Order as placed by the Buyer on the basis of the terms of the Seller's Quotation.
- "Bunker Requisition Form" means the document (i) drafted by the Seller/Supplier and signed and stamped before commencement of bunkering operations by the Master of the Vessel or his representative; and (ii) requesting delivery of Marine Fuels, and containing the quantities and the grades of the Marine Fuels requested.
- "Bunker Delivery Note" (BDN) means the document drafted by the Seller/Supplier and signed and stamped after completion of delivery by the Master of the Vessel or his representative. The BDN shall be taken by the Seller or its representative who shall hand over one copy to the Buyer, one copy to the Master of the Vessel receiving delivery of Marine Fuels and one copy to the Master of the ship/barge or to the driver of the truck/railcar delivering Marine Fuels as acknowledgement of the delivery of Marine Fuels.
- "Bunker Tanker Safety Check List" means the document signed and stamped before commencement of bunkering operations by the Master of the Vessel requesting delivery of Marine Fuels or his representative, and by the Seller or its representative, which shall enable them to check that all the safety requirements have been met. Signature of the Bunker Tanker Safety Check List by the Seller does not relieve the Buyer from its primary obligation to ensure the safety of Vessel receiving Marine Fuels. Safety on board the Vessel receiving Marine Fuels shall remain the sole responsibility of the Buyer.
- "Master of Vessel" means the individual authorised to represent the Receiving Vessel.
- "Receiving Vessel" means the vessel to which the Marine Fuels are physically delivered "Sale Contract" means the contract arising out of (i) Written Acceptance by the Seller of an Order for Marine Fuels placed by the Buyer; or (ii) delivery by the Seller or by its Supplier of Marine Fuels ordered by the Buyer, whichever occurs first.

2 – QUOTATION AND BINDING AGREEMENT

In agreement with the Seller's Quotation and the price or price formula quoted by the Seller, the Buyer shall send an Order to the Seller identifying the quantity and grade of Marine Fuels required, the port of delivery, the name of the Vessel, her IMO number, the identity and contact details of the Vessel's Master, Owners, Managers, Operators, disponent Owners and Charterers.

No binding agreement shall arise until and unless either (i) the Seller sends a Written Acceptance of the Buyer's Order to the Buyer (directly or via brokers), or (ii) the Marine Fuels are delivered to the Vessel, whichever takes place first. In any event, these GTCs shall apply.

3 – CANCELLATION

The Buyer shall be free to cancel its Order at no cost within three [3] calendar days of the date of its Order, provided that the Seller's Written Acceptance has not been issued. If the buyer cancels its Order after the Seller has issued its Written Acceptance, or more than three [3] calendar days after its Order, the Buyer shall be liable for any and all losses suffered and liabilities incurred by the Seller/Supplier as a result of the cancellation, including, without limitation, barges costs and hedging costs. These losses and liabilities shall be indemnified in a minimum amount of USD 4000 by way of agreed liquidated damages if they amount to USD 4000 or less as "cancellation costs", but shall be indemnified in full if they exceed USD 4000.

