

# STANDARD TERMS & CONDITIONS FOR SALE

SEPTEMBER 2022

The present general terms and conditions shall govern the sale and purchase and the procurement of sale and purchase of marine fuels by Marine Brokers APS (hereinafter Marine Brokers) to any contracting party (hereinafter the client), subject to any derogatory clause contained expressly in any specific and/or subsequent contract agreed upon by marine brokers and the client.

## 1. DEFINITIONS & TERMS

Definitions throughout these general terms and conditions, except where expressly otherwise provided in any specific and/or subsequent contract agreed upon by Marine Brokers and the client, the following shall be applied:

**Agent:** means any entity acting on behalf of the Buyer or the vessel.

**Buyer:** means the party stated in the confirmation note contracting to purchase, take delivery and pay for the marine fuels.

**Banking day:** means a day on which banks are open in the places of business of marine brokers and the client.

**Bunker delivery note:** means the document issued at the point of delivery by the Seller or the sellers representative recording the specification and quantities of marine fuels delivered to the vessel.

**Bunker tanker:** means bunker barge or tanker or tank truck supplying marine fuels to the vessel.

**Confirmation note:** means the sellers written confirmation setting out the details of the supply of the marine fuels.

**Contract:** means these general terms and conditions as amended and supplemented by the confirmation note.

**Day:** means a calendar day.

**Delivery period:** means the vessels eta/delivery window as stated in the confirmation note.

**Delivery window:** means the date range designated in the confirmation note which shall begin on the eta and end on the ETD. The delivery window shall not exceed seven (7) days.

**ETA:** means the estimated date of arrival of the Buyers vessel.

**ETD:** means the estimated date of departure of the Buyers vessel.

**General terms and conditions:** means the present document.

**Marine Fuels:** means products as stated in the confirmation note.

**Party:** means the Buyer or the seller.

**Parties:** means the Buyer and the seller collectively.

**Seller:** means the party stated in the confirmation note contracting to sell and arrange delivery of the marine fuels.

**Vessel:** means the vessel nominated by the Buyer to receive marine fuels.

## 2. ORDER CONFIRMATION

2.1. A contract shall be deemed concluded and binding when marine brokers sends the confirmation note to the client.

2.2. The general terms and conditions shall be deemed accepted by the client upon reception of the confirmation note, whether the confirmation note includes an express reference to the general terms and conditions or not.

## 3. QUALITY

3.1. The Buyer shall have the sole responsibility for the nomination of the grades of the marine fuels for use by the vessel. The marine fuels shall comply with iso standard 8217. The seller excludes any express or implied warranties as to the fitness for any purpose, stability or compatibility of the marine fuels.

3.2. The seller warrants that the marine fuels are of a homogenous nature, comply with the grades nominated by the Buyer and meet the specifications that are generally offered at the time and place of delivery for the grades of marine fuels specified by the Buyer.

3.3. It is the responsibility of the Buyer to keep the marine fuels delivered to the vessel segregated from other oil products aboard the vessel.

3.4. Where the Buyer nominates marine fuels above the sulphur limits set out in MARPOL annex vi, the Buyer shall be fully responsible for, and on the sellers request provide confirmation in writing, that the vessel has working abatement technology (as defined in MARPOL annex vi) installed in compliance with MARPOL annex vi or must include a copy of a valid fuel oil non-availability report (FONAR) and the relevant authorization granted to the vessel for that specific delivery of products. The Buyer shall indemnify the seller of all cost or losses incurred as a result of sellers breach of this clause 3.4.

## 4. QUANTITY

4.1. The quantity of the marine fuels delivered to the Buyer shall be as agreed between the Buyer and the seller in the confirmation note.

4.2. The quantity of the marine fuels delivered shall be determined from the official gauge or meter of the vessel or truck effecting delivery, unless otherwise agreed upon by the parties. The quantity of marine fuels measured shall be conclusive evidence of the quantities delivered and shall be recorded in the bunker delivery note which the Buyer or its representative shall be invited to sign. The bunker delivery note shall be binding evidence of the quantity delivered, regardless of the Buyers or its representatives failure to sign the same. Measurements by any other means shall not be binding on the seller, save for a measurement according to clause 4.3.

