

General Terms and Conditions for the delivery of Bunker Fuel from

**South African Bunkering & Trading (Pty) Ltd
and**

South African Bunkering & Trading Ltd

(both companies hereinafter referred to as SABT)

SEPTEMBER 2015

South African Bunkering & Trading (hereinafter referred to as the "Seller") is a seller of Marine Fuels, Lubricants and other products (hereinafter referred to as "Products") to Purchasers (hereinafter referred to as "Buyers") for the operation waterborne vessels.

1. GENERAL

- 1.1 The General Terms and Conditions of Sale of SABT shall apply exclusively. These terms shall be binding on SABT and any Purchaser of Products in the absence of an explicit written agreement to the contrary by both Parties.
- 1.2 The Buyer shall be responsible for ensuring that the shipping company observes all health and safety regulations with regard to the receipt and use of bunker fuel and the Seller disclaims any liability whatsoever in relation thereto.

2. FUEL GRADE

- 2.1 The Buyer alone shall be liable for and bear the risk of the choice of Product grade and the Seller shall not be under any obligation to check whether the chosen Product grade is suitable for the vessel in question. Where the Product complies with the specification and is moreover of the same quality as the current fuel of the relevant geographic area, the Seller has supplied the correct service in this respect.

3. DELIVERY

- 3.1 Both with regard to the right to compensation and the right of rescission, it is a condition that an Agreement has been made to the effect that delivery will take place at a specific date and time and this time is exceeded by six (6) hours and that the Seller has acknowledged forty eight (48) hours notice regarding the arrival of the vessel to the place of delivery. The said notice may only be given on normal working days between 08:30 a.m. and 17:00 p.m. and by email or fax to the Seller.
- 3.2 Upon delivery the risk and title of the Product shall pass successively at the passage of the fixed connections (manifold) of the receiving vessel. Representatives from the receiving vessel shall be responsible for ensuring that the Product is received in a safe way and without any liability whatsoever for the Seller.

4. DELIVERY COSTS

- 4.1 If no mention is made to the contrary when making the purchase, the Buyer shall pay the costs of the delivery in addition to the purchase price, irrespective of whether it takes place from installation, barge or road truck. Furthermore, the Buyer shall pay any additional costs of delivery on weekends (Saturday and Sunday), public holidays and outside normal working hours. Services in pursuance of this provision shall be effected according to the rules stated in clause 3 above.

5. DISPUTES

Invoices are to be paid in full within the terms specified on the Agreement and all/any disputes will be handled as a separate negotiation.

5.1 QUALITY

- 5.1.1 If it is proved, that the Seller has in error or has negligently delivered Products which do not meet the quality requirements, as stated in clause 2.1, the Seller shall be liable for any documented loss as a result thereof. However, the Seller shall not be liable for any loss whatsoever which the Buyer may suffer in connection with lost contracts and the liability shall be limited to the costs of repair of machine components and a time loss of five (5) days as defined in clause 5.3.2.
- 5.1.2 If the Buyer fails to object in writing to the quality or specification of the delivered Products within 14 days after delivery, any claim against the Seller will lapse.
- 5.1.3 In the case of repair, ten (10) % of the invoiced value of the spare parts shall be deducted from the compensation for each year or fraction of a year the replaced part has been in use. However, the Seller shall not be liable to pay damages if the Buyer has failed to safeguard the Seller's recourse against the physical supplier or any other wrongdoer or has failed to ensure the existence of the necessary evidence or has not objected to the Seller as stated in clause 5.1.2.
- 5.1.4 The Parties make an Agreement to the effect that an analysis of the sealed representative samples drawn on delivery may alone form the basis of documentation with regard to the fact that the Product was substandard or "off spec" on delivery.
- 5.1.5 In order for one or more samples to be regarded as representative such sample(s) must be signed by a representative from the Buyer's vessel as well as a representative for the Seller. Both the Buyer and Seller shall individually be responsible for ensuring that the said representative sample(s) is/are drawn as stated above. If the Seller in case of doubt can prove that the sample is representative, the sample will be awarded this status.
- 5.1.6 Any analysis must be carried out in an independent laboratory that must be approved in advance by the Parties involved. The same applies to any method of analysis.
- 5.1.7 Any implied warranties, including the warranties of fitness for purpose that the Seller may be deemed to have made, are expressly excluded and disclaimed as the Buyer shall be responsible for and bear the risk of the grade of Marine Fuel ordered from the Seller and the Seller shall not be under any obligation to check whether the grade of Marine Fuel is suitable for the vessel. The Marine Fuel shall be of the quality generally available for sale at the place of delivery in line with Buyers requirements
- 5.1.8 The Buyer shall be responsible to keep the delivered Marine Fuel segregated from any other fuels onboard the vessel. In no event shall the Seller be responsible for the quality and compatibility of the Marine Fuel delivered if the Seller's product is mixed or comingled with any other product(s) onboard the receiving vessel. The Buyer shall be solely responsible for any loss or damage caused by mixing or comingling the Marine Fuel with any other product.