4 - GRADES/QUALITY AND LIMITATION OF LIABILITY

- (a)** The Marine Fuels shall be described using ISO Standard 8217/2005 or any subsequent amendment at the time of the Sale Contract. The Buyer shall have the sole responsibility for the identification of the grades of Marine Fuels suitable to the Vessel, including determination of compatibility with marine fuels already on board the Vessel. The Buyer shall accordingly state the grades required in its Order.
- (b)** The Seller warrants that the Marine Fuels will comply with the grades quoted in the Seller's Written Acceptance. Failing a Written Acceptance by the Seller, and if Marine Fuels are delivered, the grades warranted will be those defined by the Buyer in its Order.
- (c)** The Seller does not provide any guarantee nor warranty, whether, expressed or implied, as to the merchantability, satisfactory quality, fitness or suitability of the Marine Fuels for any particular purpose.
- (d)** The Buyer shall (i) take delivery of the Marine Fuels in segregated tanks and shall not mix the same with any other marine fuels, and (ii) satisfy itself, through an independent laboratory analysis, that the Marine Fuels delivered are within specifications before burning the same. Failure by the Buyer to comply with these obligations which are conditions precedent to any liability whatsoever of the Seller and Supplier arising out of or in connection with the Sale Contract, or otherwise, will result in any and all claims from the Buyer being waived and absolutely barred.
- (e)** If off specifications Marine Fuels are delivered, the Buyer shall not burn the same and shall take all necessary steps to minimise the damage and losses arising from the same.
- (f)** Any claim as to the quality of the Marine Fuels must be notified in writing to the Seller with all supporting evidence as soon as possible and, in any event, within 30 calendar days of the date of delivery failing which it shall be waived and absolutely barred.
- (g)** In the event of a quality claim, the parties shall have the quality of the Marine Fuels analysed by a mutually agreed, qualified and independent laboratory. The Seller shall provide this laboratory with one of the samples retained by him as per Clause 7. The analysis shall be established by tests in accordance with ISO 8217/2005 and ISO 4259 or subsequent amendments. Due to poor reproducibility for some testings - for example TSP - it should be in some cases recommended to proceed to analysis by more than one mutually agreed laboratory. The result of this joint quality inspection shall be final and binding as evidence of the quality of the product delivered, except in cases of manifest error or fraud. The expenses of the analysis shall be borne by the Buyer if the Marine Fuels are found to be within specifications and by the Seller if the Marine Fuels are found to be outside of specifications.
- (h)** The Seller's and the Supplier's liability (if any) arising out of delivery of out of specifications Marine Fuels shall be limited to the costs of (i) discharging the off specifications Marine Fuels delivered; and (ii) delivery of Marine Fuels which are within specifications.
- (i)** The Seller/Supplier shall have no liability whatsoever for any other loss/damage including, without limitation, claims for delay, loss of hire, damage to the Vessel, her machinery or injury to her crew, loss of profit, loss of charter/contract, loss of opportunity.
- (j)** The Buyer's submission of a quality claim does not relieve it of its obligation to pay the Sale Contract price in full without set off, deduction or counterclaim, as per the invoice issued by the Seller pursuant to Clauses 10 and 11.

5 – QUANTITIES

The quantities of Marine Fuels to be delivered by the Seller are those stated in the Seller's Written Acceptance, plus or minus 5% (five percent) at Seller's option unless agreed otherwise. Failing a Written Acceptance by the Seller, the Seller will endeavour to deliver the quantity ordered by the Buyer in its Order but shall not be liable for any short delivery or delivery in excess of the quantity ordered and the Buyer shall pay the quantity delivered measured according to clause 6 below.

6 – MEASUREMENTS

- (a) The Marine Fuels to be delivered under the Sale Contract shall be measured and calculated in accordance with the ISO 91 – 1/1992 and ISO 91 – 2/1991 Petroleum measurements tables.
- (b) The quantity delivered shall be finally and conclusively determined on the basis of the gauge/meter of the Seller's or Supplier's barge or shore-tank or road truck/rail car tank or on the basis of the Seller's/Supplier's oil meters, at Seller's option.
- (c) The Buyer or its representative (including an independent surveyor /inspector) is entitled to witness such measurements.

7 – SAMPLING

- (a) The Seller shall arrange for four (4) identical representative samples of not less than 400 ml each for each grade of Marine Fuels to be drawn during the entire bunkering operation in the presence of both the Seller and the Buyer or their respective representatives. Three of these samples are taken for quality purposes (quality samples). The fourth sample is known as the MARPOL sample.
- (b) The samples shall be securely sealed and seal numbers shall be written on BDN and witnessed by Buyer or by Buyer's representative.
- (c) One quality sample and the Marpol sample shall be handed to the Buyer or to Buyer's representative.
- (d) The 2 other quality samples are retained by the Seller.
- (e) The 3 quality samples have to be kept for a period of 40 calendar days, from the date of delivery. At the end of the said period these samples may be discarded unless the Buyer has made a complaint or claim under Clause 4 above.
- (f) In case of road truck or rail car delivery, the 4 samples shall be drawn at the end of the delivery.

