

## AEGIS STANDARD BUNKER CONTRACT- VERSION 2012

### Preamble

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

#### 1. Definitions

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

- a. "Buyers" means the party contracting to purchase, take delivery and pay for the Product and so described in the Confirmation<sup>1</sup> together with any agent, principal, associate, manager, partner, servant, parent, subsidiary, owner or shareholder thereof.
- b. "Nomination" means the written request/requirement by the Buyer to the Seller, for the supply of Bunkers;
- c. "Confirmation" means the written confirmation as issued by the Seller to the Buyer to conclude the contract for sale and purchase of Bunkers. In case of conflict between the Nomination and the Confirmation, unless the Seller otherwise agrees in writing, the wording and content of the Confirmation is deemed to contain the prevailing terms of the Agreement;
- d. "Delivery" means, in the case of Product in drums or other containers, physical delivery by Seller to Buyer's vessel, alongside vessel or to Buyer's agent or, in the case of pump-over of Product from a barge or shore facility, as the Product exits Seller's or its supplier's delivery equipment into vessel's intake flange.
- e. "Product" means the fuels, oils, lubricants, goods, items, equipment and materials of whatever type and description as specified in the Confirmation, the subject of the Agreement, delivered or to be delivered to the Vessel by the Seller;

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<sup>1</sup> NOTE: IN THE CONFIRMATION, DESCRIBE THE BUYERS AS OWNERS/MANAGERS/CHARTERERS OF THE VESSEL and also the party who has negotiated with us.

- f. "Seller" means Aegis Logistics Ltd. together with its servants, agents, assigns, subcontractors and any and all other persons acting under the Seller's instructions in fulfillment of this Agreement
- g. "Vessel" means the Buyer's vessel, ship, barge or off-shore unit that receives the supply/Bunkers; either as end-user or as transfer unit to a third party;

2. **Grades/Quality**

- a. The Buyers shall have the sole responsibility for the nomination of the grades of Product fit for use by the Vessel.
- b. The Sellers warrant that the Product shall be in accordance with the specifications provided in the Confirmation.

3. **Price**

- a. The price of the Product shall be in the amount expressed per unit and in the currency stated in the Confirmation for each grade of Marine Fuels delivered into the Vessel's tanks free delivered/ex wharf as applicable and stated in the Confirmation.
- b. In the event the price is quoted in volume units, conversion to standard volume shall be at 30 degrees Celsius.
- c. Any and all additional charges, if applicable, shall be specified in the Sellers' quotation and in the 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 on the Buyers' account.
- d. In case the Local Government revises the taxation structure and the pricing of the fuel before within the fortnight stipulated pricing, the revised rates shall be applicable and intimated to the Buyer accordingly.

4. **Cancellation and Breach**

- a. In the event of the Buyer at any time cancelling a request for Product or the Vessel failing to take delivery of part or all of the requested Product the Seller shall have the right to pursue a claim against both the Buyer and the Vessel for all loss and damage thereby suffered including loss of profit. The Seller may treat any other breach by the Buyer of any express term of the Agreement as a breach of a condition and it may at its discretion thereupon accept the breach, treat the Agreement as repudiated and seek such remedies as it considers appropriate.
- b.

5. **Inspection and Measurement**

- a. Buyer, at his own expense, shall have the right to appoint an approved petroleum inspector to inspect the Product before delivery, but sampling shall be done prior to product leaving Seller's shore tanks.
- b. The quantity of fuels delivered shall be determined by measurements of shore tanks or gauges at the point of delivery ex-wharf, at Seller's sole option, and Buyer will be charged on the basis of these measurements, regardless of amounts delivered to Buyer's vessel. Buyer has a right to have its representative present during measurement to verify same, but in the event no such representative attends, determination of quantity shall be made solely by Seller, and, in any case, such determination shall be conclusive.
- c. The Product to be delivered under this contract shall be measured and calculated in accordance with ISO – ASTM-API-IP Petroleum measurement tables

6. **Sampling**

- a. The Seller shall arrange for four (4) representative samples of min. 400 ml each of each grade of Product to be drawn throughout the entire bunkering operation. The Buyer's representative has the responsibility to witness that such samples are drawn correctly and shall confirm his witnessing thereof and also confirm the proper and correct sealing by signing the labels of the sample bottles.
- b. In case drip-sampling is not available onboard barge, tanktruck or shore tank, samples shall be taken as a composite of each tank from which supplies are made, onboard the barge (respectively at the shore tank or tank-truck), divided with 1/3 from each the top, mid and bottom of the tanks.