5.2 QUANTITY

- 5.2.1 Complaints about differences in quantity will only be considered on the condition that the Seller is notified immediately and prior to the signing of Delivery Receipts failing which the rights to complain or to claim compensation will be waived for all time. The seller shall acknowledge clean Delivery Receipts only.

5.2.2 The Seller will not accept any claim for short supply based on ship's tank measurements which are subject to error as affected by a vessel's list and trim and to calibration errors which could occur as a result of the irregular shape of some vessels tanks.

5.2.3 **SOUTH AFRICAN PORTS:**

It is a Customs regulation in South Africa to invoice fuels based on supply at 20 deg C. All flow meters are calibrated and temperature compensated to read the volume corrected to 20 deg C. Volume measured at ambient temperature will differ from volume which has been delivered through a temperature compensated flow meter and as such the Seller will not accept claims for short delivery based on measurements based on ambient temperature.

5.3 DEMURRAGE

5.3.1 Where the bunker fuel is not delivered in due time and it is proven that this is a result of the Seller's error or negligence, the Seller shall be liable for any documented loss as a consequence thereof.

5.3.2 The Seller's liability for damages shall be limited to a time loss of five (5) days calculated as the time charter equivalent in the charter agreement in which the Buyer is engaged. The Seller shall never be liable for any consequential loss whatsoever.

5.4 FORCE MAJEURE

5.4.1 The Seller shall not be liable for late or interrupted delivery as a result of circumstances beyond the Seller's control. Shall such circumstances persist for longer than fourteen days (14), this Agreement shall be terminated without any liability on either party. The Seller shall not be liable for any impediment which is due to war or any situation comparable to that of war, riots, strikes, congestion, lack of barges, adverse weather conditions, transport conflicts, transport impediments, impediments to the delivery of fuel, any event in the oil-producing countries, changed market conditions and similar situations. The Seller shall moreover be entitled to demand payment of such additional costs from the Buyer where the said costs are due to any of the above events in so far as the delivery has taken place.

6. CONDITIONS OF PAYMENT

6.1 CREDIT TERMS

6.1.1 Where credit terms apply, at any time the Seller considers it inadvisable to make deliveries to the Buyer on credit, the Seller will request that the Buyer pay Cash in Advance (CIA) or put up security acceptable to the Buyer and in such event, until the Buyer shall comply with the Seller's request, no deliveries need to be made.

6.2 PAYMENTS

6.2.1 Where the **Principal is a Broker, an Agent or a Manager**, such Principal shall be liable for payment, irrespective of whether the Principal is stated or not. Furthermore, delivery shall always take place for the account of the registered Owners and the Owners stated in Lloyd's Register of Shipping and for the account of the current Charterers all of whom shall be jointly and severally liable for the payment of the delivery as Buyers. The Buyer shall moreover warrant that the Seller has a lien on the vessel for his claim.

