

## **BELGIAN TRADING AND BUNKERING BV – GENERAL TERMS OF SALE**

### **1. APPLICABILITY OF TERMS**

- 1.1. These general terms apply to all offers, quotations, orders, agreements, services and all subsequent agreements of whatever nature, except where expressly agreed otherwise in writing by the Seller.
- 1.2. In case, for whatever reason, one or more of the (sub)clauses of these terms are invalid, the other (sub)clauses remain valid and binding upon the parties.
- 1.3. General terms of another party will not apply, unless expressly accepted in writing by the Seller.
- 1.4. The Seller reserves the right to unilaterally modify the general terms at any time.

### **2. DEFINITIONS**

- 2.1. Throughout these general terms the following definitions shall be applied:  
“**Seller**” means Belgian Trading and Bunkering BV.  
“**Buyer**” means any party asking 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 agreements have been made.  
“**Third party**” means any other (legal) person than the Buyer or the Seller.  
“**Bunkers**” means the commercial grades of Bunker oils as generally offered to the Sellers’ customers for similar use at the time and place of delivery and/or services connected thereto.

### **3. OFFERS, QUOTATIONS AND PRICES**

- 3.1. Whatever their form, all offers and price quotations submitted by the Seller, are without engagement from the Seller unless agreed upon otherwise expressly and in writing.
- 3.2. Offers and price quotations shall only be binding upon the Seller if confirmed in writing and duly authorised by the Seller.
- 3.3. Agreements entered into by brokers or other representatives on behalf of the Seller shall only bind the Seller upon written confirmation by the Seller.
- 3.4. Unless expressly stated otherwise, the selling prices are calculated on the basis of taxes, duties, costs and charges and the price level of crude or components for Bunkers applicable at the time of the conclusion of the agreement.
- 3.5. If upon delivery said taxes, duties, costs and charges or the price level of crude or components for Bunkers have increased, for whatsoever reason, the Seller shall at all times retain the right to revise its prices proportionately to the aforementioned increase, provided that the Seller shall give the Buyer prior notice of any such increase within a reasonable time after the Seller becoming aware of the relevant circumstances.
- 3.6. Unless expressly stated otherwise, all prices and/or tariffs are exclusive of VAT.

### **4. SPECIFICATIONS (QUALITY – QUANTITY)**

- 4.1. The Buyer shall have the sole responsibility for the nomination of the quality and the quantity of the Bunkers, including determination of compatibility with Bunkers already on board the vessel.
- 4.2. The quality and quantity shall be as agreed between the Seller and the Buyer and correspond to the Seller’s written confirmation.

- 4.3. Where standard specifications are being given or referred to, tolerances of 5% in quality are to be accepted without compensation or other consequences whatsoever.
- 4.4. In respect of the quantity agreed upon the Seller shall be at liberty to provide, and the Buyer shall accept a variation of 5% from the agreed quantity, with no other consequence than a similar variation to the corresponding invoice from the Seller.

## **5. MEASUREMENTS**

- 5.1. The quantity of Bunkers delivered shall be determined by Seller's barge figures based on Mass Flow Meter, volume flow meter or barge gauges as per port regulations or Seller's option.
- 5.2. In gauging the Seller's shore tanks or barges, the chief engineer of the respective vessel or his representative shall together with the Seller's representative measure and verify the quantities of Bunkers delivered.
- 5.3. Should said chief engineer or his representative fail or decline to verify quantities, measurements of quantities made by the Seller as aforesaid shall be final, conclusive and binding as to quantities sold and delivered, and in any such event the Buyer shall have waived all claims for variance.
- 5.4. Adjustment in volume owing to differences in temperature shall be made in accordance with the abridged volume correction table of the ASTM-IP Petroleum Measurement Tables.
- 5.5. When the use of a Mass Flow Meter is requested or obligated, this figure will be considered final and binding.