- c. The samples shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, product name, delivery date and place and seal number, authenticated with the Vessel's stamp and signed by the Seller's representative and the Master of the Vessel or his representative. The seal numbers shall be inserted into the BDN/Bunker Delivery Note, and by signing the BDN both parties agrees to the fact that the samples referred to therein are deemed valid and taken in accordance with the requirements as specified in this clause.
- d. Two (2) samples shall be retained by the Seller. One (1) sample shall be retained for three hundred and sixty five days [365 days] after delivery of the Bunkers as per MAPROL requirements. The other sample shall be retained for ninety (90) days after the delivery of bunkers, or if requested by the Buyer in writing, for as long as the Buyer reasonably required. The other two (2) samples shall be retained by the Vessel, one of which being dedicated as the MARPOL sample.
- e. In the event of a dispute in regard to the quality of the Bunkers delivered, the samples drawn pursuant to clauses related hereto above, shall be deemed to be conclusive and final evidence of the quality of the product delivered. One, and only one, of the samples retained by Seller shall be forwarded to an independent laboratory to perform a set of tests, the results of which are to be made available to both parties. Those test results shall be final and binding upon both Buyer and Seller as to the parameters tested. The parties are to use best endeavours to agree on the independent laboratory to perform the tests. If, however, no agreement can be reached on the choice of laboratory within 3 days of the Buyer being advised of the Seller opting to have the sample tested, the Seller is at liberty to send the sample to a reputable and independent laboratory of its choice for the tests to be conducted, and those test result will be final and binding upon Buyer and Seller as set out above.
- f. The seal must be breached only in presence of both parties unless one/both in writing have declared that they will not be present; and both parties shall have the right to appoint independent person(s) or institute(s) to witness seal breaking. No samples subsequently taken shall be allowed as (additional) evidence. If any of the seals have been removed or tampered with by an un-authorized person, such sample(s) shall be deemed to have no value as evidence.
- g. Any eventual samples drawn by Buyer's personnel either during bunkering or at any later date after bunkering shall not be valid as indicator of the quality supplied. The fact that such samples may eventually bear the signature of personnel on board the barge or tank truck or other delivery conveyance shall have no legal significance as such local personnel have no authority to bind Seller to different contractual terms. Seller shall

have no liability for claims arising in circumstances where Buyer may have commingled the products on board the Vessel with other fuels.

7. **Payment**

- a. Payment for the Product shall be made by the Buyers in advance of delivery or, if otherwise agreed, within the number of days stated in the Confirmation Note/invoice raised by the Seller upon the Buyer, after the completion of delivery.
- b. 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.
- c. Payment shall be made in full, without set-off, counterclaim, deduction and/or discount, free of bank charges.
- d. 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 last business day preceding the due date.
- e. 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 from the due date of payment.
- f. In the event of non-payment within the due date of payment, the Seller reserves the right to pursue such legal remedies as may be available to them to recover the amount owed.

8. **Delivery**

- a. Delivery of the Product shall be made day and night, Sundays and holidays included, at the port or place of delivery, subject always to the permits by custom of that port or place.
- b. 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. In the event that the Vessel's arrival at the point of Delivery is delayed or likely to be delayed the

Buyer must so advise the Seller. The Buyer should also ensure that the Vessel's agent at the port of Delivery is similarly informed and that the agent advises the physical supplier (agent of the Seller) accordingly. At the Buyer's request the Seller will use its best endeavours to supply a delayed Vessel on the terms originally agreed but reserves the right to pass on to the Buyer all additional costs including increased price arising from the Vessel's delayed arrival.

- c. The Sellers shall:
  - (i) be in possession of all permits required to comply with all relevant regulations pertaining to delivery of Product 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.
  
- d. 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.
  