6.2.2 The Buyer shall not be entitled to offset any claims against the Seller without the written consent of the Seller whether such claims are connected or not or originate from the

delivery in question or not. Should the Buyer nevertheless setoff, the Seller's claim will be increased by 20% as a penalty.

6.3 LATE PAYMENT AND INTEREST

- 6.3.1 Where the Buyer fails to pay at the time of maturity as stated in the invoice, including email and/or fax invoice, the purchase price carries interest at the rate stated in the invoice as from the date of maturity. The interest rate will be charged per month and any other claim which the Seller may have against the Buyer falls due immediately even if the agreed date of maturity has not yet been reached.
- 6.3.2 Where the Buyer fails to pay for the delivery in time, the Buyer shall compensate the Seller for any cost which the Seller may incur in connection with recovery of his claim, including but not limited to legal expenses and other costs related to such recovery.
- 6.3.3 The Seller retains title to the delivered bunker fuel until the invoiced amount has been paid in full insofar as the Seller has this right according to the law of the place of delivery or according to the law of the vessel's flag State or to the law at the location where the vessel is found. It should be noted that the rule concerning venue and choice of law as stated in clause 8 shall be deemed to be unwritten in relation to the rights conferred on the Seller in pursuance of this clause.

6.4 CURRENCY CONVERSIONS

- 6.4.1 Payment shall be effected at the Seller's place of business, by telegraphic bank transfer, without any deductions, according to the payment instructions of the invoice. Where the purchase price is agreed in a currency other than USD, the Buyer shall bear the risk if such other currency converted to USD may have a lower offer price on the actual day for payment in relation to the final due date stated in the invoice and shall consequently indemnify the Seller in USD for any possible difference. Any exchange gain shall be allotted to the Seller.

6.5 ARREST

- 6.5.1 In addition to the fact that the Buyer shall be liable for the payment of the purchase price and any costs in pursuance of clause 6.2, the Seller reserves the right to look to the ship owner for payment to the extent that the ship owner is liable according to the legislation of the place of delivery or the flag State of the vessel or the owner's place of business and the Seller reserves the right to take precautions by means of a maritime lien or the like on the vessel in so far as such lien is permitted in a jurisdiction where the vessel may be found. It should be noted that the rule concerning venue and choice of law as stated in clause 8 shall be deemed to be unwritten in relation to the rights conferred on the Seller in pursuance of this clause.

6.6 CANCELLATION FEES

- 6.6.1 If the Buyer will not take delivery of the bunker fuel ordered or any part thereof, the Buyer shall compensate the Seller for any loss which the Seller may suffer and the Buyer shall bear the risk of the return transport, storing or selling the bunker fuel and any defray costs which may have been incurred, including any price difference compared to the Agreement, unless the fuel does not comply with local physical suppliers specifications.

7. POLLUTION

- 7.1 In case of an oil spill when bunkering, the Buyer and Seller shall jointly coordinate their efforts in order to control the damage as much as possible, irrespective of which Party is responsible for the situation. Expenses for pollution control shall be divided equally between the Parties until the degree of guilt on both sides has been established by agreement or judgment. Reimbursement of half the expenses paid shall fall due on demand.
- 7.2 Where a third party, including public authorities, abides by one Party or the other or both in solidum with regard to a claim pertaining to pollution, the settlement shall be achieved internally after an assessment of the degree of guilt. If liability may objectively be imposed on the Parties, the Buyer shall be fully liable for the loss.

8. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with English law. Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the rules of the London Maritime Arbitration Association ("LMAA"). The number of arbitrators shall be three, one to be nominated by each party and third (chairman) to be nominated by the two appointed arbitrators or, failing agreement on such nomination, to be of a nationality independent of the parties and to be nominated by the LMAA, provided that if the respondent party fails to nominate their arbitrator within 14 days of receipt of the nomination by the claimant, the arbitrator nominated by the claimant shall be the sole arbitrator. The place of arbitration shall be London or such other location as the parties and the arbitrator(s) shall agree.