## **6. SAMPLING**

- 6.1. During delivery four representative samples will be drawn, properly sealed, signed and labelled. Two samples will be handed over to the ship's representative, one for Marpol purpose and one for Buyer's representative.. The other two samples will be retained by the Seller for a period of 3 months after delivery of the Bunkers.
- 6.2. Such samples shall be drawn in the presence of both the Seller and the Buyer or their respective representatives. The absence of the Buyer or his representative shall not prejudice the validity of the samples taken.
- 6.3. In the event of a dispute with regard to the quality of the Bunkers, the samples drawn pursuant to clauses 6.1. or 6.2. shall be deemed to be conclusive and final evidence of the quality of the product delivered. In case of disputes the sample retained by the Seller shall be forwarded, for final and binding analyses, to an independent laboratory in Antwerp, agreed upon by the Seller and the Buyer. The seal can only be broken in presence of both parties unless one/both have declared in writing that they will not be present. Both parties shall have the right to appoint independent person(s) or institute(s) to witness seal breaking.
- 6.4. If any of the seals have been removed or tampered with by an unauthorized person, such sample(s) shall be deemed to have no value as evidence.
- 6.5. The costs of analysing shall be worn by the Buyer unless claim is at Seller's fault
- 6.6. No samples subsequently taken will be allowed as (additional) evidence.

## **7. DELIVERY, LOADING CONDITIONS AND RISK**

- 7.1. The time of delivery is given by the Seller as an approximate time, unless it has been expressly agreed otherwise in writing between the parties.
- 7.2. The time of delivery will only be binding upon the Seller when all information necessary for the Seller to comply with its obligations hereunder, has timely come into the possession of the Seller.

- 7.3. In any case the Buyer must give not less than 48 hours clear notice (Sundays and holidays, whether by law or by custom, in the port of loading excepted) to the Seller and or the Seller's agent in the port of loading of the vessel's readiness to receive delivery.
- 7.4. The Seller shall be entitled to deliver the Bunkers in part deliveries, in which case each part delivery shall have a corresponding Bunker Delivery Note.
- 7.5. The Buyer shall accept actual delivery of the Bunkers at permanent intake connections.
- 7.6. The Buyer shall ensure that the vessel provides a free, safe, always afloat and accessible side for the delivery of Bunkers and that all necessary assistance as required by the Seller or the Seller's representative is rendered in connection with the delivery.
- 7.7. In case the Buyer for whatever reason fails to accept the Bunkers in full or in part at the place or time designated for delivery, the Seller shall, without prejudice to all its other rights, be at liberty to take any action which it may deem appropriate, such as the Seller's sole discretion, leaving unaffected all the Seller's rights as set out in these terms.
- 7.8. 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.
- 7.9. The Buyer has the duty to verify the quantity and the quality of the delivered Bunkers promptly upon delivery.
- 7.10. The Seller reserves the right to claim demurrage cost for delays caused by the Buyer or their representatives. Starting from \$300 for 2 hour idle time + \$200 each additional hour. Rates are subject to indexation.
- 7.11. 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 tank trucks or any other reason.

## **8. RETENTION OF TITLE**

- 8.1. In all cases it is agreed between parties that, irrespective of the transfer of risk at actual delivery as described in clause 7.9, title in and to the Bunkers delivered and / or property rights in and to such Bunkers 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. Full payment, pursuant to the terms of clause 9 hereof, shall include, without limitation, the amount of any interest or other sum payable under the terms of this and all other agreements between the Buyer and the Seller.
- 8.2. The Buyer shall be entitled to transform the goods or to incorporate them in a new product or products. In that case the Seller reserves the legal and equitable title to the final product or products into which the goods are incorporated or mixed.
- 8.3. The Buyer may sell the goods in the normal course of his business but on condition that the Buyer, in a fiduciary capacity as bailee of the goods, and for so long as he has not fully discharged his debt to the Seller, shall hold and pursue claims for the proceeds of their sale equal to the price of the goods for and on behalf of the Seller. The Buyer shall fully pursue such claims and if necessary shall recover the sums due by legal process. The Buyer shall if so required by the Seller, allow to conduct in the Buyer's name legal proceedings in respect of the monies due on the sale of the goods. Any sums recovered by the Seller as a result of such proceedings (including sums

accepted by the Seller in settlement thereof whether or not equal to the sums claimed) shall be applied to the payment of the monies the Buyer is due to the Seller and then to the reasonable costs incurred by the Seller in the course of such proceedings. Any balance remaining shall be paid to the Buyer.

