

GULF AND CONTINENTAL BUNKER FUELS CO LTD B.V.I.

GENERAL TERMS AND CONDITIONS GOVERNING SALE AND DELIVERY OF BULK MARINE OIL BUNKER SUPPLY

A. Definitions

Unless the context otherwise demands:

- A.1 "Seller" means **GULF AND CONTINENTAL BUNKER FUELS CO LTD BVI**
 - A.2 "Buyer" means the party requesting the Seller either to sell and deliver to it, or to arrange for the delivery to it, of Marine Fuels.
 - A.3 "Supplier" means the party having Marine Fuels available at a port and requested by the Seller to deliver to the Buyer.
 - A.4 "Delivery Port" means the port at which the Supplier delivers Marine Fuels against a nomination.
 - A.5 "Marine Fuels" means marine fuel oil, intermediate fuel oil, marine diesel oil, light marine diesel oil and gas oil.
 - A.6 "Fuels Prices" means those prices quoted by the Seller against the Buyer's specified requirements.
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B. Terms

- B.1 The terms and conditions contained hereinbelow apply to any and all sales and deliveries of Marine Fuels irrespective of time, place of delivery, quantity, quality or grade.
 - B.2 Terms and conditions, presented at any time, in any form, by any other party (including buyers, brokers, agents etc.) are overridden by the following unless expressly accepted by Seller in writing.
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C. Quality

- C.1 The Marine Fuel to be delivered hereunder shall be Seller's and Supplier's commercial grades of oil as offered generally to its customers for similar use at the time and place of delivery. It is the sole responsibility of the Buyer to select and accept the Marine Fuel for use in the vessels to which such Marine Fuel is delivered.
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D. Nomination and final notice of requirement

- D.1 Buyer shall give Seller or Supplier directly or through Buyer's agents at least 72 hours written notice. (Saturdays, Sundays and holidays excluded) of vessel's readiness to receive delivery. Buyer shall specify the name of the vessel, the vessel's agent, the loading port, the estimated arrival date and the exact required quantity and quality of Marine Fuels required so as to enable Seller or Supplier to make any necessary arrangements for the delivery. By making such nomination the Buyer shall be deemed to have accepted and agreed to the terms and conditions herein contained.
- D.2 Buyer shall give Seller or Supplier final notice of requirement directly or through Buyer's agent at least 48 hours (Saturday, Sundays and holidays excluded) before loading Marine Fuel into barge.
- D.3 Seller on its own behalf may decline a nomination by notice given to the Buyer at least 48 hours before loading Marine Fuels into barge.
- D.4 If the vessel shall not have arrived at the Delivery Port within ten (10) calendar days after the expected date of arrival as notified in C.1. above the nomination shall be deemed to have been cancelled by the Buyer.
- D.5 Notwithstanding the nomination to the Buyer of a Supplier hereunder the Seller

shall be and remain responsible as principal for the performance of the contract subject always to the terms and conditions herein contained. It is specifically and accepted by the Buyer that upon receiving notification from the Seller of the Supplier that nomination shall be accepted by the Buyer and that Supplier so nominated is for the purposes of this contract referred to as "Supplier".

