

# **Standart terms and conditions for the sale of marine bunker fuels, lubricants and other products.**

## **1. General Provision**

1.1. This is a statement of the terms and conditions under which INTERBUNKER MANAGEMENT LIMITED ("IML") undertakes to sell marine bunker fuels and other products.

1.2. These Terms and Conditions shall apply to all offers, quotations, orders, agreements, services and all subsequent contracts of whatever nature, except where otherwise is expressly agreed in writing by IML.

1.3. General trading conditions of third parties shall not apply unless expressly accepted in writing by IML.

1.4. In the case that, for whatever reason, one or more of the (sub)clauses of these Standard Terms and Conditions is found invalid, the other (sub)clauses hereof shall remain valid and be binding upon the parties.

## **2. Definitions and their interpretations**

The terms mentioned herein including the above preamble shall have the following meanings:

"Seller" means IML, any office, branch office, affiliate or associate of INTERBUNKER MANAGEMENT LIMITED;

"Buyer" means the vessel supplied and jointly and severally her Master, Owners, Managers/Operators, Disponent Owners, Time Charterers, Bareboat Charterers and Charterers or any party requesting offers or quotations for or ordering Bunkers and/or Services and any party on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made;

"Bunkers" means the commercial grades of bunker oils as generally offered to the Seller's customers for similar use at the time and place of delivery and/or services connected thereto;

"Owner" means the registered Owner or Bareboat Charterer of the vessel;

"Vessel" means the Vessel, Ship, Barge or Off-Shore Unit that receives the supply/bunkers; either as end-user or as transfer unit to a third party.

"Incoterms" means Incoterms 2000 with all further amendments. In case there is any inconsistency or conflict between Incoterms and the present Terms and Conditions, the terms of the present Terms and Conditions shall prevail;

"Banking Day" means a day, when the banks in New-York are open to fulfill day-to-day banking operations;

"Delivery date (bunkering date)" means the ending date of the loading (transfer) of the Goods to the board of the nominated sea (river) vessel that is stated in the Bunker receipt (bunker delivery note);

"FOB" - "Free on board" means that the Seller shall be deemed to have fulfilled his obligation to deliver (transfer) the Goods when the Goods have passed the board of the nominated vessel, as described in Incoterms 2000, unless this meaning has been amended by the present Terms and Conditions;

"Day" or "Days" shall mean a calendar day or days according to the Gregorian calendar;

"Metric ton" means a quantity equivalent to the mass of One Thousand (1,000.00) kilograms;

The references to the Clauses, sub-clauses and Schedules refer to the clauses, sub-clauses and Schedules of the present Terms and Conditions.

The headings herein shall be used only for convenience and shall be ignored for the interpretation of these Terms and Conditions.

## **3. Offers and prices**

3.1. The price for the Bunkers supplied under the present Terms and Conditions shall be fixed in US dollars per one metric ton and specified in a relevant confirmation which shall define the quantity of the Bunkers being supplied as well.

3.2. It is not allowed to reconsider the price for the quantity of the Bunkers already supplied and/or agreed in the case that all the terms and conditions of the agreement between the Seller and the Buyer, such as the date and port of delivery, the quantity and quality of the Goods, have been fulfilled.

3.3. The Seller's offer is based on the applicable taxes, duties, costs, charges and price level of components for Bunkers existing at the time of the conclusion of the agreement (the time of the Seller's confirmation). Any subsequent or additional tax, assessment, duty or other charge of whatever nature and however named, or any increase of components for Bunkers or any additional costs incurred by the Seller whatsoever caused by any change in the Seller's contemplated source of supply or otherwise, coming into existence after the agreement has been concluded, shall be added to the agreed purchase price, provided that the Seller gives the Buyer a prior notice of this effect within a reasonable time after the Seller becoming aware of the relevant circumstances.

3.4. If the party requesting Bunkers is not the Owner of the Vessel, the Seller shall have the right to insist as a precondition of sale that a payment guarantee be provided by the Owner. The Seller shall have the right to cancel any agreement with the Buyer at any time if such payment guarantee is not received upon request thereof from the Seller to the Owner.

## **4. Quality and quantity**

4.1. The Buyer shall have the sole responsibility for the nomination of the quality and the quantity of the Bunkers, which shall correspond to the written confirmation from the Seller.