4.3. The Buyer may request that an independent surveyor measure the quantity of the marine fuels delivered and shall issue his survey report. The Buyer shall pay the independent surveyors costs and expenses in relation to the measurements of the quantity of the marine fuels delivered. The measurement carried out by the independent surveyor shall then be conclusive evidence of the quantities delivered. Both the seller and Buyer shall have the right to witness the measurement operations. The quantity of the marine fuels delivered shall be the quantity specified in the confirmation note with a tolerance at sellers option of +/- 5% of the quantity specified.

## 5. SAMPLING

5.1. The seller or its representative shall arrange for samples to be drawn at the time of delivery of the marine fuels, in accordance with good standard practice, unless otherwise agreed by the parties.

5.2. The sampling mentioned in clause 5.1 shall be performed in the presence of the seller or its representative and the Buyer or its representative, unless otherwise agreed by the parties.

5.3. All samples must be sealed, labelled, and signed by both the seller, or its representative, and the Buyer, or its representative, and their numbers must be recorded on the bunker delivery note. Two (2) samples shall be retained by the Buyer or its representative, one being the marpol compliant sample. The remaining samples shall be retained by the seller or its representative.

5.4. In the event of a dispute related to the quality of the marine fuels, one (1) sample retained by the seller with a seal number reproduced on the bunker delivery note shall be transmitted to an independent laboratory, mutually appointed by the Buyer and the seller, for testing. If the parties cannot agree on an independent laboratory or in the event the Buyer fails to reply to the sellers notice hereof within seven (7) days from receipt by the Buyer of such notice, the seller can choose a laboratory and this choice shall be deemed final and binding for all parties involved.

## 6. DELIVERY

6.1. The Buyer shall be responsible for obtaining the necessary documentation and shall comply with all regulations applicable to the receipt, handling, and use of the marine fuels.

6.2. The seller shall use reasonable endeavours to commence delivery within the delivery period agreed in the confirmation note.

6.3. Responsibility for connections and disconnections of the delivery hose is the Buyers.

## 7. DOCUMENTATION

7.1. Before commencement of delivery, the seller shall present for written acknowledgement by the master of the vessel or the masters authorized representative, a bunker pre-delivery form or similar document, duly signed by the seller or its representative, which shall contain the quantities to be delivered and the information required in accordance with iso 13739.

7.2. Once the delivery is completed, a bunker delivery note shall be signed and stamped by the master of the vessel or the masters authorized representative, and returned to the seller or its representative.

## 8. PRICE

8.1. The sellers price of the marine fuels is valid only if the vessel arrives within the delivery period and shall be in the amount stated in the confirmation note.

8.2. The seller shall have a lien on the vessel for all sums payable in respect of the marine fuels delivered to the vessel.

## 9. PAYMENT

9.1. Payment for the marine fuels shall be made by the Buyer within thirty (30) days or, if otherwise agreed, within the number of days stated in the confirmation note.

9.2. Payment shall be made in full, without set-off, counterclaim, deduction and/or discount, and free of bank charges. There shall be no withholding either in part or in full by reason of any setoff, counter-claim or for any other reason, whether relating to the contract or other agreements.

9.3. Without prejudice to any other rights or remedies available to the seller, any delay in payment shall entitle the seller to interest at the rate of two (2) per cent per month or otherwise agreed as per the confirmation note. If the seller incurs any costs in relation to attempts to collect any overdue sums, the Buyer shall indemnify the seller for those costs and shall pay the same upon first demand.

## 10. CLAIMS

10.1. Any dispute as to the quantity of the marine fuels delivered must be notified in writing to the seller before the bunker delivery note is signed by the Buyer or its representative or it shall be deemed waived and time barred. A notification inserted in the bunker delivery note or in a separate protest handed to the physical supplier of the marine fuels shall not qualify as notice to the seller.

10.2. Any dispute as to the quality of the marine fuels delivered must be notified to the seller immediately upon the circumstances giving rise to such claim having been discovered. Any claims not raised and properly documented within fifteen (15) days of delivery of the marine fuels shall be deemed to be waived and time barred.

