

**GENERAL TERMS AND CONDITIONS**

**MIPCO - BUNKER SUPPLIES // MIPCOGTC2007BUNKERS //**

Except as otherwise expressly agreed in writing all sales of Bunkers from the Seller to the Buyer under this contract shall be subject to the following terms and conditions:

**1. PRICE**

- (a) The price of the Bunkers delivered shall be the price as determined by the Seller and accepted by the Buyer for the relevant grade of Bunkers. Any taxes, duties or charges, whatsoever, imposed upon the Seller by any governmental authority upon, incident to, or as a result of the manufacture, storage, withdrawal from storage, transportation, distribution, sale or handling of Bunkers delivered hereunder, shall be additional to the agreed price and be paid on demand by the Buyer to the Seller.
- (b) Prices offered and subsequently confirmed and accepted by Buyer are valid only for the nominated vessel on the nominated date or nominated date range at the time of the confirmation of trade on acceptance of price by Buyer in (a) above, or, in the case of a term contract, as stated on the first nomination, unless otherwise specified. In the event that the nominated vessel is substituted for whatever reasons, the Seller reserves the right to amend the price or cancel any or part of the nomination.
- (c) The Seller reserves the right to increase the price of the Bunkers to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in costs of materials), any change in delivery dates, quantities or specification for the Bunkers which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions by giving notice to the Buyer in writing at any time before delivery, and the Buyer shall be bound by and pay such increased price.

**2. QUALITY**

- (a) The Buyer shall have the sole responsibility for the selection and acceptance of Bunkers for use in the vessel including the determination of compatibility with fuel already on board the vessel.
- (b) Seller shall not be liable to deliver Bunkers with any characteristics or specifications that are not expressly agreed to and described in the contract of sales.

- (c) The Seller gives no warranties or guarantees, express or implied as to fitness, merchantability, suitability or compatibility of its Bunkers sold to Buyer.

### 3. NOMINATIONS AND DELIVERIES

The Buyer shall give to the Seller, in writing of not less than five (5) working days prior to vessel's first ETA specifying grades and quantities, expected date of arrival at delivery port, the vessel's local agent(s) and any other details as shall be necessary or required by the Seller.

- (a) The Buyer or vessel's local agent shall give the Seller or its Supplier at the delivery port concerned at least forty eight (48) hours advance notice excluding Saturdays, Sundays and Public Holidays, prior to the time the Bunkers is to be delivered. In the event that such notice is not given or received by Seller, the Seller shall without prejudice to any other rights or remedies be entitled at the Seller's option to cancel the contract or to supply on best endeavor basis.
- (b) Where delivery is required outside regular business hours, and is permitted by applicable regulations, the Buyer shall pay all overtime and extra expenses incurred.
- (c) Where barging is employed, barging charges shall be for the account of the Buyer. In the event the Buyer fails to take delivery, in whole or in part, of the quantities nominated, the Buyer shall be responsible for any costs resulting from the Buyer's failure to take delivery, as well as any losses incurred by the Seller who shall have the sole discretion whether to dispose off the fuels and/or downgrade the fuels.
- (d) Any other method of delivery employed shall be charged to the Buyer at the current local rates.
- (e) Each delivery shall constitute a separate contract.

### 4. RECEPTION

The Buyer shall make all connections and disconnections between the delivery hose and the vessel's intake flange connection and shall render all other necessary assistance and provide sufficient equipment to receive promptly all deliveries of Bunkers hereunder.

### 5. DELAYS

- (a) Time is of essence where a time of delivery is indicated, the obligation of the Seller shall be to bunker the vessel as promptly as circumstances permit having regard to congestion affecting the Seller's delivery facilities or the facilities of its suppliers or agents or to the prior commitment of bunkering barges or other delivery vehicles.
- (b) Where agreements with employees' organizations apply, the Seller shall not be liable for inability, as a consequence, to deliver on public, customary or dock holidays.

