

# PACIFIC BUNKERS PTE LTD

## GENERAL TERMS AND CONDITIONS OF SALE OF BUNKER FUEL

### 1. APPLICATION

- 1.1. These General Terms and Conditions for the Sale of Bunker Fuel, including any revisions made at the date of delivery, together with the Bunker Confirmation, constitute the entire contract and supersede all prior or written agreements, representations and/ or warranties. The Bunker Contract shall apply to any contract of sale and purchase of marine bunker fuel and related products of any type or grade by Pacific Bunkers Pte Ltd to any Buyer as defined below.
- 1.2. Pacific Bunkers Pte Ltd reserves the right, at its sole discretion, to revise and amend the General Terms and Conditions herein without notice, from time to time.

### 2. DEFINITION

- 2.1. **'Bunker Confirmation'** refers to a confirmation in writing from the Seller to the Buyer setting forth the particular terms of each sale of Bunker Fuel.
- 2.2. **'Bunker Contract'** refers to the Bunker Confirmation and the General Terms and Conditions of Sale of Bunker Fuel.
- 2.3. **'Bunker Fuel'** refers to marine bunker fuel and related products of whatever type or grade delivered by the Seller
- 2.4. **'Buyer'** refers to the Buyer under each Bunker Contract, including the entity or entities named in the Bunker Confirmation, together with the Vessel, her master, owners, operators, charterers, any party benefitting from consuming the Bunker Fuel, and any other party ordering the Bunker Fuel, all of whom shall be jointly and severally liable as Buyer under each Bunker Contract.
- 2.5. **'General Terms and Conditions'** refer to these set of terms of conditions in force as of 24<sup>th</sup> February 2009 and any subsequent amendments hereto.
- 2.6. **'Seller'** refers to Pacific Bunkers Pte Ltd with Singapore company registration number 200903322K and registered address at 124 Lorong 23 Geylang Arcsphere #10-01, Singapore 388405.
- 2.7. **'Vessel'** refers to the vessel to which a delivery of Bunker Fuel is made and/or on board which it is consumed, which shall include any on-shore tank, train, right, helicopter, aircraft, truck or other unit of installation supplied by the Seller.

### 3. PRICE

- 3.1. The selling price shall have been agreed in advance by the Buyer and Seller. The Buyer shall, in addition to the price, pay all applicable duties, taxes and other such costs including, without limitation, those imposed by governmental authorities, and barging and/or other delivery charges.

### 4. NOMINATION

- 4.1. The Buyer shall give the Seller at least seventy-two (72) hours' notice exclusive of Saturdays, Sundays, and Public Holidays (unless otherwise agreed to by the Seller) of the exact time and location at which delivery is required together with a confirmation of the quantity of the grade of Bunker Fuel ordered.



- 4.2. The Buyer shall be liable for any cost and expenses incurred by the Seller resulting from the failure of the Buyer to take delivery of, or rejecting in part or in full, the quantity of Bunker Fuel ordered by the Buyer prior and accepted by Seller.

## **5. DELIVERY**

- 5.1. Unless otherwise requested by the Seller, the Buyer and/or its representatives shall give the Seller and/or Seller's nominated representatives at the place of delivery forty-eight (48) hours written notice of arrival of the Vessel at the place of delivery.
- 5.2. The Buyer shall be responsible for all connections and disconnections of the delivery hose(s) to the Vessel, and shall ensure that the Bunker Fuel is received by the Vessel at the time for delivery. In the event the delivery is requested outside normal working hours or normal working days and is permitted by local port regulations to be so delivered, the Buyer shall pay all overtime and additional expenses incurred in connection therewith.
- 5.3. The Buyer shall be responsible for any and all demurrage, detention or additional expenses incurred by the Seller if the Buyer or the Vessel fails to receive the Bunker Fuel at the time for delivery. In addition, if the Vessel fails to take delivery of the Bunker Fuel or any part thereof, the Buyer shall compensate the Seller for any loss or damage which the Seller may suffer as a result of such failure, including but not limited to any loss of profit on any resale of the Bunker Fuel, and the Buyer shall bear the risk of the return transport, storage or selling of the Bunker Fuel.
- 5.4. In case of delay or failure to deliver the Bunker Fuel, the Seller shall not be liable to the Buyer or any other entity for any claim, loss or damage unless such delay or failure to deliver is caused by the Seller's negligence.

