



BP MARINE AMERICAS
A Division of BP Products North America Inc.

TERMS OF SALE – MARINE FUELS

Edition of December 2001

1. Application of Terms of Sale and BP Marine Fuels Global Service Guide.

These terms of sale and the terms and conditions of the BP Marine Fuels Global Service Guide (including any revisions to the BP Marine Fuels Global Service Guide) current on the date of delivery apply to all deliveries contracted for unless the Seller expressly agrees otherwise in writing. Each delivery shall be a separate contract. The BP Marine Fuels Global Service Guide can be accessed on BP Marine's web site, <http://www.bpmarine.com> (at "What we offer", [fuelsglobalserviceguide](#)").

2. Price.

(a) Unless otherwise stated in the Seller's quotation, the Seller's prices are for delivery ex-wharf in bond and exclude taxes, duties, wharfage dues, and delivery charges (including any pipeline charges specified in the BP Marine Fuels Global Service Guide) and any other charges leviable in respect of Marine Fuels at the time of delivery. Any such taxes, duties, wharfage dues, delivery charges and other charges shall be paid by the Buyer at the rate applicable for the actual date of delivery.

Prices quoted as "delivered" comprise the ex-wharf price and delivery charges only.

(b) The Buyer shall begin to take delivery within the 4-day range commencing three days after the earliest estimated lifting date notified by the Buyer to the Seller and confirmed by the Seller in writing on conclusion of the contract.

(c) If after the contract is concluded, the Buyer begins to take delivery, or requires delivery to begin, outside the 4-day range in sub-section (b), the Seller shall be entitled to amend its quoted price to take account of prevailing market prices. This right is without prejudice to any claim the Seller may have against the Buyer for damages for failing to take delivery within the 4-day period.

3. Grades.

(a) The Marine Fuels supplied hereunder shall be the Seller's commercial grades offered to customers generally at the time and delivery location from time to time. The Buyer shall be solely responsible for nominating to the Seller the grade of Marine Fuels for each delivery from the range of fuels supplied by the Seller at the location in question. The Seller warrants that the Marine Fuels supplied hereunder shall be within the specification set out in the BP Marine Fuels Global Service Guide for the grade nominated by the Buyer unless otherwise agreed in writing by the Seller.

(b) Information regarding the typical characteristics of the Marine Fuels at any delivery location shall only be indicative of the Marine Fuels that have been available at that location from time to time and shall not form part of the specification of Marine Fuels to be delivered.

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

(d) The Buyer hereby warrants that it has not relied upon any representations made by or on behalf of the Seller but has relied exclusively on its own knowledge and judgment as to the fitness for its purpose of the Marine Fuels ordered.

4. Notice to Port.

The Buyer or its representative shall give the Seller's local representative at least 48 hours' notice (unless otherwise specified in the BP Marine Fuels Global Service Guide), excluding Saturdays, Sundays and holidays, of the exact time and location at which delivery is required and (subject to Section 5) confirmation of the quantities of each grade of Marine Fuels contracted for.

5. Reception.

(a) The Buyer shall be responsible for providing safe reception of the full quantity of Marine Fuels contracted for without risk to the Buyer, the Seller, any agent, employee or supplier of the Buyer or Seller or to the property of any such parties (negligence by the Seller or failure of or defect in the Seller's equipment being solely excepted). The Buyer shall ensure that the vessel to be supplied with Marine Fuels shall be free from all conditions or defects which might give rise to any hazard in connection with the delivery of Marine Fuels to such vessel.

(b) The Buyer shall provide a free side of the vessel for barge deliveries and prompt and safe passage between the public roadway and the actual place of unloading for road vehicles. The Seller shall not be obliged to deliver in locations or over roadways which in its opinion are unsafe for its barges or vehicles.

(c) If a spill occurs during supply the Buyer shall promptly take all action reasonably necessary to remove the spillage and mitigate its effect. If the Buyer fails to promptly take such action, the Seller may, at its option and upon notice to the Buyer or the agent for the Buyer's vessel, take such measures it considers to be required in connection with the removal of the spillage and the mitigation of its effects by employing its own resources or contracting with others. The Buyer shall indemnify the Seller against all liability, costs and expenses (including but not limited to those incurred by the Seller in accordance with the provisions of this sub-clause(c)) arising from any spillage, except to the extent that such spillage has been caused or contributed to by the negligence of the Seller or failure of or defect in the Seller's equipment. The Buyer shall promptly provide the Seller with any requested documents and information regarding a spill, including the vessel's spill contingency plan or any other applicable program for the prevention or mitigation of pollution as required by any applicable laws or regulations.