8 - DELIVERY

- (a) The Marine Fuels shall be delivered to the Receiving Vessel at the port or place stated in the Seller's Written Acceptance. Absent a Written Acceptance by the Seller of the Buyer's Order, the port or place of delivery shall be that stated in the Buyer's Order.
- (b) Delivery is to take place during working days and hours at the relevant port of delivery. Any delivery outside of these periods, if permitted by port regulations, may give rise to additional charges which shall be for the Buyer's account. The Buyer shall give the Vessel's estimated time of arrival ("ETA") in its Order; if the Buyer has not given any ETA in its Order, it shall do so within 24 hours of receipt of the Seller's Written Acceptance of the Buyer's Order. The Seller/Supplier shall be under no obligation to deliver if the Vessel arrives outside the ETA and the Buyer shall reimburse any extra costs incurred by the Seller/Supplier in delivering outside of the ETA.
- (c) The Buyer shall give the Seller, or its representatives at the port or place of delivery, 72, 48 and 24 hours definite written notice of the Vessel's arrival, indicating the exact location at the port of delivery, and the exact time at which delivery is required. The Seller/Supplier shall endeavour to deliver the Marine Fuels at the required time but shall, under no circumstance, be liable for any delay in the delivery of the Marine Fuels. The Buyer undertakes to accept delivery of the Marine Fuels at any time on the day of requested delivery and to pay for any extra costs incurred by the Seller/Supplier if the Vessel cannot take delivery of the Marine Fuels upon presentation of the Marine Fuels for delivery.
- (d) The Marine Fuels shall be delivered, ex delivery hose (see clause 13 re. risk /title), from:
 - (i) storage tank or
 - (ii) tank truck(s)/rail car(s) or
 - (iii) bunkering barge(s)at Seller's option.

- (e) The Seller/Supplier shall have all permits/licences required for delivery of Marine Fuels at the port or place of delivery.
- (f) The Buyer shall ensure that the Receiving Vessel has all certificates required to comply with all relevant regulations relating to delivery of the Marine Fuels at the port or place of delivery and shall instruct the Master of the Receiving Vessel to:
 - (i) advise the Seller in writing, prior to delivery, of the maximum allowable pumping rate and pressure and to provide all emergency contact, details and the Receiving Vessel's emergency shut-down procedures;
 - (ii) notify the Seller in writing prior to delivery, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of, and particular to, the Vessel, and which might affect the delivery of the Marine Fuels,
 - (iii) provide a free side to receive the Marine Fuels and to render all necessary assistance which may reasonably be required to moor or unmoor the bunkering barge or to connect or disconnect the delivery hose(s).
- (g) In the event of delivery by barge(s), the Buyer shall provide free of expense to the Seller/Supplier a clean and safe berth for the barge(s) alongside the vessel's intake pipe/receiving line(s).
- (h) Receiving Vessel to moor, unmoor, hoist, lower, bunkering hoses, whenever required by Seller/Supplier free of charge and to assist Seller/Supplier in delivery operations.
- (i) The Buyer and Receiving Vessel shall make and be solely responsible for all connections and disconnections between the delivery hose(s) and the Vessel's intake pipe and shall ensure that the delivery hose(s) are properly secured and connected to the Vessel's manifold prior to the commencement of delivery of Marine Fuels to the Vessel.
- (j) The Vessel shall provide sufficient segregated tankage to receive the contracted quantity of Marine Fuels, plus or minus five (5) percent at Seller's option (see Clause 5). The Buyer shall pay any cost or expense incurred by the **Seller/Supplier** resulting from the Buyer's failure to provide sufficient segregated tankage and/or to take delivery of the Sale Contract Quantity.
- (k) If any delay in the delivery of the Marine Fuels is attributable to the Buyer of the Receiving Vessel, the Seller shall be entitled to recover against the Buyer all losses/expenses, liabilities arising out of the said delay including, without limitation, any liability for demurrage on barges/trucks/rail cars (if any) and storage costs. The Seller/Supplier shall have no liability for any delay in the supply/delivery of the Marine Fuels to the Receiving Vessel.
- (l) If the Buyer fails to take delivery, in whole or in part, of the Sale Contract quantity(ies), the Buyer shall pay the full Sale Contract price for the quantity ordered and the Buyer shall indemnify the Seller and hold the Seller harmless against any and all losses suffered and liabilities incurred as a result of the Buyer's failure.