## **6. QUALITY**

- 6.1. The Buyer alone shall be responsible for and bear the risk of the grade of Bunker Fuel ordered from the Seller, and the Seller shall not be under any obligation to check whether the grade of Bunker Fuel is suitable for the Vessel. The Bunker Fuel shall be of the same quality generally offered for sale at the time and place of delivery, for the grade of Bunker Fuel ordered by the Buyer.
- 6.2. The Buyer shall be responsible to keep the delivered Bunker Fuel segregated from any Bunker Fuel(s) onboard the Vessel or from a different delivery to the Vessel. In no event shall the Seller be responsible for the quality and compatibility of the Bunker Fuel delivered if the Seller's product is mixed or comingled with any other product(s) onboard the receiving Vessel. The Buyer shall be solely responsible for any losses caused by mixing or comingling the Bunker Fuel with any other oil, including any damage the Bunker Fuel may cause on other products on board the receiving vessel.
- 6.3. Buyer at its own expense has the right to have its representatives present to inspect the Bunker Fuel to be delivered hereunder before it is pumped aboard the vessel being supplied. Any such inspection must not delay delivery and must take place in the presence of a representative of the Seller.

## **7. QUANTITY**

- 7.1. The quantity of Bunker Fuel delivered shall be determined from the gauges/ullages of the barge or truck effecting delivery or shore tank if delivery is made by pipeline. The Buyer has the right to have its representatives present during measurements, but determination of quantity shall be made solely by Seller, and will be conclusive.
- 7.2. For deliveries in Singapore, the quantity shall be measured in accordance with prevailing guidelines set in the Code of Practice for Bunkering - Singapore Standard SS 600:2008 or its latest edition.



## **8. SAMPLING**

- 8.1. The Seller or its representatives shall arrange for samples to be drawn at the time of delivery of the Bunker Fuel. Unless otherwise agreed between the Seller and Buyer prior to entering into the Bunker Contract, the samples shall be drawn from a point and in a manner chosen by the Seller or its representatives in accordance with the customary sampling procedures at the port or place of delivery of the Bunker Fuel. For deliveries in Singapore, All samplings taken at the time of bunkering shall be done in accordance to the procedures as set in the Code of Practice for Bunkering - Singapore Standard SS 600:2008, or its latest edition. Any sample taken outside of the procedures as set in the above, shall not be recognized as the legal and binding sample.
- 8.2. The sampling mentioned in section 8.1 shall be performed in the presence of the Seller or its representatives and the Buyer or its representatives, but the absence of the Buyer or its representatives during all or any part of the sampling process shall not prejudice the validity of the samples.
- 8.3. On completion of sampling, all samples drawn by the Seller or its representatives are to be sealed, labelled and signed by both Seller or its representatives and Buyer or its representatives. Two samples shall be retained by the Buyer or its representatives, one of these shall be the MARPOL compliant sample. The remaining samples shall be retained by the Seller or its representatives.
- 8.4. In the event of a dispute concerning the quality of the Bunker Fuel, the results of analysis of the Seller's or its representative's drawn samples performed by an independent laboratory mutually appointed by the Buyer and Seller shall be conclusive to determine the quality of the Bunker Fuel supplied. Analysis results of the Seller's or its representative's drawn samples will be the sole binding evidence for the quality of the Bunker Fuel supplied to the Vessel.
- 8.5. If the Seller and the Buyer cannot agree on an independent laboratory to perform mutual analysis or if the Buyer fails to reply to the Seller's notice hereof within 7 (seven) days from receipt of such notice, the Seller can at its sole discretion decide which laboratory to perform the analysis, which shall be final and binding for all parties involved.

## **9. PAYMENT**

- 9.1. The Buyer shall pay for the Bunker Fuel at the price agreed in the Confirmation as set forth in Seller's invoice(s) (hereinafter the "Invoice"). In addition, the Buyer shall pay the costs of the delivery irrespective of whether the delivery takes place from a terminal facility, barge, lorry, or other method of delivery. The delivery costs shall be set forth in the Confirmation and/or in the invoice. Unless otherwise agreed, the final volume stated in Seller's or its representative's delivery documentation is to be considered final in respect of the quantity to be invoiced.
- 9.2. All prices are excluding VAT and/or taxes. The Seller is entitled, at any time, to charge additional VAT and/or taxes.
- 9.3. If not otherwise specifically agreed between Buyer and Seller at time of ordering, the confirmed costs including possible additional extra costs are only valid for delivery performed to the Vessel on the agreed and confirmed delivery date(s). Should the date(s) of delivery for any reason change, the Seller is entitled to change the price.
- 9.4. Payment shall be made in full, free of bank charges, without discount or deduction, and without set-off for any claim or counterclaim of any nature whatsoever. Should the Buyer nevertheless set-off any amount; the Seller's claim will be increased by 20 (twenty) percent as a penalty.
- 9.5. Payment shall be made to the Seller by bank transfer, according to the payment instructions contained in the Seller's Invoice or any copy hereof forwarded by fax, e-mail or by any other means. The Seller shall be under no obligation to provide any accompanying documents with the Invoice such as a bunker delivery receipt or other documents.
- 9.6. If the Buyer fails to pay any Invoice at the time of maturity set forth in the Invoice, the Buyer shall pay interest at the rate stated in the Invoice. In the absence of an indication in the invoice the



