



**WARM SEAS**

# General Terms and Conditions 1 January 2016

## Warm Seas Development & Trading Co LLC

### Preamble

These General Terms and Conditions shall apply to all deliveries contracted for unless the Sellers expressly confirm otherwise in the Bunker Confirmation. Each delivery shall constitute a separate contract.

### 1. Definitions

Throughout this Contract, except where the context otherwise requires, the following definitions shall be applied:

"*Marine Fuels*" means products, derived from crude oil, delivered or to be delivered to the Vessel.

"*Sellers*" means the party contracting to sell and deliver Marine Fuels, and

"*Buyers*" means the party contracting to purchase, take delivery and pay for the Marine Fuels.

"*Bunker Tanker*" means bunker barge or tanker or tank truck supplying Marine Fuels to the Vessel.

### 2. Grades/Quality

- a) The Buyers shall have the sole responsibility for the nomination of the grades of Marine Fuels fit for use by the Vessel.
- b) The Sellers warrant that the Marine Fuels shall be of a homogeneous and stable nature, shall comply with the grades nominated by the Buyers and be of a quality widely accepted in the industry. Unless otherwise agreed in the Bunker Confirmation, the Marine Fuels will comply with ISO Standard 8217 (E):2005

### 3. Quantities/Measurements

- a) Subject to the provisions of sub-clause 6(c) and Clause 9 hereunder the quantities of Marine Fuels delivered shall be determined from the official gauge or meter of the Bunker Tanker effecting delivery, or in case of delivery ex wharf, of the shore-meter.
- b) The Buyers and the Sellers shall both have the right to be present or represented when such measurements are taken and shall be given sufficient information and access to the official gauge or meter of the Bunker Tanker or shore-meter and relevant documentation to verify the volume delivered.
- c) The Marine Fuels to be delivered under this Contract shall be measured and calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.

### 4. Sampling

- a) The Sellers shall arrange for a representative sample of each grade of Marine Fuels to be drawn throughout the entire bunkering operation and that sample shall be thoroughly mixed and carefully divided into four (4) identical samples. The sampling shall be performed in

the presence of both the Sellers and the Buyers or their respective representatives. The absence of the Buyers or their representatives shall not prejudice the validity of the samples taken.

- b) The sample shall be drawn at a point, to be mutually agreed between the Sellers and the Buyers or their respective representatives, closest possible to the Bunker Tanker manifold.
- c) The sample shall be drawn using a mutually accepted sampling device which shall be constructed, secured and sealed in such a way so as to prevent the sampling device and the sample being tampered with throughout the transfer period.
- d) The four (4) identical samples referred to in subclause 4(a) shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, product name, delivery date and place and point of sampling and seal number, authenticated with the Vessel's stamp and signed by the Sellers' representative and the Master of the Vessel or his authorised representative.
- e) Two (2) samples shall be retained by the Sellers for minimum forty five (45) days after delivery of the Marine Fuels to the Vessel or, on being requested in writing by the Buyers, for as long as the Buyers may reasonably require, and the other two (2) samples shall be retained by the Vessel.
- f) If the quantity is delivered by more than one Bunker Tanker, the sampling procedure shall be repeated as outlined in this Clause 4.
- g) In the event of a dispute relating to the quality of the marine fuel supplied, the samples drawn by the Bunker Tanker only under this clause shall be conclusive and only the results of testing of samples drawn under this section shall be admissible in any proceedings to prove the quality of the marine fuel provided.

### 5. Delivery

- a) Delivery of the Marine Fuels shall be made day and night, Sundays and holidays included, at the port or place of delivery, subject always to the custom of that port or place.
- b) Buyers shall at the time the order is placed designate a date or range of dates for delivery of the Marine Fuels, which dates will be confirmed in the Bunker Confirmation for delivery of the Marine Fuels.
  - i) In the event the vessel arrives earlier than 24 hours prior to the agreed date or range of dates or later than 24 hours after the agreed date or range of dates, Buyer agrees to an adjustment in price to reflect any increase in the relevant Platts publications, which may be obtained from the Seller upon request.

