

# MARINE FUELS

## Terms and conditions of sale - February 2009



### 1. Definitions

Throughout these Terms & Conditions of Sale, save where the context requires, the following definitions shall be applied:

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

"Seller" means Peninsula Petroleum Limited, and

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

### 2. Application of Terms and Conditions of Sale

These terms and conditions shall apply to all deliveries contracted for unless the Seller expressly agrees otherwise in writing. Each delivery shall be a separate contract and the Buyer shall be deemed to have read and accepted the terms and conditions contained herein.

### 3. Price

- (a) Unless otherwise stated in the Seller's quotation, the Seller's prices are for delivery ex-wharf in bond and exclude taxes, duties, wharfage dues, delivery and any other charges leviable in respect of Marine Fuels for the time of delivery. Any such taxes, duties, wharfage dues, delivery charges and other charges shall be paid by the Buyer at the rate applicable for the actual date of delivery.
- (b) In the event that the price is quoted in Volume units, conversion to standard volume shall be at 60 degrees Fahrenheit or 15 degrees Celsius
- (c) Prices quoted as "delivered" comprise the ex-wharf price and delivery charges only.
- (d) Prices will be valid for delivery within 7 days of concluding the Contract and the Buyer take delivery within the said 7 days.
- (e) If after the contract is concluded, the Buyer begins to take delivery, or requires delivery to begin, outside the 7 day range referred to in sub-section (d), the Seller shall be entitled to amend its quoted price to take account of prevailing market prices. This right is without prejudice to any claim the Seller may have against the Buyer for damages for failing to take delivery within the 7 day period.

### 4. Grades

- (a) The Marine Fuels supplied hereunder shall be the Seller's commercial grades offered to customers at generally the time and delivery location from time to time. The Buyer shall be solely responsible for nominating to the Seller the grade of Marine Fuels for each delivery from the range of fuels supplied by the Seller at the location in question.
- (b) Information regarding the typical characteristics of the Marine Fuels at any delivery location shall only be indicative of the Marine Fuels that have been available at that location from time to time and shall not form part of the specification of Marine Fuels to be delivered.
- (c) All other warranties and all conditions relating to quality, fitness for purpose, description or otherwise, whether expressed or implied by common law, statute, or otherwise are hereby excluded.
- (d) The Buyer hereby warrants that it has not relied upon any representations made by or on behalf of the Seller but has relied exclusively on its own knowledge and judgment as to the fitness for its purpose of the Marine Fuels ordered.
- (e) The Seller expressly reserves the right to supply Marine Fuels blended by the Seller at any time prior to delivery provided always that the Marine Fuels delivered are in accordance with the grades and specifications contracted for by the Buyer.

### 5. Notice to Port

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 written notice of arrival, also advising any change in excess of three (3) hours, and the exact location and time at which deliveries are required.

### 6. Reception

- (a) The Buyer shall be responsible for providing safe reception of the full quantity of Marine Fuels contracted for without risk, to the Buyer; the Seller; any agent, employee or supplier of the Buyer or Seller or to the property of any such parties (negligence by the Seller or failure of or defect in the Seller's equipment being solely excepted). The Buyer shall ensure that the vessel to be supplied with Marine Fuels shall be free from all conditions or defects which might give rise to any hazard in connection with the delivery of Marine Fuels to such vessel. The Buyer shall ensure that the vessel has sufficient tankage and equipment to receive the Marine Fuels promptly and safely, and shall be responsible to make all connections and disconnections between the delivery hose(s) and the vessels intake pipe and ensure the hose(s) are properly secured to the Vessels manifold prior to commencement of delivery.
- (b) The Buyer shall provide a free side for barge deliveries and prompt and safe passage between the public roadway and the actual place of unloading for road vehicles. The Seller shall not be obliged to deliver in locations or over roadways which in its opinion are unsafe for its barges or vehicles.
- (c) If a spill occurs during supply the Buyer shall promptly take all action reasonably necessary to remove the spillage and mitigate its effect. If the Buyer fails to promptly take such action, the Seller may, at its option and upon notice to the Buyer or the agent for the Buyer's vessel take such measures it considers to be required in connection with the removal of the spillage and the mitigation of its effects by employing its own resources or contracting with others. The Buyer shall indemnify the Seller against all liability, costs and expenses (including but not limited to those incurred by the Seller in accordance with the provisions of this sub-clause (c)) arising from any spillage except to the extent that such spillage has been caused or contributed to by the negligence of the Seller or failure of or defect in the Seller's equipment. The Buyer shall promptly provide the Seller with any requested documents and information regarding a spill including the vessel's spill contingency plan or any other applicable program for the prevention or mitigation of pollution as required by any applicable laws or regulations.
- (d) If the Buyer fails to take delivery of or rejects any amount of the Marine Fuels contracted for, the Buyer shall be liable for all expenses and loss incurred by the Seller and arising out of such failure or rejection by the Buyer.