Seller shall be entitled to 3 (three) percent monthly interest. The interest rate will be charged monthly from the date of maturity, without prejudice to any other right or claim of the Seller. Interest will be added to the principal as it falls due.

- 9.7. In the event that any Invoice is not paid in due time, the Seller shall be entitled, at its sole discretion, to specify any particular Invoice or part thereof to which any subsequent payment(s) shall be applied, including, but not limited to, payment covering interest charges, legal fees and other charges. Moreover, the Buyer shall indemnify the Seller against any loss which is caused by adverse currency fluctuations between the Invoice currency and the value of the USD from the latest due date of the Invoice until the date on which payment is made.
- 9.8. Notwithstanding any agreement to the contrary, payment will be due immediately and the Seller shall be entitled to cancel all outstanding stems and/or withhold future deliveries in case of
- i. bankruptcy, liquidation or suspension of payment or comparable situation of the Buyer,
  - ii. arrest of assets of the Buyer,
  - iii. if the Buyer fails to pay any invoice to the Seller at the time of maturity set forth in such invoice,
  - iv. if the Buyer fails to comply with any other obligation pursuant to the Bunker Contract, including, but not limited to, the Buyer's failure to take delivery of Bunker Fuel in full or in part, or
  - v. in case of any other situation, which in the sole discretion of the Seller is deemed to adversely affect the financial position of the Buyer.

In any of the foregoing situations the Seller shall have the option to either (a) cancel the Bunker Contract, (b) to store the Bunker Fuel in full or in part for the Buyer's account and risk, (c) to demand that the Buyer complies with its obligations pursuant to the Bunker Contract or (d) to make use of any other remedy available under the law.

- 9.9. Sales shall be made on the credit of the receiving vessel, as well as on the credit of the Buyer. The amount due on the purchase price, together with all delivery and other charges forming part of the agreement of sale, shall give rise to a maritime lien against the vessel immediately upon delivery.
- 9.10. Any notice or any stamp in the Bunker Delivery Receipt or similar cannot waive the Seller's maritime lien on the Vessel.
- 9.11. Should the Bunker Fuel be purchased by an intermediary such as a manager, broker, trader or agent then such manager, broker, trader or agent shall (in addition to the Buyer) be bound by and liable for all obligations as fully and completely as if they were themselves the Buyer whether such principal be disclosed or undisclosed and whether or not such manager, broker, trader or agent purports to contract as manager, broker, trader or agent only. Furthermore, delivery shall always take place for the account of the registered owners and for the account of the current charterers all of whom shall, together with any intermediary, remain jointly and severally liable for the payment of the delivery as Buyers until payment has been received by the Seller in full. The Buyer warrants that it is authorized as agent to order the Bunker Fuel for delivery to the Vessel, and that the Seller has a lien on the Vessel for its claim.

## **10. RISK OF LOSS**

- 10.1. Delivery shall be deemed complete and risk in the Bunker Fuel, including loss, damage, deterioration, evaporation or any condition or incident related thereto shall pass and belong to the Buyer, as the Bunker Fuel reaches the flange connecting the Seller's delivery hose to the receiving vessel's manifold.



## **11. TITLE**

- 11.1. Notwithstanding the risk in Bunker Fuel delivered being passed to Buyer, title in the delivery shall remain with Seller and shall not be passed to the Buyer until the payment due on the delivery has been paid in full.
- 11.2. The Buyer shall remain bailee of deliveries for the Seller until title has been passed to the Buyer as the Seller has this right according to the law of the place of delivery or according to the law of the Vessel's flag state or according to the law at the location where the Vessel is found.
- 11.3. In the event that payment is not made at the time and in the manner above as prescribed, the Seller shall have right to regain possession of deliveries already made without being obliged to set a deadline for payment and all expenses and charges arising in connection shall therefore be borne by the Buyer.