4.2. The quality and quantity shall be as agreed between the Seller and the Buyer in a written confirmation.

4.3. The Buyer shall have the sole responsibility for any determination of compatibility of the Marine Fuel purchased from the Seller with the marine fuel already on board of the vessel. There are no guarantees or warranties, express or implied, of merchantability, fitness or suitability of the Marine Fuel for any particular purpose or otherwise, which extends beyond this subsection.

4.4. Where standard specifications are being given or referred to, tolerances of 5% in quality are to be accepted without compensation or other consequences whatsoever.

4.5. In respect of the quantity agreed upon the Seller shall be at liberty to provide, and the Buyer shall accept a variation, of 10% from the agreed quantity, with no other consequence than a similar variation to the corresponding invoice from the Seller.

4.6. The quality of the Bunkers shall be determined in accordance with ISO 8217 and/or any other specifications agreed to between the Buyer and the Seller in writing.

4.7. The quantities of bunkers shall be determined from the official gauge or meter of the bunkering barge or tank delivery or of the shore tank in case of delivery ex wharf.

4.8. The Chief Engineer or his representative shall together with the Seller's representative measure and verify the quantities of Bunkers delivered from the tank(s) from which the delivery is made. Should the Chief Engineer or his representative fail or decline to verify the quantities, the measurements of quantities made by the Seller shall be final, conclusive and binding.

## **5. Delivery**

5.1. The time of delivery, as given by the Seller, has been given as an approximate time, unless it has been otherwise specifically agreed in writing between the parties.

5.2. In any case the Buyer, unless otherwise agreed in writing, must give a no less than seventy two (72) hours approximate notice of delivery, which is to be followed by a forty-eighth (48) hours and a twenty four (24) hours notices, where the last notice must specify the exact place of delivery. The notices of delivery must be given to the Seller and/or the Seller's representatives/agents.

5.3. The Vessel in question shall be bunkered as promptly as the circumstances permit. The Seller shall not be liable for any demurrage paid or incurred by the Buyer or for any loss, damage or delay of the Vessel of any nature whatsoever due to congestion at the loading terminal, prior commitments of available barges or any other reason.

5.4. The Buyer shall ensure that the Vessel provides a free, safe and always afloat and accessible side for the delivery of bunkers and that all necessary assistance as required by the Seller or the Seller's representatives is rendered in connection with the delivery.

5.5. The receiving Vessel shall moor, unmoor, hoist bunkering hose(s) from the barge(s) respective lower hose(s) whenever required by the Seller or the Seller's representatives, free of expenses, and shall in any way be requested to assist barge equipment to a smooth supply. The Buyer shall make and be responsible for all connections and disconnections between the delivery hose(s) and the Vessel's bunker intake manifold/pipe and ensure that the hose(s) are properly secured to the Vessel's manifold prior to commencement of delivery.

5.6. The Buyer shall notify the Seller, in writing, prior to delivery, of the maximum allowable pumping rate and pressure for the Vessel and the Buyer and the Seller shall agree on communication and emergency shutdown procedures.

5.7. During bunkering the Vessel's scrubbers must be safely blocked, which blocking must be made by the Vessel's own crew. Furthermore, the Vessel must ensure that all pipes and manifolds and receiving tanks are completely checked and ready to receive the bunkers, including but not limited to ensuring proper opening/closing of relevant valves, without any risk of spillages, etc, during the bunkering.

5.8. Further local special requirements for receiving bunkers must be followed strictly by the receiving Vessel, whether advised or not by the Seller or the Seller's representatives, as it is always the Vessel and the Buyer who remain solely responsible for the awareness of such eventual additional requirements for safety reasons.

5.9. Delivery shall be deemed completed and all risk, including loss, damage, deterioration, depreciation, evaporation, or shrinkage as to the Bunkers delivered shall pass to the Buyer from the time the Bunkers reaches the flange connecting pipe lines/delivery hoses provided by the Seller.

5.10. If possible, the Vessel shall provide segregated tanks in order to receive the confirmed quantity of bunkers.

## **6. Sampling procedure**

6.1. The Buyer's vessel sampling device shall have to be disassembled and presented to the Seller's representatives in order to be inspected.

6.2. A valid certificate or any other documentation proving efficiency of vessel's sampling device should be provided.

6.3. The Seller's representatives such as an independent surveyor shall have the authority to carry out sampling by dropping method using dnv/fobas sampler throughout the whole of the bunkering process.