E. Delivery

- E.1 Seller's obligation to make any delivery hereunder is subject to the availability to Seller at the Delivery Port of the particular grades of Marine Fuels desired by Buyer.
- E.2 If Seller or Supplier at any time for any reason believes that there may be such a shortage of supply at any port that it may be unable to meet the demands of all its customers. Seller or Supplier may allocate its available and anticipated supply among its customers in such a manner as it may in its sole discretion determine.
- E.3 Deliveries shall be made during normal working hours at the port in question unless required at other times and permitted by port regulations in which event the Buyer shall pay all overtime and extra expenses incurred.
- E.4 Seller shall not be required to deliver Marine Fuels into any of the vessel's tanks which are not regularly used for bunkers, and shall not be required to deliver any fuel for the export of which a Government permit is required and has not been obtained by the Buyer or its accredited representative.
- E.5 Delivery shall be made at wharf or at shore terminals of Seller or Supplier or by barge where barging facilities are available in Seller's option: or a combination of the mentioned supply methods.
- E.6 Vessel shall be bunkered as promptly as circumstances permit. Seller or Supplier shall not be liable to Buyer for any loss or demurrage due directly or indirectly to weather, congestion of the port, prior commitment of available barges or any other contingency.
- E.7 In the event of delivery by barges(s). Buyer shall provide free of expense a clear and safe berth for the barge(s) alongside the vessel's receiving lines. Buyer shall pay Seller the amount due to Seller or Supplier according to its current barging rates at the port concerned. Other charges, such as for mooring and unmooring, to be for Buyer's account.
- E.8 Seller, Supplier, or the barging equipment are in no case whatsoever responsible to any damage, loss or delay to the receiving vessel. Furthermore Buyer agrees to pay and indemnify against all claims and expenses for any loss, damage or delay caused by receiving vessel to barging equipment.
- E.9 Terminal or barge deliveries need not be made where in Seller's or Supplier's opinion clear and safe berth is not available.
- E.10 Receiving vessel to moor, unmoor, hoist bunkering hose(s) from the barges(s), respectively lower hose(s) day/night, Saturdays, Sundays, holidays included, whenever required by Seller or Supplier; free of expenses, and in any way assist barge equipment to a smooth supply. Buyer shall make the connection between the pipeline(s)/delivery hose(s) and vessel's lines, and shall provide sufficient tankage and equipment to receive promptly, day/night, Saturdays, Sundays, holidays included, all deliveries hereunder. In case Buyer's vessel is not able to receive promptly and smoothly Buyer is to be responsible for and to pay reasonable demurrage claims to the barging facilities.

F. Measure

- F.1 The quantity of the fuel oils delivered hereunder shall be determined from gauge of Seller's or Supplier's shore tanks or barge effecting delivery or Seller's or Supplier's oil meter, at Seller's or Supplier's option.
- F.2 In gauging shore tanks or barge, the chief engineer of Buyer's vessel or his representative, shall jointly with the Seller or Supplier, measure and verify quantities of the Marine Fuels sold and delivered hereunder in tanks or barges from which delivery is made. Should chief engineer or his representative fail or decline to

so verify quantities, measurement of quantity made by Supplier as aforesaid shall be final and conclusive as to quantities sold and delivered hereunder, and no claims for variance shall be allowed subsequent to delivery. In the measurement of the fuel oils, Seller shall make, or cause to be made, allowance for all water and/or non-petroleum sediment in excess of one (1) percent.

G. Quality Determination

- G.1 Complaint as to quality must be based on tests made as soon as possible by an independent laboratory of samples taken at time of delivery from shore tank or barge from which delivery is made.
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H. Prices

- H.1 Except as otherwise agreed between the Seller and the Buyer the prices to be paid for Marine Fuels delivered hereunder shall be the prices quoted by the Seller against the Buyer's specified requirements.
- H.2 At ports where the Seller itself does not have Marine Fuels available and is not the direct Supplier prices are quoted on the condition that the final price charged to the Buyer may be adjusted to reflect any increases imposed upon the Seller by the Supplier effective the date such increase is made effective by the Seller's Supplier whether retroactive or not.
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I. Invoices

- I.1 The Seller shall invoice the Buyer in (US Dollars) or in such other currency as may have been agreed between the Seller and the Buyer before delivery.
- I.2 At the option of the Seller the invoice may be submitted to the Buyer by Telegraphic means.
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J. Payment