CONDITIONS OF SUPPLY - OFFSHORE

Confirmed price is valid for the nominated ETA range only, thereafter subject to renegotiation.

Final supply date and location will be on supplier's option. Seller cannot be held liable for demurrage due to delays of supply tanker.

Master(s) of receiving vessel(s) to contact Master of supply tanker 48, 24, 12, 6 hours before arrival offshore meeting point in order to agree to a final meeting point and anchorage (if necessary) as same.

Always weather permitting and all going well.

The Buyer warrants that neither the Buyer nor the receiving vessel are or will be engaged, directly or indirectly, in any activities, trades and/or dealings that are illegal, banned, prohibited or made unlawful by any international, national or local authorities or any authorities, bodies and/or persons purporting to act on behalf of any such authorities. Illegal, banned, prohibited or unlawful activities, trades and/or dealings include but are not limited to unlicensed or unlawful fishing activities, carriage of any unlawful cargoes or merchandise, piracy, pollution, drug or arm trafficking, violation of any embargo, customs and/or immigration regulations whatsoever.

In the event the Buyer and/or the receiving vessel are, directly or indirectly, engaged in any of the activities defined above; any and all expenses, claims, damages, costs, fines, penalties or otherwise arising, directly or indirectly, from such activities and/or from the involvement of the Buyer and/or the vessel therein will be paid by the Buyer and the vessel in full. The Buyer further undertakes to hold the Seller harmless and to indemnify the Seller, upon the Seller's first demand, against any and all expenses, damages, claims, costs, fines, penalties or otherwise incurred or suffered, directly or indirectly, by the Seller or the supplying vessel as a consequence of any of the activities defined above.

Supplies are made on a best endeavours basis. The seller cannot be held liable for any delays to supply or lack of available product at short notice. African countries are often subject to political turmoil and supplies are made in good faith but without guarantees. Suppliers figures are final and binding.

Original BDR's can be delayed in some African supply locations and it may not be possible to courier originals before due date. Therefore payment is accepted to be made within agreed terms, no exceptions allowed, on faxed or emailed copies of Bunker Delivery Receipts and invoice and without any deductions whatsoever.

Interest will be charged on overdue accounts from date following due date.

CONDITIONS OF SUPPLY - SOUTH AFRICAN IN PORT DELIVERIES:

Supplies are made in good faith that the vessel is foreign going and will clear an international port thereby making it eligible for duty free product. Should the South African Revenue Services (SARS) for any reason claim this vessel should not be eligible for duty free product and impose a claim for the duty on and or impose a fine on SABT, the Buyer and end-user explicitly agree such duties and fines will be for their account. All supplies will be made strictly according to this provision.

Confirmed price is valid for the nominated ETA range only, thereafter subject to renegotiation.

It is the agent's responsibility to book the barge where this option is available. SABT will not entertain demurrage claims due to delays caused by lack of barge availability.

It is a customs regulation that volume is measured at 20°C and all shore / barge meters are therefore temperature compensated to 20°C.

Original Bunker Delivery Receipt's can be delayed in some supply locations and it may not be possible to courier originals before due date. Therefore payment is accepted to be made within agreed terms, no exceptions allowed, on faxed or emailed copies of Bunker Receipts and Invoice and without any deductions whatsoever.

Interest to be charged on overdue accounts from date following due date.

This present Agreement shall be governed by and construed in accordance with English law. In case of breach of contract by the Buyer, the Seller shall moreover be entitled to take such legal action in any court of law in any state or country which the Seller may choose and which the Seller finds relevant in order to safeguard or exercise the Seller's rights in pursuance of this present Agreement.

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