- (c) If any delay is caused by the Buyer, the vessel in her arrival, her condition, breakdown, inability to receive and / or its agents, to the delivery of the vessel, the Buyer shall be responsible and pay to the Seller and the Supplying company for all losses, expenses, charges arising therefrom or in connection therewith including without limitation demurrage at the Seller's or Supplying company's established rates.

#### 6. MEASUREMENT OF QUANTITY

- (a) The sale of Bunkers shall be on the basis of the quantity delivered by the Seller to the Buyer.
- (b) The Buyer may be present when such measurement is taken, but if the Buyer is not represented, the Seller's determination of quantity delivered shall be deemed correct, final and binding on the Buyer.
- (c) The quantity of Bunkers delivered shall be determined from the official gauge or meter of the barge effecting delivery, or by such other method the Seller deems fit.
- (d) Any claim by the Buyer as to shortage in quantity of Bunkers supplied, must be noted on the bunker delivery note signed on board at the time of delivery prior to the departure of the vessel, failing which the Seller's determination of the quantity of the fuel supplied shall be final, conclusive and binding on the Buyer.

#### 7. CLAIMS

- (a) Any claim pertaining to shortage in quantity must be notified by the Buyer or the Master of the vessel to the Seller or its representative at the time of the completion of delivery in the form of statement of a letter of protest. The claim must be lodged to Seller in writing together with letter of protest within 5 days from the date of delivery. If the Buyer fails to present such letter of protest to the Seller, such claim shall be deemed to have been waived and shall be absolutely barred for any later time.
- (b) There shall be no liability unless there is a defect in quality as provided in Clause 2 above and complaint thereof is notified in writing received by the Seller within fifteen (15) days of delivery and supported by evidence, including full and final details of any claim to be made by the Buyer, received by the Seller within thirty (30) days from the date of delivery failing which the claim is time-barred.

In this respect, Bunkers delivered shall only be determined by the mutual analysis at an agreed laboratory of the barge representative sample taken in accordance with the CP60:2004. The result of such analysis shall be final and binding on the Buyer and Seller as evidence of the quality of Bunkers delivered and the cost of the analysis shall be borne by the party at fault.

- (c) In the event of any delivery of Bunkers not complying with the terms of the Contract, then unless any other arrangement is agreed upon, the Seller's liability herein for any claim arising out of or in connection with the aforesaid events of non-compliance with the express and/or implied terms of the Contract and/or delivery of defective Bunkers shall be limited to the Seller at its sole discretion requesting the Master of the Vessel to debunker the delivered fuel and refuel the Vessel to the extent of the delivered Bunkers PROVIDED ALWAYS that the maximum extent of the Seller's liability shall not exceed the value of that contract with the Buyer or the sum of USD200,000, whichever is lower;
- (d) The Buyer's submission of any claim does not, by itself without Seller's express agreement in writing, relieve the Buyer of the responsibility to make payment in full under the Contract when such payment falls due.

#### 8. TITLE AND RISK

Delivery shall be deemed completed and title (passing of title shall be subject to Clause 15 hereunder) and risk for Bunkers shall pass to the Buyer at the permanent intake flange connection of the Buyer's vessel or the Buyer's nominated barges or other delivery vehicles.

#### 9. PAYMENT

- (a) Payments for Bunkers and other charges payable shall be made by the Buyer, in U.S. dollars in an immediately available funds, without discount or deduction upon receipt by the Buyer of written, telegraphic or other notification of quantities delivered and amounts due.

Payment falling due on a Sunday or Monday New York banking holiday shall be made on the following New York banking day. Payment falling due on a Saturday or Non-Monday New York banking holiday shall be made on the previous New York banking day.

Subsequent adjustments, if any, shall be made upon receipt by the Seller of the Delivery Receipt. Any complaints lodged by the Buyer shall not affect its obligation to make payment for the whole amount due.

Payment shall be made by tested telegraphic transfer to the Seller's designated bank account to be credited by or on the due date stipulated on seller's invoice.