- ii) Should Buyer elect to cancel the order, Buyer shall pay a cancellation fee equal to 5 % of the order price.
- c) The Buyers, or their agents at the port or place of delivery, shall give the Sellers or their representatives at the port or place of delivery, 72 and 48 hours approximate and 24 hours definite notice of the Vessel's arrival and the location and time at which deliveries are required.
- d) The Sellers shall:
  - i) be in possession of all permits required to comply with all relevant regulations pertaining to delivery of Marine Fuels at the port or place of delivery, and;
  - ii) subject to local laws, render all necessary assistance which may be reasonably required to make connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold.
- e) The Buyers shall be responsible for making all connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold and to ensure that the hose(s) are properly connected to the Vessel's bunker manifold prior to the commencement of delivery.
- f) Seller shall have no responsibility for detention or demurrage incurred by Buyer or to Buyer's Vessel caused by delays in the Bunker Tanker arriving on station due to bad weather or bad visibility.
- g) The Buyers shall ensure that the Vessel is in possession of all certificates required to comply with all relevant regulations pertaining to delivery of the Marine Fuels at the port or place of delivery and that the Master of the Vessel shall:
  - i) advise the Sellers in writing, prior to delivery, of the maximum allowable pumping rate and pressure and agree on communication and emergency shut-down procedures;
  - ii) notify the Sellers in writing prior to delivery, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Marine Fuels, and;
  - iii) provide a free side to receive the Marine Fuels and render all necessary assistance which may reasonably be required to moor or unmoor the Bunker Tanker, as applicable.

## 6. Documentation

- a) Before commencement of delivery the Sellers shall without obligation endeavour to present a bunker requisition form or similar document, duly signed by the Sellers or their representative, which shall contain the quantities to be delivered and all information required in accordance with the Bunker Confirmation or any subsequent amendments thereof, including, in particular, the values for:

- viscosity
- density
- sulphur content
- flash point

In addition, and if available, similar information shall be provided for vanadium, ash content, water content and pour point.

- b) Once the delivery is completed and quantities measured, a receipt shall be signed and stamped by the Master of the Vessel or his authorised representative, and returned to the Sellers, or their representative, as acknowledgement of the actual volume only and a duplicate copy shall be retained by the Master of the Vessel. This receipt shall contain the following minimum information which is warranted by the Sellers:
  - delivered quantity in volume units
  - density in kg/m<sup>3</sup> at 15o C as per ISO 3675
  - flash point
  - sulphur content in % m/m as per ISO 8754
  - viscosity
- c) In the event the Master of the Vessel is not satisfied with the sampling, quality, quantity or any other matter concerning the Marine Fuels or their delivery, he shall take immediate phone contact to Seller's 24/7 phone number stated in the lower right footer of the Bunker Confirmation or to Buyer, whom must take immediate action on the complaints to solve the issue raised by the Master of the Vessel. Verification of the information provided under sub-clause 6(b) may later be obtained by analysis of the Vessel's retained sample.
- d) Buyer warrants that it is authorized by the Vessel's owners/operators to order the marine fuels delivered to the Vessel and that it has provided a copy of these terms and conditions to the Vessel's owner and/or Master.
- e) Buyer further warrants that by receiving the marine fuel and signing the Bunker Receipt, the Master acknowledges the vessel is bound by the terms and conditions contained herein.

## 7. Price

- a) The price of the Marine Fuels shall be in the amount expressed per unit and in the currency stated in the Bunker Confirmation for each grade of Marine Fuels delivered into the Vessel's tanks free delivered/ex wharf as applicable and stated in the Bunker Confirmation. In the event the price is quoted in volume units, conversion to standard volume shall be at 60 degrees Fahrenheit or at fifteen (15) degrees Celsius.
- b) Any and all additional charges, if applicable, shall be specified in the Sellers' quotation and in the Bunker Confirmation and shall include but not be limited to:
  - i) Wharfage charges, barging charges or other similar charges;
  - ii) Mooring charges or port dues incurred by the Sellers which are for Buyers' account, and;

- iii) Duties, taxes, charges or other costs in the country where delivery takes place, for which the Sellers are accountable but which are for the Buyers' account.

## 8. Payment

- a) Payment for the Marine Fuels shall be made by the Buyers as per stated in the Bunker Confirmation, after the completion of delivery. In the event payment has been made in advance of delivery, same shall be adjusted on the basis of the actual quantities of Marine Fuels delivered and additional payment and/or refund shall be made within thirty (30) days after the completion of delivery. Should the Buyer appear to be in financial difficulty or unable to meet its obligations to other creditors as they become due, Seller on written notice to Buyer may accelerate the payment date hereunder in which case payment is immediately due. In consideration of this acceleration, Buyer is entitled to a credit against the principal amount due of 2% per month (prorated over the 30 days) for every day the payment is early.
- b) Payment shall be made in full, without set-off, counterclaim, deduction and/or discount, free of bank charges.
- c) Payment shall be deemed to have been made on the date the payment is credited to the counter of the bank designated by the Sellers. If payment falls on a non-business day, then payment shall be made on or before the business day nearest to the due date. If the preceding and succeeding business day are equally near to the due date, then payment shall be made on or before the preceding business day.
- d) Any delay in payment and/or refund shall entitle either party to interest at the rate of two (2) per cent. per month or any part thereof. Any payments made by Buyer and received by Seller shall be credited first against any interest owed under this section after which the balance of the payment, if any, shall be credited against the principal debt.
- e) In the event of non-payment, the Sellers reserve the right to pursue all legal remedies available to recover the amount owed. The Sellers shall have a maritime lien on the vessel identified by its IMO number until payment and interest has been received by the Sellers. 'No-Lien- Stamps' or -remarks in any form or wording on Bunker Delivery Receipt(s) shall be invalid and of no effect, and shall in no way impair Seller's lien or discharge the vessel's responsibility for debts under this agreement.