### 7. Delivery

- (a) If delivery is to be made by barge or road vehicle the Buyer shall notify the Seller when making its enquiry. The Seller undertakes to provide such delivery only within normal harbour limits. If the Buyer or its representative requests delivery by barge or road vehicle after conclusion of the contract such delivery shall be subject to the reasonable availability of the necessary facilities and payment by the Buyer of any additional costs.
- (b) Where the Buyer or its representative requests a time of delivery, the Seller's obligation shall be to deliver as soon thereafter as reasonably practicable having regard to congestion affecting the delivery facilities of the Seller, its suppliers or agents and to prior commitments of barges and vehicles. The Buyer shall not be entitled to demurrage or other compensation for delay unless expressly agreed and confirmed by the Seller in writing.
- (c) The Seller shall not be liable for inability to deliver on public or dock holidays or on customary non-business days of the week.
- (d) The Buyer shall pay the Seller for delivery services at the rates applicable on the date of delivery and for all additional charges incurred in connection with the delivery, including but not limited to, port dues, wharfage, demurrage, provision of additional hose in excess of that normally available and the use of all oil pollution control equipment required to effect delivery. Where work is carried out in connection with deliveries outside normal working hours at the port or outside normal harbour limits the Buyer shall be liable for all additional charges.
- (e) Unless otherwise specifically agreed, the Seller shall be under no obligation to supply the Vessel immediately on its arrival in Port.
- (f) In the event of the Buyer's Vessel through no fault of the Seller not being available to accept delivery of the Marine Fuels at the time and date agreed between the parties, the Seller shall incur no liability whatsoever for any subsequent delay in delivery of the Marine Fuels.

### 8. Quality, Quantity and Sampling

- (a) The Seller shall measure quantity and take samples of the Marine Fuels delivered. The Seller shall take three samples in accordance with its normal sampling procedures at the port in question. Two samples shall be retained by the Seller and one sample shall be passed to the Buyer (or its representative) for its retention. The Buyer (or its representative) may witness such measurement and sampling. The measurements of volume and calculations of quantity taken by the Seller shall be conclusive of the volume and quantity of Marine Fuels delivered. The results of the analysis of the Seller's samples shall be conclusive of the quality of the Marine Fuels delivered.
- (b) The aforementioned 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 authorized representative. Two samples shall be retained by the Seller for sixty days after delivery of the Marine Fuels to the Vessel and the other sample shall be retained by the Vessel.
- (c) The Buyer shall not be entitled to complain of an incorrect measurement of the volume of Marine Fuels delivered unless the Buyer or its representative has witnessed such measurement and has made a complaint in writing at the time of delivery. Any claim as to short delivery shall be presented by the Buyer in writing within 15 days from the date of delivery including full supporting documentation and providing Suppliers were notified in writing at the time of delivery, failing which any such claim shall be deemed to be waived and absolutely barred.
- (d) The Seller shall not entertain any claim for any defects in the quality of Marine Fuels unless the Seller receives notice in writing of a complaint within 15 days of delivery and receives full details of the claim with supporting evidence. Failing this any such claim shall be deemed to be waived and absolutely barred. In the event of a dispute regarding the quality of Marine Fuels the parties hereto shall have the quality of the Marine Fuels analysed, by a mutually agreed, qualified and independent laboratory under witness on one of the samples retained by the supplier as detailed in clause 8(a). The results of testing this sample shall be final and binding on both Parties.

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### 9. Risk and Property

- (a) Risk in the Marine Fuels shall pass to the Buyer once the Marine Fuels have passed the flange connecting the Seller's bunker manifold with the vessel being supplied with Marine Fuels. Title to the Marine Fuels shall pass to the Buyers upon payment for the value of the Marine Fuels delivered, pursuant to the terms of Clause 14 hereof. Until such payment has been made, the Sellers shall have a right of lien over the Marine Fuels delivered. In the event that the marine Fuels have been commingled with other bunkers on board the vessel supplied, the Sellers shall have the right of lien to such part of the commingled bunkers as corresponds to the quantity of the Marine Fuels delivered.
- (b) "No-Lien" stamps or the use of any wording similar in nature and/or meaning on any document including but not limited to bunker delivery receipt(s) whether used by the Buyer or any third party shall be invalid and have no legal effect, and shall in no way prejudice any right of lien the Seller may have against the Buyer over the Marine Fuels.

