

*General terms and conditions*

Marine Bunkers

**UNERGY**

01 janvier 2015

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## UNERGY

### Terms and Conditions of sale for Marine Bunkers Edition 2015

#### A. GENERAL INTRODUCTION

- A.1-This is a statement of the terms and conditions according to which UNERGY will sell marine bunkers.  
A.2-These conditions apply to all offers, quotations, orders, agreements, services and all subsequent contracts of whatever nature, except where otherwise is expressly agreed in writing by UNERGY.  
A.3-General trading conditions of another party will not apply, unless expressly accepted in writing by UNERGY.  
A.4-In the case that, for whatever reason, one or more of the (sub)clauses of these general conditions are invalid, the other (sub)clauses hereof shall remain valid and be binding upon the parties.

#### B. DEFINITIONS

- (a) "Seller" includes in addition to the Seller Itself, its servants, agents assigns, subcontractors and any and all other persons acting under the Seller's instructions in fulfillment, compliance or observance of the Agreement unless the context otherwise requires  
(b) "Buyer" means the party/ies so described in the Nomination Telex together with any agent, principal, associate, manager, partner, servant, parent, subsidiary, owner or shareholder thereof  
(c) "Vessel" means the vessel, ship or craft duly nominated to receive Products as specified in the Nomination Telex  
(d) "Supplying Company" means the person/company which physically supplies the Products to the Vessel together with these persons'/companies' servants, agents, successors, sub-contractors and assignees.  
(e) "Point of Delivery" means the precise place at which delivery of the Products is to be effected as provided in the Nomination Telex, or as thereafter confirmed, advised or revised by the Seller or the Supplying Company.  
(f) "Price" means the basic cost of Products calculated by multiplying the unit price stated in the Nomination Telex by the quantity of Products delivered to the Vessel.

#### C. NOMINATION

- C.1 - All information regarding the delivery of the Products (i.e. vessel's name, agents, E.T.A., quantity, grade etc) will be notified by the Buyer to the Seller in writing. Any change to the above will be notified in writing by; the Buyer to the Seller on due time prior to the delivery,  
C.2-The Buyer shall inform the Seller directly or through Buyer's Agent at least 48 hours prior, (excluding weekends and holidays of vessel's readiness to receive delivery and the exact required quantity of the Products. Such notice shall be deemed cancelled if the Vessel has not arrived within 2 days after the Vessel's earliest estimated lifting date, as per the Nomination Telex. In such a case, the Seller reserves the right to refuse delivery of the Products, as already nominated or to renegotiate the prices/quantities.

## **D. DELIVERY**

D.1-Delivery of the Products shall be effected in one or more consignments at the Point of Delivery by such means as the Seller shall deem appropriate in the circumstances.

D.2-The Buyer shall make all connections or disconnections and provide all necessary equipment to receive promptly each and every consignment of the delivery.

D.3-Seller shall not be liable to the Buyer for any loss or demurrage due to congestion of the terminal, or prior commitments of the truck or the barge if available.

D.4-The Seller shall not be required to deliver Products into any of the Vessel's tanks which are not regularly used for bunkers.

D.5-If the Buyer causes delays to Seller's or Supplying Company's facilities in effecting deliveries, Buyer shall pay demurrage at Seller's or Supplying Company's established rates, and reimburse the Seller or the Supplying Company for all other expenses in connection therewith.

D.6-Where delivery is delayed by any reason ( ship delay ...). Buyer shall pay all overtime and extra expenses incurred.

D.7-The Sellers' responsibility shall cease and delivery of the Products shall be deemed completed, and risk of loss, damage, deterioration, depreciation, evaporation, etc... shall pass to the Buyer at Vessel's permanent flange connection.

## **E. DOCUMENTS**

On completion of the delivery the Master of the Vessel or Buyer's representative shall give to the Supplying Company any form required by the Supplying Company properly signed and stamped of which one copy shall be retained by the Master or the representative of the Buyer.

## **F. PRODUCTS' QUALITY AND QUANTITY DETERMINATION**

F.1-Products shall meet specifications that are applicable at the time and place of delivery, The Buyer shall be solely responsible for the selection and acceptance of Products tendered for delivery to the Vessel.

F.2-Two representative sample -bottles, of each grade fully sealed and stamped, shall be taken throughout the delivery operation prior to the Products leaving either shore tanks, tank truck, or barge. The Vessel's tank samples will not be accepted. One sealed sample shall be handed to the Master of the vessel receiving the Products and the other one will be retained by the Supplying Company, Any dispute as to the quality of the Products delivered shall be determined finally and conclusively by analysis of the third representative sample retained by the Supplying Company by an expert appointed jointly by the Buyer and the Seller.