(d) If the Buyer fails to take delivery of or rejects any amount of the Marine Fuels contracted for, the Buyer shall be liable for all expenses and loss incurred by the Seller and arising out of such failure or rejection by the Buyer.

6. Delivery.

(a) If delivery is to be made by barge or road vehicle, the Buyer shall (except in respect of any port for which is specified in the BP Marine Fuels Global Service Guide that delivery by barge or road vehicle, as the case may be, is the only method of delivery available) notify the Seller when making its enquiry. The Seller undertakes to provide such delivery only within normal harbor limits. If the Buyer or its representative requests delivery by barge or road vehicle after conclusion of the contract, such delivery shall be subject to the reasonable availability of the necessary facilities and payment by the Buyer of any additional costs.

(d) Where the Buyer or its representative request a time of delivery, the Seller's obligation shall be to deliver as soon thereafter as reasonably practicable having regard to congestion affecting the delivery facilities of the Seller, its suppliers or agents and to prior commitments of barges and vehicles. The Buyer shall not be entitled to demurrage or other compensation for delay unless expressly agreed and confirmed by the Seller in writing.

(e) The Seller shall not be liable for inability to deliver on public or dock holidays or on customary non-business days of the week.

(f) The Buyer shall pay the Seller for delivery services at the rates applicable on the date of delivery and for all additional charges incurred in connection with the delivery, including but not limited to, port dues, wharfage, demurrage and provision of additional hose in excess of that normally available. Where work is carried out in connection with deliveries outside normal working hours at the port or outside normal harbor limits, the Buyer shall be liable for all additional charges.

7. Quality, Quantity and Sampling.

(a) The Seller shall measure the quantity and take samples of the Marine Fuels delivered. The Seller shall take three samples in accordance with its normal sampling procedures at the port in question. Two samples shall be retained by the Seller and one sample shall be passed to the Buyer (or its representative) for its retention. The Buyer (or its representative) may witness such measurement and sampling. The Seller's measurements of volume and calculations of quantity shall, subject to the provisions of sub-section (b), be conclusive of the volume and quantity of Marine Fuels delivered. The results of the analysis of the Seller's samples shall be conclusive of the quality of the Marine Fuels delivered.

(b) The Buyer shall not be entitled to claim for an incorrect measurement of the volume of Marine Fuels delivered unless the Buyer or its representative has witnessed such measurement and has made the complaint in writing at the time of delivery.

(c) The Seller shall not be liable for any defects in the quality of Marine Fuels unless the Seller receives notice in writing of a complaint within 21 days of delivery and receives full details of the claim with supporting evidence within 90 days of delivery.

8. Risk and Property.

(a) Risk and property in the Marine Fuels delivered shall pass to the Buyer as the Marine Fuels pass the vessel's permanent hose connection.

(g) If the Seller agrees to deliver Marine Fuels to the Buyer's nominated barge or coastal lighter, risk and property shall pass to the Buyer as the Marine Fuels pass the final permanent hose connection of the Seller's delivery facility.

9. Health, Safety and Environment.

(a) The Buyer shall provide its employees, users and customers with health, safety and environmental information (including without limitation Material Safety Data Sheets) ("HSE Data") provided by the Seller from time to time. The Buyer shall ensure that its employees comply fully with all requirements, obligations and recommendations relating to the handling and use of the Marine Fuels delivered hereunder, and shall impose upon all of its customers to whom the Marine Fuels are to be supplied the same obligation to comply fully with the requirements, obligations and recommendations of HSE Data.

(b) The Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of any Marine Fuels.

(c) The Buyer shall at all times comply with any obligations, requirements or recommendations contained in any law, statute, directive or regulation of any territory, state or jurisdiction in or through which the Marine Fuel may be delivered, sold, transported or used and all Government state or local regulations at the port such as, but not limited to, those related to fire, or spillage or loss of Marine Fuels. Compliance by the Buyer with the recommendations in HSE Data shall not excuse the Buyer from its obligations under this sub-section (c).

(d) The Buyer shall indemnify and keep indemnified the Seller against any liability, claim or proceedings whatsoever arising out of or in connection with any failure by the Buyer to comply with its obligations under this Section 9.