## 9. Claims

### a) Quantity Claims:

- i) The Bunker Tanker's measurements of the quantity delivered to Buyer shall be presumed accurate, and shall be final and binding on Buyer absent proof by Buyer that the measurements were inaccurately performed, calculated or recorded. Buyer's Vessel's measurements alone are insufficient to rebut this presumption.

- ii) Any dispute as to the accuracy of the measurements of the quantity delivered must be notified by phone to Sellers on their 24/7 number stated in the lower right footer of the Bunker Confirmation at the time of delivery and before signing the delivery receipt or a letter of protest. Any claim as to short delivery shall be presented by the Buyers in writing within (24) hours from the time of delivery together with all documents supporting Buyer's claim, failing which any such claim shall be waived and barred.

- iii) The Buyers shall be charged for all proven additional expenses incurred by the Sellers in connection with the Buyers' failure to take delivery of the full quantity of the Marine Fuels ordered by the Buyers.

### b) Quality Claims:

- i) Any claim as to the quality of the Marine Fuels must be notified in writing promptly after the circumstances giving rise to such claim have been discovered. If the Buyers do not notify the Sellers of any such claim within Seven (7) days of the date of delivery, such claim shall be deemed to be waived and barred.
- ii) In the event a claim is raised pursuant to sub-clause 9(b)(i), the parties hereto shall have the quality of the Marine Fuels analysed by a mutually agreed, qualified and independent international recognized laboratory. The Sellers shall suggest minimum 2 (two) such laboratories, and Buyer shall choose one laboratory for a final and binding test. The Sellers shall provide the laboratory with one of the samples retained by them as per sub-clause 4(e). The analysis shall be established by tests in accordance with those specified under ISO Standard 8217(E):2005 or equivalent. Unless otherwise agreed the expenses of the analysis shall be for the account of the party whose claim is found wrong by the analysis.

### c) Delay Claims:

In the event of any delay resulting from:

- i) the Buyers' failure to give proper notices and/or to comply with the notices given pursuant to sub-clause 5(c) and/or the Buyers' Vessel failing to receive Marine Fuels at the pumping rate referred to in sub-clause 5(g)(i) or;
- ii) the Sellers' failure to commence delivery of the Marine Fuels promptly in accordance with the Buyers' required delivery time as notified pursuant to sub-clause 5(c), except as provided in clause 5(f), and/or the Sellers' failure to deliver the Marine Fuels in accordance with the minimum hourly pumping rate referred to in the Bunker Confirmation,

then the party suffering such delay shall be entitled to compensation from the other party for such delay.

- d) Neither party hereto shall be liable for indirect or consequential loss and/or damage arising from this Contract.

#### 10. Risk/Title

Risk of the Marine Fuels shall pass to the Buyers once the Marine Fuels have passed the Sellers' flange connecting the Vessel's bunker manifold with the delivery facilities provided by the Sellers. Title to the Marine Fuels shall pass to the Buyers upon payment for the value of the Marine Fuels delivered, pursuant to the terms of Clause 8 hereof. Until such time as payment is made, on behalf of themselves and the Vessel, the Buyers agree that they are in possession of the Marine Fuels solely as Bailee for the Sellers. If, prior to payment, the Sellers' Marine Fuels are commingled with other marine fuels on board the Vessel, title to the Marine Fuels shall remain with the Sellers corresponding to the quantity of the Marine Fuels delivered. The above is without prejudice to such other rights as the Sellers may have under the laws of the governing jurisdiction against the Buyers or the Vessel in the event of non-payment.

#### 11. Termination

Without prejudice to accrued rights hereunder, the Seller shall be entitled to terminate this Contract in the event of:

- a) any application being made or any proceedings being commenced, or any order or judgement being given by any court, for
- i) the liquidation, winding up, bankruptcy, insolvency, dissolution, administration or re-organisation or similar, or
  - ii) the appointment of a receiver, liquidator, trustee, administrator, administrative receiver or similar functionary of the Buyer of all or a substantial part of its assets (otherwise than for the purpose of a reconstruction or amalgamation);
- b) the Buyer or any of its affiliates failing to pay its debts as they become due or suspending payment of its financial obligations, ceasing to carry on business, or compounding or making any special arrangement with its creditors, or;
- c) any act being done or event occurring which, under the applicable law thereof, has a substantially similar effect to any of the said acts or events described above.