- (b) Payment shall be considered past due if not received by the Seller within thirty (30) days or mutual agreed period from the date of delivery. Overdue payments shall be subject, at the Seller's sole discretion, to a service charge at the rate of two percent (2%) per thirty (30) day period or the maximum rate permissible under prevailing laws.

#### 10. SAFETY & ENVIRONMENTAL PROTECTION

- (a) The Buyer shall be responsible for users compliance with all

health and safety requirements related to Bunkers supplied and shall best assured that any user avoids frequent or prolonged contact with or exposure to Bunkers both during and subsequent delivery. The Seller or its supplier accepts no responsibility for any consequence arising from failure to comply with such health and safety requirements or arising from such contact or exposure.

- (b) In the event of a spill during bunkering, the Buyer shall immediately take whatever action necessary to effect clean-up and in the case of failing prompt action the buyer authorized the Seller to conduct such clean-up at the Buyer's expense in accordance with the terms of applicable law or voluntary agreement. Where a spillage occurs, the Buyer agrees to make available to the Seller all documents and information concerning the spillage and environmental protection programmes which may be required by the competent authority at the place of spillage.
- (c) The Buyer warrants that Bunkers purchased hereunder are bunkers for commercial use only. In particular, the Buyer guarantees that the Bunker is not meant for military use.
- (d) The Buyer warrants that the vessel nominated is in compliance with all national regulations in the country of delivery. The vessel to be bunkered is subject to the Seller's acceptance and will not be moored at wharf or alongside other marine loading facilities of the Seller or its supplier unless free of all conditions, difficulties, peculiarities, deficiencies or defects which might impose hazards in connection with the mooring, unmooring or bunkering of vessel.

#### 11. FORCE MAJEURE

The Seller shall not be liable for non-delivery or partial non-delivery or delay in delivery either by the Seller or by its supplier as consequence of force majeure. Force majeure shall be understood to comprehend any cause, even if it could have been foreseen, for which the Seller cannot reasonably be held liable, such as (i) war, hostilities, blockades, riots, civil commotions, strikes, lockouts, labour or employment disputes, combination of workmen, epidemics, fires, floods, ice, perils of sea, other eventualities caused by nature, or (ii) prohibition of imports, export or transit, or any other executive or legislative act by or on behalf of any governments in the country of origin or in the territory in which delivery is to be made or in a country of transit, or (iii) breakdown of machinery, transport difficulties affecting Bunkers to be delivered, total or partial breakdown in the regular supply of Bunkers to be delivered or their raw materials, breakdown of power supplies or any other cause or circumstances aggravating any disturbance existing at the date of the Contract and affecting the possibility to deliver Bunkers contracted for, or (iv) any other cause whatsoever which is not within the control of the Seller. The Seller shall notify the Buyer as soon as possible, if force majeure occurs. In case of force majeure the Seller may cancel the Contract without liabilities for costs or damages.

#### 12. LIABILITY AND INDEMNITY

- (a) The Seller warrants that Bunkers supplied hereunder shall be of the agreed grade as provided in Clause 2 above. The Buyer

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 judgement as to the fitness for its purpose, merchantability or suitability. Accordingly, all other conditions or warranties in respect of Bunkers relating to quality, fitness for purpose or otherwise whether expressed or implied, by statute, common law or otherwise are hereby excluded.

- (b) The Buyer shall indemnify and hold the Seller harmless against any liability incurred by the Seller in respect of the Buyer's failure to comply with applicable government or local regulations at the port, such as those related to fire or local regulations at the port, such as those related to fire or in respect of any loss of bunkers or damage to any loss of bunkers or damage to any property caused by the Buyer's vessel during berthing, bunkering and unberthing.
- (e) The Seller shall not be liable for consequential, indirect or special losses or special damages of any kind arising out of or in any way connected with the performance of or failure to perform the Contract.