- e. 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 Product 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 Product, and;
  - (iii) provide a free side to receive the Product and render all necessary assistance which may reasonably be required to moor or unmoor the Bunker Tanker, as applicable.
  - (iv) preferably receive the Product in a dedicated tank to avoid commingling with previous fuels or other substances
  
- f. In case the vessel is delayed beyond the stipulated nominated delivery time, then additional supply retaining barging charges shall be applicable on pro-rata basis.

9. **Risk/Title**

- a. Delivery shall be deemed complete when the oil has passed the flange connecting the Seller's delivery facilities with the receiving facilities provided by the Buyer. However, ownership of the Product shall pass to the Buyer only after the Price has been received by the Seller in full. Until such time as the Price is received in full by the Seller the person in possession of the Product delivered shall hold the Product for the Seller as a mere bailee. In case, the Product is comingled with other fuels on board the Vessel, title to the Product shall remain with the Sellers corresponding to the quantity supplied.
- b. The Seller's responsibility for Product shall cease and the Buyer shall assume all risks and liabilities relating thereto, including loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage of Product and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties at the time Product leaves the Seller's fixed depot or wharf facilities. The Buyer agrees to indemnify without limit the Seller in respect of any liability, claim or demand for which the Buyer is liable.

10. **Liens**

- a. Where Product is supplied to Vessel, in addition to any other security, the Agreement is entered into and Product is supplied upon the faith and credit of the vessel. It is agreed and acknowledged that a maritime lien against the Vessel is thereby created for the price of Product supplied and that the Seller in agreeing to deliver Product to the Vessel does so relying upon the faith and credit of the Vessel, and that such maritime lien may be enforced in any court of competent jurisdiction. The Buyer represents that it is the Vessel's Owner, or a person authorized by the Vessel's owner to order the bunkers. The Buyer, if not the owner of the Vessel, hereby expressly warrants that he has the authority of the owner to pledge the Vessel's credit as aforesaid and that he has given notice of the provisions of this Clause to the owner. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien or liens attaching to a Vessel unless notice in writing of the same is given to the Seller before it sends its Confirmation to the Buyer.
- b. Any notice by Buyer that a maritime lien on the vessel may not be created because of the existence in Buyer's charter of a Prohibition of Lien Clause, or for any other reason, must be given to Seller in the initial order for Product, in which case no credit can be granted to Buyer and the marine fuel shall be paid in cash or equivalent prior to delivery. Any notice of such restriction given by Buyer, its agents, ship's personnel or other person later than in the initial order shall not effect a modification of the terms

and conditions of sale except that any granting of credit by Seller is rescinded on receipt of the notice, with full payment then due.

11. **Claims**

- a. Any claim by Buyer, including ones with respect to deficiency in quantity or quality of Product delivered by Seller must be made, by way of written notice, as soon as possible, and in no event more than 15 days from date of delivery to the Buyer's vessel after which period, Buyer shall be time-barred from making claim. Clause 5 and 6 to apply in relation to determination of quantity and quality.
- b. Seller shall not be responsible for any claim arising from the comingling of Product delivered by Seller with other fuel or substances aboard Buyer's vessel or aboard the fuel barge.
- c. Claim of any nature does not relieve Buyer of responsibility to make full and timely payment of all amounts billed by Seller.

12. **Liability**

- a. To the extent permitted by Law the Seller shall not be liable to the Buyer for any loss or damage including loss of profit or any other consequential loss whatsoever arising from any cause whatsoever whether in contract, tort or otherwise including the negligence of the Seller, its servants, agents or subcontractors.
- b. Liabilities of the Seller for consequential and/or liquidated damages including but not limited to loss of time, loss of cargo or charter cancelling date, loss of income or profit/earnings, are excluded.
- c. In any event, liability of the Seller shall under no circumstances exceed USD 200,000.
- d. The Buyer shall be liable towards the Seller and herewith undertakes to indemnify the Seller for any and all damages and/or costs suffered or otherwise incurred on the Seller due to a breach of contract and/or fault or neglect of the Buyers, its Supplier, agents, Servants, (sub)contractors, representatives, employees and the officers, crews and/or other people whether or not onboard of the respective vessel(s).
- e. No servants, agents, assigns, subcontractors and any and all other persons acting under the Seller's instructions (including independent (sub)contractors from time to time employed by the Seller) shall be liable to the Buyer for loss, damage or delay, while acting in the course of or in connection with its employment and/or agency for

the Seller unless due to negligence of Seller, its agents, etc. are affirmatively proved. Without prejudice to the above every exemption, limitation, condition and liberty herein contained, and every right, exemption from liability, defence or immunity of whatever nature applicable to the Seller or to which it is entitled hereunder shall also be available and shall extend to protect every such servant, representative or agent of the Seller acting as aforesaid.