## **12. ARREST OF VESSEL**

- 12.1. The Bunker Fuel supplied to the Vessel is sold and delivered on the credit of the Vessel, as well as on the promise of the Buyer to pay therefore, and the Buyer agrees and warrants that the Seller shall have and may assert a maritime lien against the Vessel and may take such other action or procedure against the Vessel and any other vessel or asset beneficially owned or controlled by the Buyer, for the amount due for the Bunker Fuel and the delivery thereof. The Seller is entitled to rely on any provisions of law of the flag state of the Vessel, the place of delivery or where the Vessel is found and shall, among other things, enjoy full benefit of local rules granting the Seller maritime lien in the Vessel and/or providing for the right to arrest the Vessel. Nothing in this Bunker Contract shall be construed to limit the rights or legal remedies that the Seller may enjoy against the Vessel or the Buyer in any jurisdiction.

## **13. INDEMNITY**

- 13.1. The Buyer shall indemnify Seller or Seller's supplier against any claims, demands, suits, liabilities, fines, penalties and expenses, including but not limited to legal costs incurred or sustained arising out of or in connection with:
  - (a) Any act, omission, negligence or default of the Buyer, its servants or agents in the receipt, use, storage or transportation of the Bunker Fuel delivered hereunder.
  - (b) Any action taken against Seller or Seller's supplier, by any person, party or public authority as a result of the Buyer's act, omission, negligence including, but not limited to the Buyer's failure to properly equip, maintain navigate and operate the vessel prior to and during delivery thereby causing leakage, spillage, overflow and pollution on sea and/or land.
  - (c) Any delay by the vessel during the receipt and/or delivery of Bunker Fuel, or in the use of barging facilities or in arriving, coming alongside, mooring, pumping or vacating any berth and/or terminal used for delivery of the Bunker Fuel.

## **14. CLAIMS**

- 14.1. If not otherwise agreed, the final supplied volume is to be determined by the Seller's or its representative's measurements. Any claim regarding the quantity of the Bunker Fuel delivered shall be notified verbally as well as in writing by the Buyer or the master of the Vessel to the Seller immediately during delivery of the Bunker Fuel. In the event immediate verbal as well as written notice is not made, such claim shall be deemed to be waived and barred. A notification inserted in the Bunker Delivery Receipt or in a separate protest handed to the physical supplier of the Bunker Fuel shall not qualify as notice under this section 14.1 and the Seller shall under no circumstances be deemed to have accepted such notice or protest handed to the physical supplier.



14.2. Any claim regarding the quality of the Bunker Fuel delivered shall be presented in writing to the Seller as soon as an alleged problem has occurred or the Buyer is notified of any alleged problem and in any event no later than within 14 (fourteen) days from the date of delivery to the Vessel. Should the Buyer fail to make timely notification of any claim regarding the quality of the Bunker Fuel the claim shall be deemed waived and barred.

14.3. In the event of any claim presented in accordance with Section 14.1 and 14.2, the Buyer shall:

- Cooperate with the Seller and make all necessary arrangements for the Seller or its representatives to investigate such claim, including but not limited to the boarding and inspection of the Vessel, the interviewing of crew if necessary, and the review and copying of relevant Vessel documents. Failure to provide boarding and inspection and copying shall constitute a waiver and bar of any such claim.
- Take all reasonable steps and actions to mitigate any damages, losses, costs and expenses related to any claim of alleged off-specification or defective Bunker Fuel.

14.4. The Seller shall not be liable to pay damages if the Buyer has failed to safeguard the Seller's recourse against the physical supplier of the Bunker Fuel or any other wrongdoer, or has failed to ensure the existence of the necessary evidence.

## **15. FORCE MAJEURE**

15.1. The Seller shall not be liable for any loss or damage of whatever nature resulting from any delay or failure in performance under the Bunker Contract (i) caused by any circumstance beyond the Seller's direct control, or (ii) if the supply or source of the Bunker Fuel from any facility of production, distribution, storage, transportation or delivery contemplated or intended by the Seller's supplier is disrupted, unavailable or inadequate due to war or war-like situations, riots, strikes, congestion, governmental order or intervention, unavailability of barges or other means of transport or stem, weather, act of God, changed market conditions, or similar situations.

15.2. In the event of a failure of performance as provided in Section 13.1, the Seller may, but is under no obligation, to source, procure or obtain alternative Bunker Fuel or product, and in such case the Seller shall be entitled to receive from the Buyer payment of any additional costs of performance.