- 8.4. Prior to the sale of the goods, the Buyer shall, so far as reasonably practicable, store the goods separately from similar goods of the Buyer, mark the goods as the Seller's property and shall not remove, obliterate or in any manner alter any label, mark or other means the Seller may have of identifying the goods.

## **9. PAYMENT**

- 9.1. Unless expressly agreed otherwise, payment for the respective invoice shall be made by the Buyer within 14 days after actual delivery.
- 9.2. Payment will be due immediately in case of bankruptcy, liquidation or suspension of payment or comparable situation of the Buyer, or arrest upon assets and/or claims of the Buyer or on the vessel(s) to which delivery has (have) been made, or in case of any other situation, which in the sole discretion of the Seller, adversely affects the financial position of the Buyer.
- 9.3. Payment shall be made in full, without set-off, counterclaim, deduction and/or compensation, free of bank charges and at the bank account indicated by the Seller on the respective invoice(s).
- 9.4. The reception of the invoice must be considered as a summons to pay. In the case of untimely payment on the due date, interests as stipulated in article 5 of the Act of 2<sup>nd</sup> of August 2002 shall be due. Any delay in payment gives the Seller the right to cancel discounts, if any. Furthermore, liquidated damages at the rate of 10% of the invoice amount will be due by the Buyer.
- 9.5. Payments made by the Buyer shall, notwithstanding the description, be credited in the following order: (1) costs, (2) interest, and (3) invoices in their order of age, also if not yet due.
- 9.6. Without prejudice to clause 9.4, all costs borne by the Seller in connection with the collection of overdue payments, whether made in or out of Court, or, more in general, all costs in connection with any breach of this agreement by the Buyer, shall be for Buyer's account only.
- 9.7. The Seller shall at all times be entitled to require of the Buyer to give, in such manner as shall be deemed sufficient by the Seller, security for the proper performance of all its obligations under the agreement. Failing immediate provision of such security, the Seller shall be entitled to suspend further execution of the agreement(s) until such time as the Buyer will have provided the required security.

## **10. CLAIMS**

- 10.1. Any claim as to the quantity delivered shall have to be submitted to the Seller immediately upon completion of delivery in the form of a statement of a letter of protest, failing which any such claim shall be deemed to be waived and barred.
- 10.2. Any claim as to the quality of the delivered goods shall have to be submitted to the Seller in writing within 15 days after delivery, failing which any such claim of whatever nature shall be deemed to be waived and barred.
- 10.3. The Buyer shall be obliged to make payment in full and fulfil all other obligations in accordance with the terms of this agreement, whether or not he has any claims or complaints.

- 10.4. In any case, claims will be time-barred unless legal proceedings have been instituted before the competent Court as set forth in clause 16 within 12 months after the date of delivery or the date delivery should have been made.