6.4. During the bunkering process a minimum of five (5) representative samples of each grade of Marine Fuels should be taken. The Buyer shall have the right (and is encouraged) to have its representatives witness the drawing of the samples. The aforementioned samples shall be securely sealed and labeled, numbered and identified by the name of the Vessel, delivering facility, Marine Fuel type, delivery date and place of delivery.

6.5. One (1) sample shall be given to the Buyer's representatives for MARPOL compliance purposes only; the second sample shall be given to Buyer's representatives for quality determination purposes; the third sample should remain on board; the other two (2) samples shall be retained by the Seller or the Seller's supplier for at least thirty (30) days following the date of delivery in a safe place for subsequent verification of the quality thereof, if required.

## **7. Payment**

7.1. Payment shall be made by the Buyer or a third party for and on behalf of the Buyer as directed by the Seller within the period agreed in writing.

7.2. Unless government regulations require otherwise, Seller shall have the right to invoice Buyer for deliveries of Marine Fuel based upon telex, facsimile or electronic advice or other tele-typewritten communication of delivery details in lieu of delivery documents. Delivery documents may be provided to Buyer if requested, but payment shall not be conditional upon Buyer's receipt of such documents.

7.3 All bank commission expenses and costs for the money transfer occurring at the Seller's bank shall be made by the Seller. All expenses arising at the Buyer's bank shall be paid by the Buyer. Bank commission

expenses and costs for the money transfer occurring at correspondent banks shall be paid by the Seller, unless these charges were initially paid by the Buyer.

7.4. The payment amount shall be transferred to the Seller's account on the specified date stipulated in the bunker confirmation. If the payment date falls on a Saturday or any other day which is not a banking day, then payment will be made on the preceding banking day. If the payment date falls on a Sunday or a Monday when the bank does not operate, the payment shall be made on the next banking day.

7.5. If the Buyer delays to pay for the bunkers, he on demand by the Seller shall pay the penalty to the Seller in the amount of 0.3% of the cost of the unpaid quantity for each day of delay. Moreover,

7.6. Should the Buyer deny to have received the agreed shipment of the Bunkers indicated in the bunker confirmation, the Buyer on demand by the Seller shall pay a penalty to the Seller in the amount of 1 % of the cost of that shipment.

## **8. Title and risk of loss**

8.1 All deliveries shall be deemed to be complete and title shall pass to Buyer when the Marine Fuel has reached the flange connecting the delivery facilities provided by Supplier with the receiving facilities provided by Buyer at which point Seller's or Supplier's responsibility shall cease and Buyer shall assume all risk of loss, damage, deterioration or evaporation as to the Marine Fuel so delivered. The Marine Fuel shall be pumped at the risk and peril of Seller or Supplier up to that flange only and thereafter Seller and Supplier shall not be responsible for any loss or damage.

8.2 Title in and to the Marine Fuel delivered and/or properly rights in and to such Marine Fuel shall remain vested in the Seller until full payment has been received by the Seller of all amounts due in connection with the respective delivery.

8.3 Until full payment of any amount due to the Seller has been made, the Buyer shall not be entitled to use the Marine Fuel other than for the propulsion of the Vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the Marine Fuel to any third party or other Vessel.

8.4 In case of breach hereof by the Buyer, the Seller is entitled to take back the Marine Fuel without prior juridical intervention, without prejudice to all other rights or remedies available to the Seller. In the event that the Marine Fuel have been mixed with other Marine Fuel onboard the Vessel, the Seller shall have the right of lien to such part of the mixed Marine Fuel as corresponds to the quantity or net value of Marine Fuel delivered. In case the Marine Fuel, in part or full, are no longer present or can no longer be identified or distinct from other Marine Fuel, the Seller has the right to attach the Vessel and/or sister ship and/or any other assets of the Buyer (or the Owner of the Vessel), wherever situated in the world without prior notice. Where title in and to the Marine Fuel delivered has passed to the Buyer and/or any third party before full payment has been made to the Seller, the Buyer shall grant a pledge in such Marine Fuel to the Seller. The Buyer shall furthermore grant a pledge in any other Marine Fuel present in the respective Vessel, including any mixtures of the delivered Marine Fuel and other bunkers. Such pledge will be deemed to have been given for any and all claims, of whatever origin and of whatever nature that the Seller may have against the Buyer.

## **9. Claims**

9.1. Any claim with regard to the quantity delivered must be notified by the Buyer or the Master of the Vessel to the Seller or its representative immediately after completion of delivery in the for

m of a statement or a letter of protest. If the Buyer fails to present such immediate notice of protest to the Seller such claim shall be deemed to have been waived and shall be barred for any later time.