### 10. Health, Safety and the Environment

- (a) The Buyer shall ensure that its employees comply fully with all requirements, obligations and recommendations relating to the handling and use of the Marine Fuels delivered hereunder and shall impose upon all of its customers to whom the Marine Fuels are to be supplied the same obligation to comply fully with the requirement, obligations and recommendations.
- (b) The Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of any Marine Fuels.
- (c) The Buyer shall at all times comply with any obligations, requirements or recommendations contained in any law, statute, directive or regulation of any territory, state or jurisdiction in or through which the Marine Fuels may be delivered, sold, transported or used and all Government, state or local regulations at the port such as but not limited to, those related to fire, or spillage or loss of Marine Fuels. Compliance by the Buyer with the recommendations referred to in sub-section (a) shall not excuse the Buyer from its obligations under this sub-section (c).
- (d) The Buyer shall indemnify and keep indemnified the Seller against any liability, claim or proceedings whatsoever arising out of or in connection with any failure by the Buyer to comply with its obligations under this Section.

### 11. Seller's and Buyer's Liabilities and Consequential Loss

- (a) The liability for breach of any condition or conditions whatsoever shall be limited to the payment of damages.
- (b) The Buyers shall indemnify the Seller and save it harmless in respect of any losses inclusive of interests and costs arising from any delay resulting from the Buyers' failure to give proper notices and/or to comply with clause 5 and/or the Buyers Vessel failing to receive Marine Fuels at less than 300 mts per hour.
- (c) The Buyers shall not assign the contract or any of its rights and obligations under it without the express consent in writing of the Seller.
- (d) Any addition to or deletion from the Bunker Receipt made by the Buyer or its representative and/or any documents presented by the Buyer or its representative at the time and place of delivery which purport to alter the terms of the contract shall have no validity.
- (e) The Seller shall not have any liability, howsoever arising and whether as a result of a breach of the contract, negligence or otherwise, for any loss of profit, or anticipated profit, loss of time or hire, cost of overheads thrown away, demurrage or loss of schedule, cost of substitute vessel(s), loss related to loss of operational use of vessel, physical loss or damage to cargo, or loss of contract(s), in each instance whether such losses are direct, consequential or otherwise nor, without prejudice to the foregoing, shall the Seller be liable for any consequential, indirect or special losses or special damages suffered by the Buyer.
- (f) The exclusions of liability set out in the contract shall only apply to the extent permitted by law and shall not apply in respect of fraud by the party seeking to rely on the exclusion.

### 12. Agency

If the delivery is contracted for by the Buyer as an agent of any other person or by any person as an agent of the Buyer, whether such agency is disclosed or not, such agents and principals shall be jointly and severally liable with the Buyer for all obligations expressed to be those of the Buyer under the contract and for the due and proper performance of the contract.

### 13. Force Majeur

Neither party shall be responsible for any loss, damage, delay or failure in performance under the contract resulting from act of God, or the port of delivery being affected by war, civil commotion, riot, quarantine, strikes, stoppages, lock-outs, arrests, restraints or detentions of Kings, Princes, Rulers and the People or any other event whatsoever arising after conclusion of the contract which cannot be avoided or guarded against by the exercise of due diligence, or the consequences of which, as may affect the performance of the contract cannot be avoided or guarded against by the exercise of due diligence.