10.3. A written claim for the purposes of 10.1 and 10.2 must provide a complete and comprehensive explanation of the circumstances and basis of the claim, including where applicable the quantities short and/or the discrepancies in quality, a full test report for a test performed on one of the official samples mentioned in the bunker delivery receipt (confirmation note? ) performed by an independent laboratory along with copies of all correspondence with the independent laboratory and include copies of all supporting documents including the vessels logs evidencing the matters complained of.

10.4. In the event of any delay, the party suffering such delay shall be entitled to compensation from the other party for any loss suffered because of that delay.

10.5. Any claims against the seller in respect of the contract shall be brought before the competent court within one (1) year of the date of the delivery of the marine fuels, failing which such claims shall be deemed waived and time barred.

10.6. Buyers submission of any claim does not relieve it of responsibility to make full payments as required under the contract and Buyer shall not be entitled to set off any claim from payment.

## 11. RISK / TITLE

11.1. Title to the marine fuels shall pass to the Buyer only when the Buyer has paid the price of the marine fuels in full.

11.2. The Buyer shall become liable for the marine fuels immediately upon the marine fuels passing through the flange of the vessels manifold. If the seller agrees to deliver the marine fuels to the Buyers nominated barge, storage tank or coastal lighter, title, risk of loss and property shall pass to the Buyer as the marine fuels pass through the flange of the permanent hose connection of the sellers delivery facility.

11.3. The Buyer agrees that upon demand the seller may remove the marine fuels from the vessel without judicial intervention if the price is not timely paid in full.

11.4. The above is without prejudice to such other rights as the seller may have under the laws of the governing jurisdiction against the Buyer or the vessel in the event of non-payment.

## 12. COMPLIANCE WITH LAWS AND REGULATIONS

12.1. The parties will not do or permit to be done anything which might cause any breach or infringement of the laws and regulations of the flag state of the vessel or the country of incorporation of the seller, or of the places where the vessel or the seller trade or take the marine fuels under the contract.

12.2. By accepting the sellers confirmation note, the Buyer confirms and warrants that the Buyer is in full compliance with the sanctions laws.

12.3. If at any time during the performance of the contract, the seller becomes aware or have reasonable grounds to believe that the Buyer, the vessel and/or any related parties are in breach of the warranty as aforesaid, the seller shall have the option to immediately cancel the contract for the Buyers account and risk.

12.4. The Buyer must inform the seller immediately if the Buyer becomes aware of or has reasons to believe that any of the above items are fulfilled.

12.5. The Buyer acknowledges that anticorruption laws and regulations shall apply to the parties.

12.6. The Buyer must comply with all national and international trading, pollution, environmental and health and safety regulations concerning the receipt and use of the marine fuels and shall indemnify the seller for all financial consequences of a breach of this provision.

## 13. INDEMNITY

13.1. Under no circumstances shall the seller be liable for consequential losses, whether direct or indirect and whether or not foreseeable at the time of formation. The seller shall not be liable under any circumstances for punitive damages.

13.2. The Buyer shall indemnify the seller against any claims, losses or costs of whatever kind related to the contract, instituted by third parties against the seller to the extent that such claims exceed the sellers liability towards the Buyer according to this clause.

13.3. Any damage caused by contact or collision shall be dealt with by the Buyer directly with the owners of the supply barge. The seller shall not be held liable for any such damages and the Buyer shall indemnify the seller against any claims made against the seller arising out of such incident.

13.4. The Buyer shall hold harmless and indemnify the seller in respect of any liability, costs, losses, fines, penalties and damage arising from any acts or omissions of the Buyer or its servants in connection with the delivery of the marine fuels or the bunkering operations, including the failure to obtain necessary permits or comply with applicable law.

13.5. If the supply is delayed by the Buyer for whatever reason or the vessel fails to leave the place of supply immediately, the Buyer shall indemnify the seller for any consequent loss or damage suffered by the seller including losses arising due to the delay in the supply of other vessels.

## 14. LIEN

14.1. It is agreed and acknowledged that a lien over the vessel is created for the price of the marine fuels supplied together with any interest accrued.