#### 12. Indemnity

- a) Without prejudice to any other claims arising hereunder or in connection herewith and notwithstanding the provisions of sub-clause 9(d), if loss is suffered or a liability is incurred by either party hereto as a direct result of compliance with directions given by the other party, during or for the purposes of the parties' obligations

hereunder, then the injured party is to be indemnified by the other in respect of such loss or liability.

- b) Where claims arise under sub-clause 9(c) and subclause 12(a), compensation payable in accordance with sub-clause 9(c) shall be taken into account in assessing sums payable under sub-clause 12(a).
- c) Seller and Buyer recognize the risks inherent in ship to ship operations and that the decision to proceed with such operations is in the sound discretion of the Masters of the vessels involved. It therefore is agreed that:
- i) Buyer assumes all liability for any loss or damage to Buyer's Vessel or injury to the crew thereon caused by any condition of the Bunker Tanker or any fault of the Master or crew of the Bunker Tanker and Buyer shall indemnify and defend Seller against all such liability.
  - ii) Seller assumes all liability for any loss or damage to the Bunker Tanker or injury to the crew thereon caused by any condition of Buyer's Vessel or any fault of the Master or crew of Buyer's Vessel and Seller shall indemnify and defend Buyer against all such liability.

#### 13. Force Majeure

Neither party hereto shall be responsible for any loss, damage, delay or failure in performance under this Contract resulting from an act of God, or the port or area of delivery being affected by war, civil commotion, riot, quarantine, strike, stoppage, lock-out, arrest, restraint of princes, rulers and people, piracy, acts of terrorism or any other event whatsoever which is beyond the control of Seller and cannot be avoided or guarded against by the exercise of ordinary care.

#### 14. Safety and the Environment

- a) In the event of any spillage (which for the purpose of this Clause shall mean any leakage, escape, spillage or overflow of the Marine Fuels) causing or likely to cause pollution occurring at any stage of the bunkering operation, the Buyers and the Sellers shall jointly, and regardless as to whether the Buyers or the Sellers are responsible, immediately take such actions as are reasonably necessary to effect clean up and which shall always be conducted in accordance with such local laws and regulations which may compulsorily apply.
- b) Where it is a compulsory requirement of the law of the port or place of delivery of the Marine Fuels that the Sellers shall have in place their own oil spill contingency plans, the Sellers shall ensure that valid oil spill contingency plans approved by the relevant authorities are in effect to the extent that is so required.
- c) The Sellers hereby guarantee payment of and/or agree to indemnify and hold the Buyers harmless for any claims, losses, damages, expenses, penalties or other liabilities incurred by the Buyers under the United States

Oil Pollution Act of 1990, or other state, national or international oil pollution legislation, as a result of any spillage occurring whilst the Marine Fuels are being transported directly or indirectly to or from the Vessel's bunker manifold except to the extent that such spillage is caused by any fault on the part of the Buyers. The Buyers shall similarly indemnify the Sellers where any such spillage occurs once risk in the Marine Fuels has passed to the Buyers.

- d) The Sellers shall use their best endeavours to ensure that the bunker supplying company is fully insured for oil spill liabilities as required by statutory rules or regulations. Proof and conditions of such coverage, established by the bunker supplying company shall be made available to the Buyers at their request, as soon as practically possible.
- e) The Buyers hereby advise the Sellers that they enforce a company drug and alcohol policy on board their vessels, whereby the Sellers' personnel must not be intoxicated at any time on board. It is understood and agreed that the selling, possession, distribution, use or being under the influence of any controlled substance or dangerous drugs other than those medically prescribed is prohibited.
- f) The Sellers hereby advise the Buyers that they enforce a company drug and alcohol policy in their facilities and on board their vessels, which the Buyers' personnel must comply with while in such facilities or on board such vessels. It is understood and agreed that the selling, possession, distribution, use or being under the influence of alcohol or any controlled substance or dangerous drugs other than those medically prescribed is prohibited.

This agreement to arbitrate is without prejudice to Seller's right to use any and all legal process to obtain security for its claims in the United States and/or anywhere in the world pending resolution of the merits of its claim in arbitration.

*These General Terms and Conditions shall remain applicable to any transaction between the Seller and the Buyer - including their fleet of vessels whether disposed, managed, chartered or owned.*

## 15. Severability

If any provision of this Contract shall be held invalid, the invalidity does not affect other provisions of this Contract which can be given effect without the invalid provision, and to this end the provisions of this Contract are severable.

## 16. Dispute Resolution

This Contract shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Contract shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced. The arbitrators shall be commercial men and/or familiar with shipping matters.