9.2. Any claim as to the quality of the Marine Fuels delivered must be submitted by the Buyer to the Seller in writing within fifteen (15) days after the date of delivery, failing which, such claim shall be deemed waived and forever barred.

9.3. Buyer shall base its quality claim solely on an analysis of the retained sample provided at the time of the delivery. Buyer shall promptly furnish the Seller with the results of testing of the retained sample to enable the Seller to properly evaluate the claim.

9.4. The independent laboratory's analysis shall be conclusive as to the quality of the Marine Fuel delivered. The analysis shall be established by tests in accordance with ISO 8217 and/or any other

specifications agreed to between the Buyer and the Seller in writing. Unless otherwise agreed, the expenses of the analysis performed by the independent laboratory shall be borne equally by the Seller and the Buyer.

9.5. In case the Seller accepts the quality claim, the Buyer shall take all reasonable measures, including retention and burning of Marine Fuels in accordance with the Seller's instructions, to eliminate or minimize any costs associated with an off-specification or suspected off-specification supply. The Seller's obligation shall not exceed direct expenses incurred for removal and replacement of Marine Fuels. If the Buyer removes such Marine Fuels without the consent of the Seller, then all such removal and related costs shall be for Buyer's account. Notwithstanding anything in these Terms and Conditions to the contrary, the Seller's obligations or liabilities hereunder shall not include any consequential or indirect damages, including without limitation, deviation costs, demurrage, damage to any Vessels or the Buyer's delivery vessels or to their engines or tanks, and any actual or prospective loss of profits. The Seller's maximum liability under these Terms and Conditions shall not exceed the price charged to the Buyer for the Marine Fuels supplied.

9.6. The Seller shall not be responsible for any claim arising under any circumstances where there is or has been commingling of Marine Fuels delivered by the Seller with other fuel aboard the Vessel or the Buyer's delivery vessel.

9.7. Any claim involving demurrage incurred by the Buyer's receiving vessel must be submitted by the Buyer to the Seller in writing within 15 days of the date of delivery. If the Buyer fails to submit a claim within 15 days after the date of delivery, any such claim shall be deemed to be waived and absolutely barred.

## **10. Arrest of the vessel**

10. 1. "Arrest" means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.

10. 2. "Maritime Claim" means a claim arising in accordance with goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;

10. 3. A ship may be arrested or released from arrest only under the authority of a Court of the State Party in which the arrest is effected.

10. 4. A ship may only be arrested in respect of a maritime claim but in respect of no other claim.

10. 5. A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.

10.6. Subject to the provisions of this Convention, the procedure relating to the arrest of a ship or its release shall be governed by the law of the State in which the arrest was effected or applied for.

## **11. Force Majeure**

11.1. Neither party shall be responsible for full or partial failure to perform its obligations if such a failure is a result of the circumstances that are beyond the Party's control such as: fire, flood, earthquake, other natural calamities, embargo, acts of war, military actions of any kind, riots caused by the ethnic conflicts, blockade, strikes, issuance of governmental laws or other legislative acts if their issuance inflicted on performance of the present terms.

11.2. The Party for whom it becomes impossible to execute its obligations under the Contract shall immediately notify in writing the other party about the beginning and termination of the above-mentioned circumstances. Such notice shall contain information about the nature of these circumstances and an explanation as to why these circumstances hinder the performance by that Party of its obligations hereunder.

11.3. If the Party which was affected by the force-majeure circumstances, has not notified the other party about those circumstances, as mentioned in Subclause 9.2., within 5 days, such Party shall not be entitled to refer to the circumstances stipulated in Clause 9.

11.4. A declaration of the force majeure as aforesaid shall effect only the individual delivery to which it applies and shall have no effect whatsoever on the obligations of the Parties in respect of all remaining deliveries under the present Terms and Conditions.

## **12. Applicable law, jurisdiction, arbitration**

12.1. The present Terms and Conditions shall be governed by and construed in accordance with the International legislation.

12.2. Any dispute, difference or claim arising in connection with the present Terms and Conditions or their violation, termination or invalidity shall be settled by negotiations. If the Parties fail to reach an agreement or any Party evades from participating in the negotiations, the dispute, difference or claim shall be finally settled in the Maritime arbitration Commission under the chamber of Commerce and industry of the Russian Federation (MAC) in Moscow.