14.2. The seller is entitled to rely on any provision of law of the flag state of the vessel, the place of delivery or where the vessel is located granting the seller a lien or a maritime lien in the vessel and/or providing for the right to arrest the vessel.

## 15. FORCE MAJEURE

15.1 Neither the Buyer nor the seller shall be responsible for any loss or damage resulting from any delay or failure in delivery or receipt in marine fuels due to fire, explosion or mechanical breakdown, storms, earthquakes, floods, tidal waves, war, military operations, national emergency, civil commotion, strikes or other differences with workmen unions, or from any delay or failure in delivery or receipt of marine fuels when the supplies of the Buyers or sellers or the facilities of production manufacture, consumption, transportation, distribution of the Buyer and seller are impaired by causes beyond the Buyers or sellers control, or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or the Buyers or sellers compliance therewith, or by governmental proration, regulation or priority, or from any delay or failure due to any causes beyond the Buyers or sellers control similar or dissimilar to any such cases.

## 16. ENVIRONMENTAL PROTECTION

16.1. It is the Buyers sole responsibility that the vessel and its crew comply with and are informed of all environmental regulations and laws in relation to receipt, handling and use of the marine fuels. Furthermore, the Buyer warrants that the vessel is in compliance with all national and international governmental and pollution regulations.

16.2. In the event of an oil spillage during or after receipt of the marine fuels, the Buyer shall immediately notify appropriate governmental and/or port authorities, take the necessary actions and precautions and pay all costs to affect the clean-up. If the Buyer does not take such immediate action, the seller or the supplying company shall be authorized by the Buyer, at their sole discretion and without the need to seek any prior approval from the Buyer, to conduct such clean-up on behalf of the Buyer and at the Buyers risk and expense. The Buyer shall indemnify and hold harmless the seller or the supplying company during the cleanup, unless the oil spillage is proven to be caused solely by the sellers gross negligence.

## 17. ANTI-CORRUPTION

17.1. The Buyer undertakes and warrants that it complies with all applicable anticorruption laws and regulations and that it shall not, directly or through third parties, give, promise or attempt to give, or approve or authorize the giving of, anything of value to any person or any entity for the purpose of: securing any improper advantage for the seller or the Buyer; inducing or influencing a public official improperly to take action or refrain from taking action in order for either party to obtain or retain business, or to secure the direction of business to either; or inducing or influencing a public official to use his/her influence with any government or public international organization for such purpose.



17.2. The seller may, at its sole discretion, terminate the contract immediately if the Buyer is in breach of clause 17.1.

## **18. THIRD PARTIES RIGHTS AND ASSIGNMENT**

18.1. No third party may enforce the terms of these general terms and conditions.

18.2. Neither party shall assign any of their rights under these general terms and conditions and the confirmation note without the prior consent of the other party.

## **19. CANCELLATION**

The Buyer and Seller are required to comply with their contractual obligations even if events have rendered performance more onerous or less favourable than could have been expected at the time of the conclusion of the agreement. Should the Buyer cancel the contract or should the vessel fail to take delivery of part or all of the requested Marine Fuels, the Buyer shall be considered in breach of the contract and be obliged to pay to the Seller a) a cancellation fee of five per cent (5%) of the total order price, and b) any documented costs and damages incurred by the Seller as a result of such cancellation or failure to take delivery.

## **20. TERMINATION**

20.1 Without prejudice to accrued rights hereunder, Marine Brokers shall be entitled to terminate the contract if any application is made, any proceedings are commenced or any order or judgment are given by any court for the liquidation, winding up, bankruptcy, insolvency, dissolution or similar of the client.

## **21. PARTIAL VALIDITY**

21.1 If any provision of the contract is or becomes illegal or invalid, the provision shall be deemed to be amended to the extent necessary to avoid such illegality or invalidity, or, if such amendment is not possible, the provision shall be deemed to be deleted from the contract to the extent of such illegality or invalidity. The remaining provisions shall continue in full force and effect.

## **22. DISPUTE RESOLUTION**

22.1. The construction, validity and performance of the contract and any dispute or claim arising out of or in connection with it shall be governed by danish law.

22.2. Any dispute arising between marine brokers and the client shall be subject to the exclusive jurisdiction of the competent courts in Copenhagen (Denmark).