9 – DOCUMENTATION

- (a) Before commencement of delivery, the Master of the Receiving Vessel shall sign a Bunker Requisition Form in the form presented by the Seller/Supplier and containing the quantities and the grades of the Marine Fuels to be delivered. In the Bunker Requisition Form, the Master of the Vessel shall confirm the name of the Receiving Vessel, her IMO number, the details of the Vessel's Owners, her Managers, her Operators, her disponent Owners and her Charterers.

Before commencement of delivery operations, the Seller or its representative shall also present to the Master of the Receiving Vessel or his representative, a Bunker Tanker Safety Check List or similar document, which shall be signed by the Seller or its representative and by the Master of the Receiving Vessel or his representative, which shall enable to check that all the safety requirements have been met. Signature of this document by the Seller does not relieve the Buyer from its primary obligation and sole responsibility to ensure safety on board its Vessel.

- (b) Once the delivery is completed and quantities measured as per clause 6, a Bunker Delivery Note shall be signed and stamped by the Master of the Receiving Vessel or his representative and by the Seller or his representative, and returned to the Seller or its representative, as acknowledgement of the delivery. A BDN shall also be retained by the Master of the Receiving Vessel and kept on board the Receiving Vessel for a minimum of three (3) years from the date of delivery. In addition to the information in the Bunker Requisition Form, the BDN shall contain the following information:
 - Vessel's name and her IMO number
 - Seal numbers of samples taken during delivery
 - Viscosity
 - Delivered quantity in volume units
 - Density in kg/m³ at 15°C or at ambient in conformity with local Port regulation

- Delivered quantity in metric tons
- Measured temperature before delivery
- Flash point
- Sulphur content.

10 – PRICE

- (a) The price of the Marine Fuels shall be that stated in the Seller's Quotation or in the Seller's Written Acceptance whichever is issued last. That price shall be either a fixed price per unit of Marine Fuels delivered or a price calculated on the basis of a formula as stated in the Seller's Quotation or in the Seller's Written Acceptance whichever is issued last.
- (b) The price shall be valid for the time range (the "price validity time range") identified in the Seller's Quotation or in the Seller's Written Acceptance whichever is issued last.
The Seller shall be under no obligation to deliver if the Receiving Vessel arrives outside of the price validity time range. If the Receiving Vessel does not arrive within the price validity time range, the Seller is entitled to terminate the Sale Contract forthwith and to claim damages as per clause 3 above as if the contract had been cancelled by the Buyer more than three [3] days after the Buyer's Order. The Seller is also entitled, at its sole discretion, to elect to deliver the Marine Fuels on new terms to be agreed between the Buyer and the Seller and without prejudice to the Seller's right to claim damages as if the contract had been cancelled by the Buyer more than 3 days after the Buyer's Order (see clause 3).
- (c) The price stated in the Seller's quotation is exclusive of all taxes and charges which are levied against the Seller/Supplier by the State of delivery and/or by any governmental/regional/local authorities in connection with the Sale Contract, including but not limited to:
- (i) Wharfage charges, barging charges or other similar charges,
 - (ii) Mooring charges or port duties incurred by the Seller,
 - (iii) Duties, taxes, charges, freights or other costs in the country where delivery takes place,
- (d) At ports where the Seller is not the direct Supplier, the Seller reserves the right to invoice the Buyer for any additional charges/dues/taxes that the Supplier demands from the Seller after the Seller has issued its Written Acceptance of the Buyer's Order.

