

# TOYOTA TSUSHO PETROLEUM PTE LTD

## GENERAL TERMS AND CONDITIONS FOR SALES OF MARINE FUELS

### 1. Application

The terms and conditions herein shall apply in a Contract where Toyota Tsusho Petroleum Pte Ltd (hereinafter called the Seller) agrees to sell and deliver, or to arrange for the sale and delivery of Marine Fuels to a Buyer which agrees to buy Marine Fuels from the Seller under the Contract.

### 2. Price

2.1 The price of Marine Fuels shall be the price as determined by the Seller for either "ex-wharf" delivery or "delivered" basis and accepted by the Buyer for the relevant grade of Marine Fuel. "Delivered" prices comprise the ex-wharf price and delivery charges only. Unless otherwise stated in the Seller's quotation or Contract, prices exclude taxes, duties, wharfage dues, port charges and other charges. Any such taxes, duties, wharfage dues, port charges and other charges shall be paid by the Buyer at the rate prevailing on the actual date of delivery.

2.2 The price agreed by parties in the Contract is valid for a delivery which is within 5 percent more or less of the agreed volume and for a 3-day delivery range beginning from the estimated date of arrival of Buyer's nominated vessel as confirmed in the Contract.

2.3 If the Buyer begins to take delivery, or requires delivery to begin, outside the 3-day range as notified in clause 2.1.1, the Seller shall be entitled to amend its quoted price to reflect prevailing market prices or to cancel the nomination. This right is without prejudice to any claim the Seller may have against the Buyer for damages for failing to take delivery within the 3-day period.

2.4 The prices applicable to the commencement of delivery under the Contract shall remain effective until the completion of delivery.

### 3. Bunkering Procedures

Marine Fuels sold on "delivered" basis in Singapore shall be governed by procedures and requirements as stipulated in SS 600: 2008 ( "Code of Practice for Bunkering " ) incorporating the latest amendments. The General Terms and Conditions herein will prevail in the event of any inconsistency with the provisions of SS 600: 2008 or any subsequent revision thereof.

### 4. Quality

4.1 The specifications of the Marine Fuels supplied to Buyer shall be the Seller's or Seller's suppliers' commercial grades as available at the time and location of delivery.

4.2 The Buyer has the sole responsibility in the selection of the proper Marine Fuels for use in the vessel including the determination of compatibility with other fuels already on board such vessel.

- 4.3 All other warranties and all conditions relating to quality, fitness for purpose, description or otherwise whether expressed or implied by common law, statute, or otherwise are hereby excluded.

**5. Quantity**

- 5.1 The quantity of Marine Fuels shall be determined from measurements of the Seller's or Seller's supplier's delivery facility, using tank gauging or oil meter at the Seller's or Seller's supplier's election. The Buyer or Buyer's nominated representative shall have the right to be present when such measurements are taken.
- 5.2 The quantities of Marine Fuels to be delivered shall be measured and calculated in accordance with ASTM-IP Petroleum Measurement Tables for petroleum and petroleum products or the methods of any other recognised standards authority at the discretion of the Seller or Seller's supplier.

**6. Nomination**

- 6.1 The Buyer or the agent of the vessel shall give the Seller at least 48 hours' advance notice (excluding Saturdays, Sundays and Public Holidays) of the exact time and exact location at which delivery is required together with confirmation on the quantity and grade of Marine Fuels to be delivered.
- 6.2 Where the delivery is ex-wharf, the Buyer shall nominate the vessel for loading of a quantity of Marine Fuel of not less than 2,000 metric tons and shall give the Seller at least five (5) working days' notice (excluding Saturdays, Sundays and Public Holidays) of such loading.
- 6.3 The quantities to be delivered ex-wharf in a term Contract shall be evenly spread over the Contract period.

**7. Delivery**

- 7.1 Delivery of the Marine Fuels shall be made to the vessel ex-wharf or ex-barge as specified in the Contract and into the tanks normally designated for the fuels.
- 7.2 Delivery of the Marine Fuels by the Seller shall be made only within the established port limits unless otherwise agreed between the Buyer and the Seller.
- 7.3 The Seller shall deliver the Buyer's Marine Fuel requirements as promptly as circumstances permit; but the Seller shall not be liable for any loss, damage, delay or demurrage whatsoever which may be suffered by the Buyer as a result of any congestion affecting the Seller's or Seller's supplier's delivery facilities or any prior commitment of bunker barges.
- 7.4 If any government or port permit is required for delivery of the Marine Fuels, no delivery will be made until such permit has been obtained by the Buyer.
- 7.5 The receiving vessel shall make all connections and disconnections between the delivery hose and the vessel's intake pipe and shall render all necessary assistance and provide sufficient equipment to receive promptly the Marine Fuels. In the case of barge deliveries, the Buyer shall provide a free and safe berth for the barge alongside the vessel's receiving lines. Where deliveries are taken ex-wharf, the Buyer shall promptly receive the delivery and withdraw the vessel from the wharf upon completion of the delivery.
- 7.6 Should the Buyer cause any delay in taking delivery to the Seller's or Seller's supplier's barge or in failing to vacate the wharf promptly, the Buyer shall be liable for any loss or expense incurred by the Seller arising from any such delay.