## **11. LIABILITY**

- 11.1. The Seller shall not be liable for damages of whatever nature, including physical injury, nor for delay in delivery of Bunkers or services, even when such damages or delay have been caused by faults or negligence on the side of the Seller. The Seller shall furthermore not be liable for damages or delay as described above when such damages or delay have been caused by the fault of its personnel, representatives or (sub)contractors.
- 11.2. The Seller shall not be liable for indirect or consequential loss and/or damage arising from this agreement.
- 11.3. In any event the liability of the Seller shall not exceed the invoice value of the Bunkers supplied under the relevant agreement.
- 11.4. The Buyer shall be liable towards the Seller and herewith undertakes to indemnify the Seller for any and all damages and/or costs (to be) suffered and/or to be made by the Seller due to a breach of agreement and/or fault or neglect of the Buyer, its agents, servants, employees and the officers, crews and/or other people whether or not on board of the respective vessel(s). The Buyer furthermore undertakes to hold the Seller harmless in case a Third party institutes a claim against the Seller in connection to an agreement under the terms of these conditions.
- 11.5. No servant or agent of the Seller (including independent (sub)contractors from time to time employed by the Seller) shall be under any liability to the Buyer for loss, damage or delay, while acting in the course of or in connection with its employment and/or agency. 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 or agent of the Seller acting as aforesaid.
- 11.6. A direct claim against Seller's directors from the Buyer is excluded. Moreover, the Buyer shall hold harmless the Seller's directors if a Third party (including the owner of the vessel – if not the Buyer) would introduce a claim against Seller's directors, which is related to the agreement between Seller and Buyer.
- 11.7. In no event shall the Seller be liable in case damage or loss has been caused by a failure of an IT-application, unless it is proven that the failure is due to the fact that the Seller did not take sufficient precautionary measures avoiding such a failure.

## **12. FORCE MAJEURE**

- 12.1. Force majeure shall be considered to exist in all those circumstances which prevent or render impossible or make unreasonably burdensome to the Seller the execution of this agreement or any part thereof, in and as far as such circumstances occur beyond the reasonable control of the Seller.
- 12.2. As force majeure will be considered, amongst others, acts of God, acts of the public enemy, hostilities, conditions of war (declared or undeclared), mobilisation, insurrections, riots and civil commotions, perils of navigation, governmental measures, expropriation, confiscation, requisition, shortage or obstruction or delay in the supply of basic and auxiliary materials, or of producing, manufacturing, blending, selling, transportation, or delivery facilities and equipment, or of fuel and electricity,

blockades, embargoes, labour conflicts, strike, shortage of labour, fire, flood, storm, snow, frost, and other catastrophes of nature, accidents, machine failure and other operational failure, disturbance of road-, inland-waterways and sea traffic, e.g. (floating) ice, prohibition of manufacturing and supply, non-observance of obligations and/or a breach of contract by (sub)suppliers, prohibition of export or import, failure to obtain import or export licenses, unforeseen economic conditions, market disturbance, governmental measures of national or international nature, quarantine, epidemics, contagious disease, veterinary measures, as well as circumstances which aggravated any disturbance, and further all other circumstances considered as force majeure in the trade. Non-provision by the Buyer of data relevant for the Seller in connection to the fulfillment of the Seller's obligations, will constitute force majeure on the side of the Seller.

- 12.3. In case of force majeure, the execution of the agreement shall be suspended for the duration of the said circumstances. Under no circumstances however, shall the Buyer be excused from its obligation to pay all amounts due for the Bunkers actually delivered.
- 12.4.1. In the event that the Seller as a consequence of force majeure does not have sufficient quantities of Bunkers available to supply all its Buyers, the Seller shall have the right to choose which obligation(s) to meet and in which order, and/or to pro-rate the quantity of Bunkers available between the various Buyers whereby the Seller shall not be required to purchase Bunkers to replace its supplies so curtailed or to make use of other than its normal transportation and/or other facilities.
- 12.5. In the event that the Seller, as a result of force majeure, can only deliver a superior grade of Bunkers, the Seller is entitled to offer the said grade, and the Buyer must accept delivery thereof and pay the then applicable price.

### **13. BREACH / CANCELLATION**

- 13.1. The Seller shall have the option to immediately and legally cancel the agreement in full or in part, or to store or procure the storage of the Bunkers in whole or in part for the account and risk of the Buyer and to charge the Buyer the expenses thereby incurred, or to hold the Buyer to his obligations, or to take any other measures the Seller deems appropriate, without prejudice to its rights to indemnification, without any liability on the side of the Seller, in any (but not limited) one of the following cases:
  - a) when the Buyer, for whatever reason, fails to accept the Bunkers in part or in full at the place and time designated for delivery;
  - b) when the Buyer fails in part or in full to comply with its obligations to pay any amount due to the Seller and/or to provide security as set out in these conditions;
  - c) when, before the date of delivery, it would become apparent that the financial position of the Buyer, in the Seller's judgement, entails a risk for the Seller;
  - d) when, in case of force majeure, the Seller is of the opinion that the nature or the duration of the circumstances is such that the execution of the agreement is no longer possible..
- 13.2. The Seller may terminate any agreement with the Buyer in whole or in part, in its full discretion, upon the breach of any provision thereof by the Buyer.