10. Seller's and Buyer's Liabilities and Consequential Loss.

(a) The Seller's liability for breach of any condition or conditions whatsoever shall be limited to the payment of damages.

(b) The Buyer shall not assign the contract or any of its rights and obligations under it without the express consent of the Seller.

(c) Any addition to or deletion from the Bunker Receipt made by the Buyer or its representative and/or any documents presented by the Buyer or its representative at the time and place of delivery which purport to alter the terms of the contract shall have no validity.

(d) The Seller shall not have any liability, howsoever arising and whether as a result of a breach of the contract, negligence or otherwise, for any loss of profit, loss of time or hire, cost of overheads thrown away, demurrage or loss of schedule, cost of substitute vessel(s), loss related to loss of operational use of vessel, physical loss or damage to cargo, or loss of contract(s), in each instance, whether such losses are direct, consequential or otherwise, nor without prejudice to the foregoing, shall the Seller be liable for any consequential, indirect or special losses or special damages suffered by the Buyer.

The exclusions of liability set out in the contract shall only apply to the extent permitted by law and shall not apply in respect of fraud by the party seeking to rely on the exclusion.

11. Agency.

If the delivery is contracted for by the Buyer as an agent of any other person or by any person as an agent of the Buyer, whether such agency is disclosed or not, such agents and principals shall be jointly and severally liable with the Buyer for all obligations expressed to be those of the Buyer under the contract and for the due and proper performance of the contract.

12. Force Majeure.

No failure of omission by either party to carry out or observe any of the terms or conditions of the contract shall, except in relation to obligations to make payments under it, give rise to any claim against the party in question or be deemed a breach of the contract if such failure or omission arises from any cause reasonably beyond the control of that party.

13. Payment Terms

(a) Payment for the delivery and of all charges shall be made in full (without any abatement, deduction, set-off or counter claim whatsoever) in U.S. dollars in Cleveland. Payment shall be due with effect from the date of delivery and shall be made by means of telegraphic transfer, automated credit transfer or electronic transfer of same day funds quoting Seller's invoice number and the Buyer's name to National City Bank, 1911 East Ninth Street, Cleveland, Ohio 44114, for the account of BP Marine Americas, A/C 2525353 value dated no later than 30 days (unless otherwise agreed) from commencement of loading of the delivery in question. If, however, the Seller's bank is closed for business on the last day of the applicable credit period, the Buyer shall make its payment by the last day within such credit period when the Seller's bank is open for business. All bank charges in respect of such payments shall be for the remitter's account.

(b) The Buyer shall notify (or shall instruct its bank to notify) the Seller as soon as payment has been made, quoting the date on which payments was made, the amount, the name of the bank effecting payment and details of each invoice to which the payment relates. Such notification shall be sent to BP Marine Americas, Credit Department, Houston, Texas by facsimile transmission to 281/ 366-7780.

(c) If the Buyer has not by the expiration of the credit period referred to in sub-section (a) paid any amount due to the Seller in respect of any other delivery of Marine Fuels by the Seller to the Buyer, the Seller, in addition to and without prejudice to any other rights it may have shall have the right:

(i) if the delivery hereunder has been made, notwithstanding the credit period referred to above, to notify the Buyer that the amount due in respect of the delivery hereunder is immediately due and payable, whereupon it shall so be paid, and

(ii) if the delivery hereunder has not been made, to notify the Buyer of the termination with immediate effect of the contract for such delivery, whereupon it shall so terminate.

(d) The Seller's invoice (which may be sent by facsimile transmission) shall be based on advice of the quantity delivered and of other charges, if incurred, and payment made pursuant to sub-section (a) shall be subject to such subsequent adjustment as may be necessary on receipt by the Seller of further details or as may be agreed by the parties to be necessary after detailed checking of the invoice. Delivery documents may be provided to the Buyer if requested, but payment shall not be conditional upon Buyer's receipt of such documents.

(e) If the Buyer's credit is deemed by the Seller to be impaired or unsatisfactory, the Seller may (without prejudice to its other rights) require the Buyer at the Seller's option either to pay cash before delivery or to provide security satisfactory to the Seller and to effect immediate payment of any outstanding amount due to the Seller in respect of any other delivery of Marine Fuels by the Seller to the Buyer. In the event of failure by the Buyer to comply with the Seller's requirement, the Seller shall have no obligation to make delivery and may terminate the contract on giving notice to that effect to the Buyer.