## **8. Failure to Lift Penalty**

- 8.1 If the Buyer fails to take delivery of or rejects any amount of the Marine Fuels to be delivered under the Contract or fails to take all necessary steps to take delivery or otherwise performs its obligations pertaining to the taking of delivery under the Contract, the Buyer shall be liable for all loss and expenses incurred by the Seller arising from such failure or rejection by the Buyer, including but not limited to any difference between the contract price and prevailing market price of the Marine Fuels, barging charge of US\$3.50 per metric ton to be applied to the Marine Fuels which are due to be but not delivered, any storage costs and if the Marine Fuels are re-sold to another party as fuels of a lower grade, the difference between the prevailing market prices of the Marine Fuels and such lower grade of fuel.
- 8.2 If the Buyer fails to lift the contracted ex-wharf quantity within the agreed loading or delivery date or date range or fails to nominate a vessel to take delivery of the Marine Fuels within 3 days before the agreed loading or delivery date or before the first day of the agreed loading or delivery date range, the Seller shall have the option to store the Marine Fuels in-tank or onboard a vessel, and impose for the Buyer's account a surcharge corresponding respectively to the aforesaid mode of storage of US\$2.00 per metric ton or US\$3.50 per metric ton of unlifted quantity for every seven calendar days or part thereof after the agreed loading date range, plus interest at the rate of two percent (2%) per month or part thereof until the contracted quantity has been completely lifted. Further, the Seller shall have the right to sell any unlifted quantity of Marine Fuels and the Buyer shall be responsible for all losses, price differential between the agreed Contract price and the subsequent selling price of unlifted quantity, storage charges and interest thereon incurred up to the date of the sale.
- 8.3 Without prejudice to its other rights and remedies, the Seller shall be entitled to set-off or deduct from any amounts due to the Buyer under any other contract for all losses and expenses it suffers or incurs under the Contract.

## **9. Vessel**

The vessel nominated by the Buyer for loading ex wharf must be in all ways acceptable to the Seller's or Seller's supplier's terminal, and meet all requirements of the Port Authority, including but not limited to compliance with ISM (International Safety Management) Code and ISPS (International Ship and Port Facility Security) Code.

## **10. Title and Risk**

Delivery of the Marine Fuels shall be deemed to be complete and risk shall pass to the Buyer as the Marine Fuels pass the flange connecting the delivery facilities provided by the Seller with the receiving facilities provided by the Buyer. Title shall pass to the Buyer only upon payment by the Buyer of the full amount of invoiced value due for Marine Fuels delivered, even if the Marine Fuels are no longer in the possession or custody of the Buyer.

## **11. Payment**

- 11.1 Payment for the delivery and all related charges shall be made by the Buyer in full without any deduction, set-off or counterclaim whatsoever in United States Dollars free of all charges by electronic or telegraphic transfer of same day funds to the Seller's nominated bank account, quoting the Seller's invoice number and the Buyer's name. The Seller shall provide the Buyer with a documentary invoice or fax invoice.
- 11.2 Unless otherwise agreed between parties, all payments hereunder shall be made within 30 days from the date of delivery (date of delivery to count as day one). The Seller reserves the right to charge interest at a rate of two percent (2%) per month and pro rata for part thereof on any amount not paid by such time.