F.3-Bulk deliveries ex-barges, wagons and vehicles must be checked by tank-dipping to measure the contents and ensure full turn-out. Flow meters if available must be checked for seals correct settings and calibration and general condition. All these checks must be carried out before and after delivery of each consignment and each barge, wagon or vehicle tank load, The delivery must be supervised at all times and care must be taken in ensuring that all documentation is complete and accurate before signing and stamping, Any alleged discrepancies can only be accepted in the form of a "Letter of Protest". No comments will be allowed to be written on the delivery receipt. The Seller will not accept any claims for short delivery or bad quality where these receiving procedures are not followed.

F.4-An Officer of the Vessel's crew or other senior representative of the Buyer is requested to witness the opening and closing meter readings (In morocco, sounding truck compartments) and road truck/barge soundings or ullages before and after the completion of the bunkering operations. These readings will be used as a final mean of measurement. The Seller will not accept a claim for short delivery based upon figures obtained by measuring Products in the receiving Vessel's tanks. No quantity dispute will be accepted should vessel's representative refuse to witness barge figures (ullages or soundings).

F.5-Surveyors appointed by the Buyer are always subject to Seller's approval.

## **H. RESTRICTIONS TO USE**

Unless otherwise agreed the Buyer undertakes that the Products supplied under the Agreement will be used solely for the bunkering requirements of the Vessel to which they are delivered.

## **I. PRICES**

I.1-The Price payable by the Buyer to the Seller for the Products is stated on the Nomination Telex, and it shall remain effective until the completion of delivery.

I.2-The Price is valid for a 5 days range namely 2 days before and 2 days after the vessel's earliest ETA (or as per Nomination Telex).

## **G. FURTHER COSTS**

G.1-In addition to the Price of the Products the Buyer agrees to pay for any charges raised in respect of taxes, freight, barge, vehicle, wagon or cleanup costs including overtime, mooring/unmooring charges or port dues etc. Also, any expenses created for the calling-in of an independent surveyor in order to settle any quantity dispute, as well as laboratory analyses for any quality dispute raised by the Buyer but eventually not verified.

G.2-In the event that the Vessel is unable for any reason to receive the nominated Products and no sufficient notice has been given to the Seller for such inability the Buyer is liable to pay cancellation charges.

G.3-The Buyer agrees to pay any expenses incurred as a result of the master of the Vessel rejecting the whole or any part of the nominated Products.

## **K. PAYMENT AND FINANCIAL RESPONSIBILITY**

K.1-The value of Products together with extra charges, if any, shall be paid by the Buyer to the Seller in full, within thirty (30) calendar days( bank warranty) from the date of delivery and always according to Seller's payment instructions and in the currency shown in relevant invoice. Should the due date for payment fall on Saturday, Sunday or Public Holiday then payment should be received by the previous working day.

K.2-Unless otherwise agreed, payment shall be made by irrevocable telegraphic transfer and all banking charges will be for Buyer's account. Delivery documents shall be provided to Buyer wherever possible, however payment shall not be conditional upon receipt of such documents.

K.3-Overdue payments will attract a financial charge of 1,5% per calendar month on the outstanding sum calculated on a daily basis from the due date until the full payment is received by the Seller's bank.

K.4-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. 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 Agreement by giving notice to this effect to the Buyer.

K.5-Where Products are supplied to a vessel, in addition to any other security, the Agreement is entered into and Products are supplied upon the faith and credit of the Vessel. It is agreed and acknowledged that a lien over the Vessel is thereby created for the value of Products supplied and that the Seller in agreeing to deliver Products to the Vessel does so relying upon the faith and credit of the Vessel. The Buyer if not 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 Nomination to the Buyer.

K.6-No disclaimer stamp of any type if applied on the delivery receipt will change or waive the Sellers' rights against the Vessel, or waive the Vessel's ultimate responsibility for the debt incurred through the Agreement.

## **L. TITLE**

L.1-Title in and to the Products delivered and/or property rights in and to such Products shall remain vested in the Seller until payment has been received by the Seller of all amounts due in connection with the respective delivery.

L.2-Until full payment of any amounts due to the Seller for whatever nature, has been made, the Buyer shall not be entitled to use the Products other than for the propulsion of the vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the Products to any third party.

L.3-in case of breach of the Agreement by the Buyer the Seller is entitled to take back the Products without prior judicial intervention and without prejudice to all other rights or remedies available to the Seller.