(f) Without limitation to the foregoing or to the Seller's other rights under the contract or otherwise, the Seller shall have the right to require, in respect of any payment not made by the due date, the payment by the Buyer to the Seller of interest thereon at two (2) percent per thirty (30) day period or the highest rate allowed by law, and pro rata for part thereof, such interest to run from the due date until the date payment is received by the Seller's bank.

14. Termination in the Event of Liquidation etc.

Notwithstanding anything to the contrary express or implied elsewhere herein, the Seller (without prejudice to its other rights) may at its sole discretion terminate the contract forthwith on notifying the Buyer either orally (confirming such notification in writing) or by notice in writing, in the event that a liquidator, trustee in bankruptcy, receiver or receiver and manager or equivalent officer is appointed in respect of any assets or undertaking of the Buyer or any of its associated companies, or the Buyer or any associated company enters into an arrangement or composition with its creditors, or any similar appointment, arrangement, or composition is made under any applicable law, or if the Seller has a reason to anticipate any such appointment, arrangement or composition.

15. Waiver, Amendments and Severability.

(a) No waiver by either party of any provision of the contract shall be binding unless made expressly and expressly confirmed in writing. Any such waiver shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

(b) No amendment to any provision of the contract shall be binding unless expressly confirmed in writing by the Seller.

(c) If any provision of the contract is invalid, void or unenforceable, this will not effect the validity, legality or enforceability of any other provision of the contract.

16. Notice.

Any communication (including without limitation invoices) by either party to the other shall, unless otherwise provided herein, be sufficiently made if sent by post (by airmail where airmail is possible), postage paid or by telex or facsimile transmission to the address of the other party and shall, unless otherwise provided, herein, be deemed to have been given on the day on which such communications ought to have been delivered in due course of postal, telex or facsimile communication.

Unless otherwise specified by not less than 15 days' notice in writing by the Seller to the Buyer, the address of the Seller to which communications shall be sent by post shall be BP Marine Americas, P. O. Box 4518, Houston, Texas 77210-4518, and by facsimile transmission to telephone number 281/366-7780.

17. Arbitration and Governing Law.

(a) 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 binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association ("AAA") by a panel of three arbitrators; provided, however, that a claim by the Seller arising from a failure by the Buyer to make payment as provided in Section 13 hereof shall not be a dispute for the purposes of this sub-section (a). The arbitration will take place in Houston, Texas.

The party requesting arbitration is to nominate its arbitrator in the Arbitration Notice, and the other party must nominate its arbitrator within 30 days of its receipt of the Arbitration Notice. The third arbitrator will be nominated by the two chosen by the parties within 30 days of the nomination of the second arbitrator and shall act as chairperson of the arbitration panel. If the third arbitrator cannot be selected by the other two within 30 days, the third arbitrator will be selected by the AAA. Arbitrators shall be both neutral and knowledgeable concerning the subject matter of the dispute. The arbitration will be governed by the United States Arbitration Act, 9 U.S.C. Sec. 1-16, as amended, and judgment upon the award rendered by the arbitrators may be entered by any court, domestic or foreign, having jurisdiction. Each party will assume its own costs of legal representation and expert witnesses and the parties will share equally in the other costs of arbitration. The arbitrators will award pre-judgment interest in accordance with the laws of Texas applicable to the dispute. The arbitrators shall not have the power to award any damages or apply any remedy that conflicts with, or is contrary to the terms and conditions of the contract.

(b) The construction, validity and performance of the contract shall be governed by the laws of the State of Texas, without regard to rules concerning conflicts of law that would direct the application of the laws of any other jurisdiction.

18. Rights of Third Parties.

Except for the provisions of sub-sections 3(d) and 10(d) of these Terms of Sale, which may be enforced by the Seller, its Affiliates and its and their directors, employees and agents, the parties do not intend any provision of these Terms of Sale or the contract to be enforceable by any person (a "third party") who is not a party to the contract. The parties may rescind or vary these Terms of Sale or the contract, in whole or in part, without the consent of any third party including, without limitation, those listed above. "Affiliate" means any company that directly or indirectly controls, is controlled by or is under the common control with the Seller; for this purpose, one company controls another if it holds more than 50% of the voting rights in the other.