- 11.3 If payment due date falls on a Saturday or bank holiday other than Monday in New York or at such other place as designated by the Seller for payment, then payment shall be made on the preceding banking day. Where the payment due date falls on a Sunday or Monday banking holiday in New York or such other place so designated, then payment shall be made on the next following banking day.
- 11.4 Notwithstanding any terms and conditions herein, including Clause 11.2 above as well as any terms and conditions as may be set out in the Contract Note, if the Marine Fuels are supplied on credit and if the Buyer's financial condition or credit standing is deemed by the Seller (at its sole discretion) to be impaired or otherwise unsatisfactory, the Seller may require the Buyer to make payment at any time before the date due for payment whether before or after delivery of the Marine Fuels or to provide security satisfactory such as a standby letter of credit or a performance bond to the Seller. In the event of failure by the Buyer to make payment or give security required, the Seller shall be entitled to suspend or terminate any delivery of Marine Fuels under the Contract, without prejudice to the Seller's other rights for remedies, including asserting all its rights against the Buyer's nominated vessel. In the event of such suspension or termination, the Buyer shall have no recourse against the Seller.
- 11.5 The Buyer shall, on the Seller's written notification pursuant to Clause 11.4, be obliged to procure a standby letter of credit or performance bond on wording to be provided by the Seller up to the value of the Marine Fuels to be supplied to the Buyer or an estimate of such value (such estimate to be undertaken solely by the Seller) before any delivery of the Marine Fuel is effected by the Seller. Such standby letter of credit or performance bond shall be issued by a first class, international bank acceptable to the Seller.

## **12. Indemnity / Liability**

- 12.1 The Buyer shall indemnify the Seller and the Seller's supplier against any claims, losses, costs, damages, liabilities, fines, penalties and expenses incurred or sustained out of or in connection with the act, omissions, neglect or default of the Buyer, its servants, crew or agents in the receipt, use, storage or transportation of the Marine Fuels delivered.
- 12.2 The Seller's liability for breach of any condition shall be limited to the payment of damages but shall exclude indirect or consequential damages, and its extent of liability shall not under any circumstances whatsoever exceed the agreed selling price of the Marine Fuel under the Contract.
- 12.3 The Seller will exercise due care in appointment and selection of suppliers and contractors for effecting physical delivery of the Marine Fuels to the Buyer. Where the Seller has exercised such care, the Seller shall not be liable or answerable to the Buyer for the consequences of any criminal act, or omission amounting to a crime, by the supplier or contractor or any employee or agent of such supplier or contractor. The mere fact that an appointed supplier or contractor, or an employee or agent of such supplier or contractor has been investigated in connection with marine fuel supply operations shall not preclude appointment by the Seller, nor shall appointment by the Seller with knowledge of such investigation imply failure to exercise due care.

## **13. Force Majeure**

- 13.1 Neither the Seller nor the Buyer shall be responsible for any failure to fulfil its respective obligations other than the obligation to make payment due under the Contract hereunder if fulfilment has been delayed, interfered with, curtailed or prevented by any circumstance whatsoever which is not within the control of that party, including without prejudice to the generality of the foregoing, failure or delay caused by or resulting from act of God, fires, floods, wars, riots, strikes, lock-out or labour dispute, navigational accidents, accidents at or closing of navigation, transportation or terminal mechanism, any curtailment, cessation or failure of supplies of Marine Fuels from any of the Seller's or Seller's suppliers' sources of supply or of the petroleum from which such Marine Fuels are derived, or compliance with any order, demand or request of any international, national, port, transportation or government authority or agency.

- 13.2 If by reason of any of the causes described in clause 13.1 herein, the Seller's availability of Marine Fuels or means of transportation is delayed, interfered with, curtailed or prevented, then the Seller shall have the liberty to withhold, reduce or suspend deliveries at its sole discretion and shall not be bound to make good shortages resulting from any such cause. In such an event, the Buyer shall have the right to purchase any undelivered portion thereof from a third party.

#### **14. Samples/Quantity and Quality Claims**

- 14.1 The Seller or Seller's supplier shall take representative samples of each grade of Marine Fuels delivered in accordance with its normal sampling procedure applicable at the port (for "delivered" supply) or loading terminal (for "ex-wharf" supply) – the number of such representative samples being four (4) and two (2) respectively. The Buyer or Buyer's accredited representative shall be at liberty to witness the sampling. Two sealed samples (for "delivered" supply) or one sealed sample (for "ex-wharf supply) shall be handed to the Buyer or the representative of the receiving vessel , and the remaining sample(s) retained by the Seller or Seller's supplier for 30 days, one of which (or the one sample retained by the loading terminal for "ex-wharf" supply) shall be used for analysis by the independent laboratory referred to in clause 14.3 herein.
- 14.2 Any claim pertaining to the quality of the Marine Fuels delivered must be submitted in writing supported by documentary evidence within thirty (30) days from the date of delivery in default of which the Buyer is deemed to have waived its right to all claims on the quality of the Marine Fuels delivered.
- 14.3 In the event of a quality dispute provided under clause 14.2, the parties shall have the quality of the designated sample referred to in clause 14.1 to be analysed by a mutually appointed independent laboratory. The results of the analysis by the laboratory shall be conclusive of the quality of the Marine Fuel delivered and binding on the parties. Costs of the testing shall be borne by the defaulting party.
- 14.4 Any claim for short delivery of Marine Fuels delivered shall not be valid and the Seller's liability, if any, for such claims shall be excluded unless the Buyer or its representative has witnessed the measurement of such quantity and has raised a note of protest at the time of delivery to be followed by the Buyer lodging the complaint in writing within 24 hours from the time of delivery. If the Buyer does not send any representative to witness the measurement of the quantity of Marine Fuels to be delivered, it shall not be entitled to challenge the correctness of any measurement of the quantity of Marine Fuels and to bring any claim of a quantitative nature.
- 14.5 Any submission of complaints or claims on the part of the Buyer does not relieve it of its obligations to make payment in full as required under the provisions in clause 11.