- J.1 Payment shall be made by Buyer as directed by Seller.
- J.2 In case payment by Buyer shall not be made by the due date Buyer shall be charged penalty interest of 18 percent per annum on the invoice amount from the date of maturity to the date of full payment without prejudice to Seller's right to claim full payment.
- J.3 When paying, the Buyer shall not be entitled, without the Seller's consent in writing to offset any amount for claims against the Seller whether or not these claims are connected, and whether or not they arise out of the consignments concerned.
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K. Financial Responsibility

- K.1 Marine Fuel is delivered hereunder not only on the credit of Buyer but also on credit of the vessel receiving delivery of the Marine Fuels and it is agreed and Buyer warrants that Seller will have and may assert a lien against the receiving vessel for the amount of the purchase price of the Marine Fuels.
- K.2 Title and Ownership of the Marine Fuel delivered remain with the Seller and/or the Supplier until the Buyer has fully and completely paid the purchase price and all other amounts due under the sales contract. If marine fuels supplied pursuant to this agreement is mixed with other marine fuels of products Buyer hereby assigns and transfers to Seller such quantity of the admixture as would satisfy all outstanding claims in respect of deliveries made under this agreement. In the event payment is not made at the time and in the manner above prescribed, Seller shall have the right to regain possession of deliveries already made without being obliged to set a further deadline for payment and all expenses and charges arising in connection there- with shall be borne by the Buyer.

- K.3 Should agreement be made with an agent, then such agent, as well as the principal, shall be bound by and liable for all obligations of Buyer, whether such principal be disclosed or undisclosed.
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L. Taxes or other charges

- L.1 Should any tax, freight, insurance premium, pilotage, port dues or any extra expenses at the time of loading under this contract, be raised or charged after this contract is made such, additional expenses shall be borne by Buyer.
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M. Security

- M.1 The Seller may at any time demand that payment be made before the date due for payment whether before or after delivery of the Marine Fuels or may demand the giving of such security as it may specify.
- M.2 If at any time the Buyer has failed to make any payment or give any security required (whether in terms of this clause or not), the Seller shall, in addition to any other remedy, be entitled to suspend or terminate deliveries (insofar as they have not already taken place) and to assert all their rights against the vessel. The Seller may also procure that any other deliveries be suspended or terminated. In the event of such suspension or termination the Buyer shall have no recourse against the Seller.
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N. Documents

- N.1 On completion of the delivery of Marine Fuel to a vessel, the Master of the vessel or the Buyer's accredited representative shall give the Supplier a signed receipt therefore in a form required by the Supplier.
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O. Claims

- O.1 Any claim by Buyer of any nature arising under these terms shall be notified to Seller in written form within eight days after delivery and no such claim shall be made or allowed after eight days from delivery.
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P. Exceptions

- P.1 Neither the Seller nor the Supplier, shall be responsible for any failure to fulfil their obligations (other than the payment of money) hereunder if fulfillment has been delayed, hindered, interferred with, curtailed or prevented by :-
- (a) any circumstances whatsoever whether or not foreseen which are not within the immediate control of the Seller or the Supplier or,
 - (b) any curtailment, failure or cessation of supplies of Marine Fuels or the petroleum from which such Marine Fuels are derived or of any of the Seller's or the Supplier's sources of supply, (whether in fact sources of supply for the Marine Fuels to be delivered against a nomination or not) or,
 - (c) compliance with any order, demand or request of any international, national, port, transportation, local, or other authority or agency or of any body or person purporting to be or to act for such authority or agency, breakdown of or accident to plant, machinery or facilities, or weather conditions or,
 - (d) any strike, lock-out or labour dispute (whether or not the Seller or the Supplier is a party thereto or would be able to influence or procure the settlement thereof) war, hostilities, or any local or national emergency (or the threat or apprehension of any of the foregoing events).
- P.2 Seller or Supplier shall not be required to remove any such cause set out in P.1. above or replace any effected source of supply or facility if doing so shall involve additional expense or a departure from Seller or Supplier's practices. Seller or

Supplier shall not be required to make up any deliveries omitted in accordance with this clause.