11 – PAYMENT

- (a) The Buyer shall pay for the Marine Fuels within 30 calendar days from the date of delivery (electronic or telegraphic invoice is acceptable, at the option of the Seller) unless otherwise agreed in the Sale Contract. If the Buyer has paid in advance of delivery, it shall be adjusted on the basis of the actual quantities of Marine Fuels delivered and any additional payment/refund, as the case may be, shall be made in accordance with this Clause 11.
- (b) Payment shall be made in full, without set-off, counterclaim, deduction or discount, free of bank charges and in the manner and at the place indicated on the invoice.
- (c) Payment shall be deemed to have been made on the date the payment is credited to the account of the bank designated by the Seller. If the payment date falls on a non-business day, the Buyer shall pay on or before the business day nearest to the due date. If the preceding and succeeding business days are equally near to the due date, then payment shall be made on or before the preceding business day.
- (d) Any delay in payment shall entitle the Seller to claim interest at the rate of 1.5% (one and a half per cent) per month. Without prejudice to the foregoing, the Seller is entitled to suspend deliveries or to require prior payment in cash for any further deliveries as long as any amount remains overdue, regardless of the cause of the delay in payment.

12 – QUANTITY CLAIMS

Provided the quantity delivered is measured in accordance with clause 6 (a), there shall be no claim regarding quantity save in case of fraud or manifest error. In case of alleged fraud on the Supplier's part or manifest error on the Supplier's/Seller's part, all quantity claims shall be barred and absolutely waived unless three cumulative conditions are met:

- (a) the Master claused the BDN disputing the quantity measured as delivered, and providing the Buyer's case as to the actual quantity delivered;

- (b) the Master issued a letter of protest and handed the same over to the Seller or its representative on the day of the delivery;
- (c) the Buyer formally notifies its claim in writing to the Seller with evidence of manifest error or fraud within 14 calendar days of the delivery date.

Absent these three conditions being satisfied, all quantity claims shall be barred and absolutely waived.

13 - RISK/TITLE

Risk in the Marine Fuels shall pass to the Buyer once the Marine Fuels have passed the flange connection between (a) the Vessel's bunker manifold and (b) the delivery facilities provided by the Seller. Title to the Marine Fuels shall pass to the Buyer upon **full** payment for the value of the Marine Fuels delivered, pursuant to the terms of Clause 11. Until such **full** payment has been made, the Seller shall have a lien over the Vessel and her bunkers for the value of the Marine Fuels delivered. If the Marine Fuels have been commingled with other bunkers on board of the Vessel, the Seller shall have a lien over the vessel and such part of the commingled bunkers as corresponds with the value of the quantity of the Marine Fuels delivered.

14 – TERMINATION

The Seller shall be entitled to terminate the Sale Contract forthwith in the event of:

- (a) breach of the GTCs or of the Sale Contract by the Buyer;
- (b) any application being made or any proceedings being commenced, or any order or judgement being given by any court, for the liquidation, winding up, bankruptcy, insolvency, dissolution, administration or re-organisation or similar of the Buyer;
- (c) any suspension of payment, cessation to carry on business or compounding or making any special arrangement with its creditors by the Buyer;
- (d) any act being done or event occurring which, under the applicable law, has a substantially similar effect to any of those acts or events.

Termination by the Seller under this Clause 14 shall not affect any other rights or remedies of the Seller.