**13. ASSIGNMENT, NO WAIVER, ENTIRE AGREEMENT AND THE BUYER'S WARRANTY**

- (a) The Buyer shall not assign the Contract or any of its rights and obligations thereunder. No waiver by either party of any provision of the Contract shall binding unless expressly made and confirmed in writing. Further, 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) The Contract contains the entire agreement between the Seller and the Buyer. The Buyer warrants that it has not in connection therewith relied upon any representations made by or on behalf of the Seller, but has relied exclusively on its own knowledge and judgement.

**14. DEFAULT**

In the event that the Buyer breaches any of the terms and conditions herein and such default continues for fourteen (14) days after the Seller notifies the Buyer thereof, or the Buyer becomes insolvent, makes an assignment for the benefit of creditors or if bankruptcy proceedings or proceedings for an arrangement or reorganization under any applicable law, or a proceeding for the appointment of a receiver, trustee, liquidator or custodian for all or any part of its property shall be commenced by or against the Buyer, or, in the reasonable opinion of the Seller that the Buyer is in financial or legal difficulties, the Seller may, at its option by giving written notice to the Buyer of its election so to do, cancel the Contract and/or defer shipment or delivery until default is cured and/or demand immediately payment of all outstanding indebtedness due to the Seller from the Buyer under the Contract or any other agreements between the Seller and the Buyer, whereupon the same shall become immediately due and payable. The Seller shall have the right, but shall not be obliged to, to offset any payables by the Seller whether due immediately or in the future against such receivable from the Buyer.

15. COLLECTION

Deliveries of Bunkers hereunder are made not only on the credit to the Buyer but also on the faith and credit to the vessel which uses Bunkers and it is agreed that the Seller and its supplier will have and may assert a lien against such vessel for the amount of the delivered price of Bunkers. Additionally, the Seller and its supplier will have and may assert a lien for the said amount of the delivered price against such vessel. All costs associated with seizure of the vessel shall be for the Buyer's account. Taking of any additional security measures by the Seller or its supplier shall not operate as a waiver of this provision. If at any time a price provided under these GTC or the Contract shall not then conform to the applicable laws, regulations or orders of a Government or other competent authority, appropriate price adjustment will be made. For the avoidance of doubt, the Buyer shall not be entitled to cancel the effect of the lien by wording on the bunker receipt or otherwise. \_

16. NOTICE

Any communications by either party to the other hereunder shall, unless otherwise provided for herein, be sufficiently made if sent by post (by airmail where airmail is possible), postage prepaid or by telegraph, telex or facsimile transmission to the address of the other party and shall, unless otherwise provided for herein, be deemed to have been given on the day on which such communications ought to have been delivered in due course of postal, telegraphic, telex or facsimile communication. Unless otherwise specified by not less than fifteen (15) days' notice in writing by the Seller to the Buyer, the address of the Seller to which shall be sent by post shall be Marubeni International Petroleum (S) Pte Ltd, 7 Temasek Boulevard #09-02A Suntec Tower One Singapore 038987. Facsimile number (65) 6336 5835.

17. APPLICABLE LAW

This agreement shall be governed by and construed in accordance with the laws of Singapore (without reference to any conflict of law rules). Any dispute arising out of or in connection with this contract not settled by negotiation, 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.

The United Nations Convention on contracts for the International Sale of Goods (1980) shall not apply to this agreement.

18. APPLICATION OF THE CODE OF PRACTICE ("CP60")

Notwithstanding anything herein to the contrary, where delivery of Bunkers (bunkers) is carried out by barges/tankers to vessels in Singapore, the bunkering operation shall be subject to and shall follow the procedures prescribed by the Code of practice for bunkering by bunker barges/tankers ("CP60") issued by Singapore Productivity and Standards Board that is current on the date of delivery.

19. INCORPORATION OF SUPPLIER'S TERMS

The Buyer shall have the right, with notice to Seller, incorporate

their supplier's terms.

In the event of any conflict between the terms and conditions and Seller's Confirmation, the Seller's Confirmation shall prevail.

Marubeni International Petroleum (S) Pte Ltd (MIPCO) reserves the rights to amend the terms and conditions at any time without prior notice to the buyer.