#### **15. Environmental Protection**

- 15.1 If an oil spill occurs while the Marine Fuels are being delivered, the Buyer shall promptly take all reasonable and necessary actions to remove the spill. The Seller or its supplier is hereby authorised, at its option on giving notice to and at the expense of the Buyer, to take measures and incur such expenses as deemed necessary to remove the spill. The Buyer shall co-operate and render all necessary assistance as required by the Seller or its supplier in the course of such action.
- 15.2 All expenses, claims, loss, damage liability and penalties arising from the spill 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, loss, damage liability and penalties shall be borne by the two parties in accordance with the respective degrees of negligence or omission.

**16. Termination by Financial Default**

Should the Buyer become insolvent or has a liquidator, receiver, or judicial manager appointed or enter into a deed of arrangement or a composition for the benefit of its creditors, or do or suffer any equivalent act or thing under any applicable law, the Seller may at its sole discretion, by written notice, forthwith terminate the Contract without prejudice to any right of action or claim accrued at the date of termination.

**17. Assignment**

17.1 Save as provided in Clause 17.2 below, the Buyer shall not assign the Contract or any of its rights and obligations under it without the express consent of the Seller.

17.2 The Buyer hereby agrees to assign (and upon written notification from the Seller) shall be deemed to irrevocably assign to the Seller all rights, receivables, benefits, interests, rights of suit, profit, claims and price ("assigned proceeds") to which it is entitled under any contract of sale or supply which it may enter into with the vessel, shipowner, charterer or any other party, pursuant to which it sells, re-sells or otherwise supplies the Marine Fuels sold by the Seller (or any part thereof), whether commingled with marine fuel sold or supplied by other parties or otherwise. The Buyer irrevocably authorises or consents to the giving of any notice of assignment by the Seller, the commencement of any legal proceedings or arbitration (whether jointly in the name of the Seller and the Buyer, or in the sole name of the Buyer and including any arrest of vessel or attachment of assets) in any jurisdiction or venue for the recovery of such assigned proceeds. Without prejudice to the generality of the foregoing, the Buyer agrees to provide all necessary cooperation to the Seller in the recovery of such assigned proceeds, including but not limited to providing discovery or disclosure of documents and procuring attendance of witnesses for meetings and hearings.

**18. Waiver**

No waiver of breach of any of the terms and conditions herein by either party to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or any other terms and conditions.

**19. Maritime Lien**

19.1 Without prejudice to the generality of the foregoing, and Clause 17 in particular, insofar as the Buyer is entitled to a maritime lien for the supply of Marine Fuels to a vessel, her owner, charterer or any other party, the Buyer shall, at the election of the Seller, either:-

19.1.1 assign such lien and all proceeds, receivables, interest, rights, benefits due to the Buyer from the vessel, her owner, charterer or any other party to whom the Buyer supplies the Marine Fuels in favour of the Seller; or

19.1.2 commence admiralty proceedings or actions in rem in its own name or the joint names of the Buyer or Seller (as the Seller may direct) in such jurisdiction as may be nominated by the Seller to enforce such maritime lien against the vessel to which the bunkers are supplied.

**20. Arbitration**

Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the arbitration rules of the Singapore International Arbitration Centre (SIAC Rules) for the time being in force which rules are deemed to be incorporated by reference into this clause.

**21. The Contracts (Rights of Third Parties) Act**

The Contracts (Rights of Third Parties) Act of Singapore shall not apply as to extend any rights, interests, benefits, defences, exemptions etc conferred on the Buyer pursuant to this Contract to any third party.

**22. Governing Law**

The construction, validity and performance of the Contract shall be governed by the laws of the Republic of Singapore.

**December 2008**