15.3. The Buyer shall have no right of cancellation of the Bunker Contract.

## **16. CANCELLATION**

16.1. Should the Buyer cancel the bunker supply for any reason whatsoever, a cancellation fee, which will be based on the difference in price of the grade (based on the Average of the Mean of Platts Quotation Asia Pacific / Arab Gulf Marketscan published for Singapore) between the date of confirmation and the date of cancellation, will be imposed by the Seller.

16.2. Should the vessel's ETA fall more than five (5) days after the original ETA, the Seller reserves the right to cancel the supply and impose a cancellation fee based on the formula as stated in section 14.1.

16.3. If the vessel fails to arrive or fails to receive the bunker within three (3) days from date of Nominated ETA, Seller has the option to cancel the bunker supply without liability to the Buyer.

## **17. MISCELLANEOUS**

17.1. In the event it becomes impossible for the Seller to supply Bunker Fuel for any reason, including but not limited to requests, suggestions, directives of official or statutory bodies, relating to supplies, priorities, rationing or allocations of any petroleum product, the Seller may reduce or stop deliveries in such a manner its sole discretion determine and shall be relieved of its obligation





to perform hereunder; provided that nothing herein shall relieve the Buyer of its obligations to pay for Bunker Fuel delivered by the Seller or its supplier and to make payment in the manner specified herein.

## **18. DISCLAIMER OR WARRANTY**

- 18.1. All warranties (whether expressed or implied) as to merchantability and fitness of the Bunker Fuel to a particular purpose, condition and agreement whatsoever (whether statutory or otherwise) are expressly excluded and disclaimed.

## **19. BUYER'S POSITION**

- 19.1. If the delivery or supply of Bunker Fuel is contracted for by an agent on behalf of another principal(s) (disclosed or undisclosed), such agent or Buyer, as the case may be, shall be jointly and severally liable with such principal(s), or other principal(s) as the case may be, for the due and proper performance of the contract.

## **20. ENVIRONMENTAL PROTECTION**

- 20.1. It shall be the sole responsibility of the Buyer to ensure that the Vessel, its crew and those responsible for its operation and management observe and comply with all health, safety and environmental laws and regulations with regard to the receipt, handling and use of the Bunker Fuel. The Buyer warrants that the Vessel is in compliance with all national and international trading and pollution regulations.
- 20.2. In the event that a spill occurs while Bunker Fuel are being delivered hereunder, the Buyer shall promptly take such actions as is reasonably necessary to remove the spilled Bunker Fuel and mitigate the effects of such spills.
- 20.3. The Seller is hereby authorized, at its option on notice to the Buyer, to take such measures and incur expenses, as are reasonably necessary in the judgment of Seller or Supplying Company, to remove the oil and mitigate the effects of such spill.
- 20.4. Any expenses, damages, cost, fines and penalties arising from the spillage, discharge or pollution of Bunker Fuel shall be paid by the party that caused such spillage by a negligent act or omission. If both parties have acted negligently, any expenses etc., shall be divided between the parties in accordance with the respective degree of negligence.
- 20.5. 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 program for the prevention thereof, which are requested by the Seller, or required by law or regulation applicable at the time and place where Seller or Supplying Company delivers the Bunker Fuel to the Buyer.

## **21. DISPUTES**

- 21.1. Any dispute arising out of or in connection with any Bunker Contract, including any disputes regarding the existence, validity or termination, shall be settled by arbitration in Singapore arranged by Singapore Arbitration, in accordance with the Singapore Bunker Claims Procedure and in force at the time when such proceedings are commenced.
- 21.2. The matter in dispute shall be referred to three persons, one to be appointed by each of the parties hereto, and the third by the two so chosen, their decision or that of any of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the court.
- 21.3. In the event if one party fails to appoint an arbitrator for seven (7) clear days after the other party, having appointed its arbitrator, has served the party making default with notice to make the



appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent.

## **22. GOVERNING LAW AND JURISDICTION**

- 22.1. The Bunker Contract shall be governed by the laws of the Republic Of Singapore. However, the choice of law is for the sole benefit of the Seller and the Seller may apply and benefit from any law granting a maritime lien and/or right to arrest the Vessel in any country as stipulated in Section 12 hereof.
- 22.2. No additional or amendment to the Bunker Contract shall be of any effect unless such addition or amendment has been mutually agreed and confirmed in writing by both parties.

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