15 – COLLECTION AND LIEN

Deliveries of Marine Fuels are made not only on the credit of the Buyer but also on the faith and credit of the Vessel and the Seller shall have, and may assert a lien against the Vessel and her bunkers and against all assets, vessels and bunkers, in the same ownership, management, operation or control for all sums due and owing in connection with the Sale Contract, including interest and costs.

It is expressly agreed between the Seller and the Buyer that Written Acceptance of the Buyer's Order or delivery of Marine Fuels following the Seller's Order creates a lien in accordance with article 31(6) of French Law (Statute) n°67-5 of 3 January 1967.

16 – INDEMNITY AND EXCLUSION OF LIABILITY

The Buyer shall indemnify, defend and hold harmless the Seller from and against any claims, demands, proceedings, damages and liabilities for loss of, or damage to, property or for death of or injury to any person and against all associated costs (including reasonable attorney's fees), losses and expenses arising out of or in connection with the Sale Contract except to the extent caused by the gross negligence or the wilful misconduct of the Seller.

Except as expressly stated at clauses 4 [and 12] above and notwithstanding anything to the contrary in these GTCs or in the Sale Contract, the Seller shall have no liability to the Buyer under or in connection with the Sale Contract for any loss or damage of any kind, whether direct or indirect, special, incidental or consequential, nor for loss of profit sustained by the Buyer.

17 – SUBSTITUTION

The Seller reserves its right to substitute for itself a third party for the performance of all or part of its obligations under the Sale Contract. The Seller shall remain responsible for the performance of the Sale Contract vis-à-vis the Buyer.

18 - FORCE MAJEURE

The Seller/Supplier shall not be responsible for any loss, damage, delay or failure resulting from an act of God, or the port of delivery being affected by war, commotion, riot, quarantine, strike, stoppage, lock-out, arrest, restraint of princes, rulers and people, or any other event whatsoever which cannot be avoided or guarded against by the exercise of due diligence.

19 - SAFETY AND ENVIRONMENT

In the event of any spillage (which for the purpose of this Clause 18 shall mean any leakage, escape, or overflow of the Marine Fuels) causing or likely to cause pollution occurring at any stage of the bunkering operation, the Buyer and the Seller shall jointly, and regardless as to whether the Buyer or the Seller is responsible, immediately take such action as is necessary to clean up, which shall always be conducted in accordance with such local laws and regulations that may apply.

If the pollution is caused by an act or omission of the Buyer, its servant or agents the Buyer shall indemnify the Seller for the cost incurred by the Seller in connection with it.

20 - MATERIAL SAFETY DATA SHEETS

Material Safety Data Sheets (M.S.D.S.) are available on the websites www.quickfds.com and www.marinefuels.total.com. Seller will send a hard copy of the M.S.D.S. upon request.

21 – SECURITY FOR COSTS

Notwithstanding anything to the contrary in the GTCs, in the Sale Contract or in any terms and conditions incorporated in the same (including the rules as to security for costs in the LMAA or FALCA terms which, if applicable, are hereby varied), any claim against the Seller/Supplier shall be deemed to be irrevocably abandoned if, within 14 calendar days of commencement of proceedings/arbitration, the Buyer has not arranged security for costs in favour of the Seller and in an amount at least equal to the quantum of the Buyer's claim by way of a First Class European bank Letter of Guarantee. This is without prejudice to the Seller's right to demand security for any claim/counterclaim against the Buyer.

22 - LAW AND JURISDICTION

The United Nations Convention on Contracts for the International Sale of Goods (Vienna Sale Convention) signed in Vienna on 11 April 1980 shall not apply to and shall be expressly excluded from the Sale Contract and these GTCs.

Any dispute arising out of or in connection with the Sale Contract or these GTCs, including, without limitation, any dispute with multiple defendants/claimants and indemnity claims, shall be exclusively referred to the Tribunal de Commerce of Le Havre, France, subject to the procedures applicable there. The laws of France shall govern the Sale Contract and these GTCs.