**13. Indemnity**

The Buyer hereby indemnifies the Seller in respect of all damage or injury occurring to any person or to any property and against all actions, suits, claims, demands, costs, charges or expenses arising in connection therewith to the extent that the same shall have been occasioned by the negligence or default of the Buyer, his servants or agents or any third party in the course of performance of or arising out of the contract.

**14. Warranties**

- a. The Seller makes no warranties of quality (other than what is expressly mentioned herein above) of the fitness or merchantability with respect to any of the Products and any implied warranties or conditions of whatsoever nature (statutory included) are expressly excluded.
- b. The Buyer shall have the sole responsibility to select suitable products for his vessel.

**15. Termination**

- a. Without prejudice to accrued rights hereunder, the Seller shall be entitled to terminate this contract in the event of:
  - (i) any application being made or any proceedings being commenced, or any order or judgement being given by any court, for 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 suspending payment, 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.

## 16. Force Majeure

The Seller shall not be liable for any failure to fulfil any term or condition of the Agreement if fulfilment has been delayed, hindered or prevented by any circumstances whatsoever which are not within the immediate control of the Seller including but without limiting the generality of the foregoing, any strike, lockout or labour dispute or reasonable apprehension thereof, any governmental order, request or restriction, any limitation restriction or interruption to existing or contemplated sources of supply of Product or the means of supply thereof.

## 17. 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 Product) causing or likely to cause pollution occurring at any stage of the bunkering operation, the Buyer and the Seller shall jointly, and regardless as to whether the Buyer or the Seller 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 Product that the Seller shall have in place their own oil spill contingency plans, the Seller 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 Seller hereby guarantee payment of and/or agree to indemnify and hold the Buyer harmless for any claims, losses, damages, expenses, penalties or other liabilities incurred by the Buyers under the local legislations dealing with pollution, or any other state, national or international oil pollution legislation, as a result of any spillage occurring whilst the Product are being transported directly to the Vessel's bunker manifold except to the extent that such spillage is caused by any fault on the part of the Buyer. The Buyer shall similarly indemnify the Seller where any such spillage occurs once risk in the Product has passed to the Buyer except to the extent that such spillage is caused by any fault on the part of the Seller.
- d. The Sellers shall use its best endeavours to ensure that the physical supplier they engage is fully insured for oil spill liabilities as required by statutory rules or regulations. If such coverage or insurance is not obtained by the supplier, it shall be the sole responsibility of the Seller to establish such coverage for their account. Proof and conditions of such coverage, whether established by the physical supplier or by the Seller shall be made available to the Buyer at its request, as soon as practically possible.

- e. The Seller hereby advises the Buyer that it enforces a company drug and alcohol policy in their facilities and on board their vessels, which the Buyer's 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.

**18. Governing Law & Jurisdiction**

- a. The Law governing the contract shall be U.S.A. Law. Such Law shall also govern, but without limitation, all issues concerning the enforcement and the application and status of maritime liens.
- b. Arbitration in Singapore<sup>2</sup>, according to the rules of the Singapore International Arbitration Centre. The Seller is entitled [not the Buyer] to invoke the provisions of Part I of the Indian Arbitration and Conciliation Act, 1996.
- c. The parties agree that Seller retains the right to enforce its maritime lien or attachment rights against the Vessel or any other vessel or asset belonging to the Buyer to safeguard and secure its rights in any court or tribunal of any state or country.
- d. The full legal and other costs and expenses incurred by that Seller including those of the Seller's own legal department and of other lawyers in connection with any breach by the Buyer of any term of the Agreement including but not limited to actions for debt shall be for the Buyer's account and shall for all purpose form part of the Price due from the Buyer to the Seller for Product supplied.

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<sup>2</sup> PLS VERIFY. THIS IS THE QUICKEST AND RELATIVELY CHEAPEST FORUM.