### **14. SPILLAGE AND ENVIRONMENTAL PROTECTION**

- 14.1. If a spill occurs while Bunkers are delivered, the Buyer shall promptly take such action as is reasonably necessary to remove the spilled Bunkers and mitigate the effects of such spill. Without prejudice to the generality of the foregoing, the Seller may, in its



full discretion and at the expense of the Buyer, take such measures and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonably necessary in the judgement of the Seller to remove the spilled Bunkers and mitigate the effects of such spill. The Buyer shall co-operate and render such assistance as is required by the Seller in the course of such action.

- 14.2. All expenses, claims, losses, damages, liabilities and penalties arising from spills shall be borne by the party that caused the spill by a negligent act or omission. If both parties have acted negligently, all expenses, claims, losses, damages, liabilities and penalties shall be divided between the parties in accordance with the respective degree of negligence. The burden of proof to show that the Seller has acted negligently, shall be on the Buyer.
- 14.3. The Buyer shall provide the Seller with all documents and other information concerning any spill or any program for the prevention thereof, that are required by law or regulation applicable at the time and place of delivery.

## **15. ARREST OF THE VESSEL**

- 15.1. The Buyer is presumed having stemmed the Bunkers in the interest of the vessel, the owner or any other operator acting in the interest of the vessel. Notwithstanding anything to the contrary herein and without prejudice to any rights or remedies otherwise available to the Seller, the Buyer, by stemming the Bunkers, expressly authorizes the Seller to arrest the vessel in question, or any other vessel owned or operated by the Buyer, under any applicable jurisdiction as security for the obligations of the Buyer. Should the Buyer fail to make any payment to the Seller immediately when due, the Seller may dispose of such arrested vessel whether by sale or otherwise as applicable under the relevant jurisdiction. Any costs or expenses of whatever kind incurred by the Seller in respect of such arrest shall be for the sole account of the Buyer and shall be added to the claim for which arrest is made.

## **16. LAW AND JURISDICTION**

- 16.1. This agreement shall be governed and construed in accordance with the laws of Belgium.
- 16.2. Any dispute arising out of or in connection with this agreement shall exclusively be referred to the competent Court in Antwerp, Belgium.

## **17. PROCESSING OF PERSONAL DATA**

- 17.1. The Seller processes the personal data it receives from the Buyer and its employees or servants for the execution of the agreement between Seller and Buyer, customer management and direct marketing activities.
- 17.2. The Seller is the controller of the personal data entrusted.
- 17.3. The personal data obtained will only be shared with processors, recipients or Third parties for the purpose of sub article 17.1 mentioned processing.
- 17.4. The Seller is entitled to rely on the correctness of the personal data entrusted to her by the Buyer or on its behalf. The Buyer has the duty to update the personal data if any change occurs.
- 17.5. The Buyer undertakes to obey to the EU General Data Protection Regulation in respect of the persons of whom it entrusted personal data to the Seller and in respect of personal data it received from the Seller or on its behalf.
- 17.6. The Buyer confirms having been informed sufficiently regarding the processing of the entrusted personal data and regarding its rights on the access, correction, deletion and filing complaint.

## **18. VALIDITY**

- 18.1. These general terms shall be valid and binding for all offers, quotations, prices and deliveries made by the Seller, any representative or agent as of 16/11/2009, or at any later date.
  - 18.2. These general terms can be consulted on the website [www.btb-bunkering.com](http://www.btb-bunkering.com). The Seller may announce amendments, alterations, changes or verifications to these conditions on the same site. These amendments, alterations, changes or verifications shall be part of the agreement from the day they were published on the site.
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