Q. Assignment

- Q.1 Seller may assign all or any part of its rights and obligations. Any assignment by Buyer without Seller's written consent shall be void.
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R. Liability and indemnity

- R.1 Buyer shall hold Seller harmless from any and all expense, claims, loss, damage and liability arising out of :-
- (a) all charges for any delivery by Barge including any barging charges, similarly charges provided for Bulk Lorry, Rail Tank Wagon and Drum deliveries,
 - (b) Any mooring or unmooring charges or port dues which may be incurred by the Supplier in connection with any vessel to which Marine Fuels are delivered hereunder.
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S. Assignment

- S.1 If an escape, spillage or discharge of oil (hereinafter called a 'spill') occurs while a delivery of Marine Fuel is being made on behalf of a the Buyer, the Buyer will promptly take such action as is reasonably necessary to remove the oil and mitigate the effects of such spill. However, notwithstanding the cause of such spill the Seller or the Supplier is hereby authorised, at its option upon notice to the Buyer, or the Buyer's operator of, or agent for, the receiving vessel, to take such measures, either in co-operation with the Buyer, or exclusively as the sole party, and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonably necessary in the judgment of the Seller or the Supplier, to remove the oil and mitigate the effects of such spill. If the Seller has exercised its option to remove the oil and mitigate the effects of such spill, the Buyer agrees to co-operate and render such assistance as is required by the Seller in the course of such action. Any expenses, damages, costs, fines and penalties arising from the escape, spillage, etc. by its negligent act or omission. If both parties have acted negligently, any expenses, etc. shall be divided between the parties in accordance with their respective degrees of negligence. The burden of proof to show the Seller's negligence shall be on the Buyer. The Buyer also agrees to give or cause to be given, to the Seller, all such documents, and other information concerning any spill, or any programme for the prevention thereof, which are requested by the Seller, or required by laws or regulations applicable at the time and place where the Seller or the Supplier delivers Marine Fuel to the Buyer.
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T. Indemnity

- T.1 The Buyer will indemnify the Seller and the Supplier against any claims, losses, costs (including costs as between Attorney or Solicitor and Client), damages, liabilities, fines, penalties and expenses incurred or sustained arising out of or in connection with the delivery of Marine Fuels against a nomination except to the extent the such claims, losses, costs, damages, liabilities and expenses arise through the negligent act or omission of the Seller or the Supplier (but such exceptions subject always to clauses C.1, E.1,E.2,E.6,E.11,G.1,H.2,P.1 and S.1 above).
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U. Waiver

- U.1 Any waiver by the Seller, the Supplier or the Buyer, or any of their respective rights hereunder or against a nomination in any particular instance shall not prejudice their respective rights to enforce the same strictly and in full on any subsequent

occasion.

V. Agents

- V.1 If the nomination is made by an agent acting for or on behalf of the Buyer, whether such agency is disclosed or undisclosed then such agent shall be liable, as well as the Buyer, not only as agent but also as principal for the performance of all the obligations of the Buyer.
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W. Notes

- W.1 Notices to be given hereunder shall be addressed to the addresses specified from time to time by the party to whom the notice is addressed.
- W.2 Where a nomination is made by any agent acting for the Buyer then notice may be given either to the agent or to the Buyer at the option of the party giving the notice.
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X. Arbitration and governing law

- X.1 This agreement shall be governed in all matters by English Law.
- X.2 Notwithstanding anything in this agreement, including, without limit, sub-clause X.1, upon delivery of the Marine Fuels to the vessel(s), Seller shall have a maritime lien on such vessel(s) for any amounts owed to the Seller, and nothing herein shall affect or prejudice the right of Seller to take action and/or commence proceedings to enforce its right of lien on such vessel(s) or to otherwise obtain security by seizure, attachment or arrest of vessel(s) or any other assets for any amounts owed to Seller in any jurisdiction in accordance with local law in such jurisdiction.