### 14. Payment Terms

- (a) Payment for the delivery and of all other charges shall be made in full (without any abatement, deduction, set-off or counter claim whatsoever) in US dollars. Payment shall be due with effect from the date of delivery and shall be made by means of Telegraphic transfer, automated credit transfer or electronic transfer of same day funds quoting the Seller's invoice number and the Buyer's name value shall be dated no later than 30 days (or such other period as is agreed by the parties) from commencement of loading of the delivery in question. If, however, the Seller's bank is closed for business on the last day of the applicable credit period the Buyer shall make its payment by the last day within such credit period when the Seller's bank is open for business. All bank charges in respect of such payments shall be for the remitter's account.
- (b) The Buyer shall notify (or shall instruct its bank to notify) the Seller as soon as payment has been made quoting the date on which payment was made, the amount, the name of the bank effecting payment and details of each invoice to which the payment relates. Such notification shall be sent to
- (c) If the Buyer has not by the expiration of the credit period referred to in sub-section (a) paid any amount due to the Seller in respect of any other delivery of Marine Fuels by the Seller to the Buyer the Seller, in addition to and without prejudice to any other rights it may have shall have the right:
  - (i) if the delivery hereunder has been made, notwithstanding the credit period referred to above, to notify the Buyer that the amount due in respect of the delivery hereunder is immediately due and payable a whereupon it shall so be paid; and
  - (ii) if the delivery hereunder has not been made to notify the Buyer of the termination with immediate effect of the contract for such delivery whereupon it shall so terminate.
- (d) If the Buyer's credit is deemed by the Seller to be impaired or unsatisfactory, the Seller may (without prejudice to its other rights) require the Buyer at the Seller's option either to pay cash before delivery or to provide security satisfactory to the Seller and to effect immediate payment of any outstanding amount due to the Seller in respect of any other delivery of Marine Fuels by the Seller to the Buyer. In the event of failure by the Buyer to comply with the Seller's requirement the Seller shall have no obligation to make delivery and may terminate the contract on giving notice to that effect to the Buyer.
- (e) Without limitation to the foregoing or to the Seller's other rights hereunder or otherwise, the Seller shall have the right to require, in respect of any payment not made by the due date, the payment by the Buyer to the Seller of interest thereon at 28 per cent. per annum and pro rata for part thereof, such interest to run from the due date until the date payment is received in cleared funds by the Seller's bank.

### 15. Termination

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

- (a) any application being made or any proceedings being commenced, or any order or judgment being given by any court, for
  - (i) the liquidation, winding up, bankruptcy, insolvency, dissolution, administration or re-organisation, or similar; or
  - (ii) the appointment of a receiver, liquidator, trustee, administrator, administrative receiver or similar functionary of the other party or 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;
- (c) any act being done or event occurring which, under the applicable law hereof, has a substantially similar effect to any of the said acts or events described above.

### 16. Waiver, Amendments and Severability

- (a) No waiver by either party of any provision of the contract shall be binding unless made expressly and expressly confirmed in writing. Any such waiver shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.
- (b) No amendment to any provision of the contract shall be binding unless expressly confirmed in writing by the Seller.
- (c) If any provision of the contract is invalid, void or unenforceable, this will not affect the validity, legality or enforceability of any other provision of the contract.

### 17. Non-physical supply

- (a) These Terms and Conditions are subject to variation in circumstances where the physical supply of the Marine Fuels is being undertaken by a third party ("the Third party"). In such circumstances these terms and conditions shall be varied accordingly and the Buyer shall be deemed to have read and accepted the terms and conditions imposed by the Third Party ("The Third Party Terms").
- (b) Without prejudice to the generality of the foregoing, in the event that the Third Party Terms include:
  - (i) shorter time limit for the doing of any act, or the making of any claim, then such shorter time limit shall be incorporated to these Terms and Conditions,

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- (ii) any additional Exclusion of Liability clause then such clause shall be incorporated mutatis mutandi to these Terms and Conditions.
- (c) It is hereby acknowledged and expressly agreed that the Buyer shall not have any rights against the Supplier greater or more extensive than the rights of the Supplier against the Third Party.

### 18. Notice

Any communication (including without limitation invoices) by either party to the other shall, unless otherwise provided herein, be sufficiently made if sent by post (by airmail where airmail is possible), postage paid or by telex or facsimile transmission to the address of the other party and shall, unless otherwise provided herein, be deemed to have been given on the day on which such communications ought to have been delivered in due course of postal, telex or facsimile communication.

### 19. Arbitration and Governing Law

This Contract shall be governed by and construed in accordance with English law and any dispute arising out of this Contract shall be referred to arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force. Unless the parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint a third arbitrator; the decision of the three-men tribunal thus constituted or any two of them, shall be final. On the receipt by one party of the nomination in writing of the other party's arbitrator; that party shall appoint their arbitrator within 14 days, failing which the decision of the single arbitrator appointed shall be final.

For disputes where the total amount claimed by either party does not exceed the amount of US\$50,000, the arbitration shall be conducted in accordance with the Small Claims Procedure of the London Maritime Arbitrators Association.

### 20. Rights of Third Parties

Except for the provisions of sub-sections 3(d) and 10(d) of the contract which may be enforced by the Seller, its Affiliates and its and their directors, employees and agents, the parties do not intend any term of the contract to be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person (a "third party") who is not a party to the contract. The parties may rescind or vary the contract, in whole or in part, without the consent of any third party including, without limitation, those listed above. "Affiliate" means any company that directly or indirectly controls, is controlled by or is under common control with the Seller; for this purpose one company controls another if it holds more than 50% of the voting rights in the other.