L.4-In the event that the Products have been commingled with other products on board the vessel, the Seller shall have the same rights as above to such part of the commingled product as corresponds to the quantity of Product delivered.

## **M. INDEMNITIES**

M.1-The Buyer agrees to indemnify the Seller against all damages and liabilities arising from any acts or omissions of the Buyer or its agents and servants or the Vessel's officers or crews in connection with the sale and supply of the Products.

M.2-In the event that this Agreement is signed by an agent acting for and on behalf of a principal disclosed or undisclosed, then such agent shall be liable not only as agent but also for the performance of all the obligations of a principal under this Agreement.

## **N. CLAIMS**

N.1-Any dispute as to the quantity delivered must be noted at the time of delivery in a letter of protest. Any claim as to short delivery shall be presented by the Buyer immediately upon completion of delivery, failing which any such claim shall be deemed to be waived and absolutely barred.

N.2-Claims concerning quality shall have to be submitted to the Seller in writing within 15 days from delivery, failing which the rights to complain or claim compensation of whatever nature shall be deemed to have been waived and absolutely barred for all times. If it is alleged that any equipment or machinery has been damaged by defective Products, full details must be given to the Seller at the earliest opportunity and the item must be preserved and made available for inspection on demand at any reasonable time or times to the Seller or its representative, otherwise no such claim shall be accepted by the Seller.

## **O. LIABILITY**

O.1-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.

O.2-Notwithstanding the foregoing in the event that the Seller is found to be liable to the Buyer, the total amount payable by way of compensation shall not exceed the value charged to the Buyer for the Products supplied under this Agreement. It is a precondition to the payment of any compensation by the Seller that all sums standing due to the Seller from the Buyer are first paid and settled.

## **P. FORCE MAJEURE**

All orders hereunder shall be filled with reasonable promptness, neither Seller or Buyer shall be held responsible for any losses, resulting if the fulfillment of any terms or provisions hereof shall be delayed or prevented by compliance with any regulation or other government restriction or by compliance with any order or request of any government authority or person purporting to act therefore, or other disorders, wars, acts of enemies, strikes, lockouts, fires, floods, acts of God, arrest or restraint of princes, perils of the sea, accidents of navigation, breakdowns or injury to ships, failure of or interference with supply from Sellers' sources of supply, breakdown or injury to, or expropriation or confiscation of the facilities used for the production, transportation, receiving, manufacturing, handling or delivery of the Products. If the Seller shall suffer any loss of tanker or barge tonnage, or if compliance with an order or request of any Governmental authority shall reduce the tanker or barge tonnage available for the normal movement of the Products the obligation to make deliveries hereunder may be reduced at Seller's option approximately in proportion to such loss or reduction. Seller shall not be required to make upon any deliveries omitted in accordance with this section.

## **Q. ENVIRONMENTAL PROTECTION**

If a spill occurs while Products are being delivered hereunder, Buyer shall promptly take such action as is reasonably necessary to remove the spilled Products and minimize the effects of such spills. Seller is hereby authorized, at its option on notice to and at the expense of the buyer, to take such measures and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonable necessary in the judgment of the Seller to remove the spilled Products and minimize the effects of such spills. Buyer shall cooperate and render such assistance as is required by Seller in the course of such action. All expenses, claims, loss, damage liability and penalties arising from spills shall be borne by the party that caused the spill by negligence or omission. If both parties have acted negligently, all expenses, claims, loss, damage, liability and penalties shall be divided between the parties in accordance with the respective degree of negligence. The burden of proof to show Seller's negligence shall be on the Buyer.

## **R. MISCELLANEOUS**

R.1-Notwithstanding anything to the contrary expressed or implied else-where herein, the Seller (without prejudice to its other rights) may at its sole discretion terminate this Agreement, on notifying the Buyer either orally (confirming such notification in writing) or by notice in writing, in the event that a liquidator (other than for amalgamation or reconstruction purposes) is appointed in respect of the assets and/or undertaking of the Buyer or any of its associated companies, or the Buyer or any such associated company, enters into an arrangement with its creditors under any applicable law, or if the Seller has a reason to anticipate any such appointment, arrangement or composition.

R.2-This constitutes the entire Agreement between the parties covering the subject matter. There are no other agreements which constitute any part of the consideration for, or any conditions to, either party's compliance with its obligations under this Agreement. Any implied warranties, conditions and agreements whatsoever are hereby expressly excluded and extinguished. No modifications shall be binding unless in writing and signed. The right of either party to require strict performance shall not be affected by any prior waiver or course of dealing. Any termination shall be without prejudice to accrued rights. All rights and remedies are cumulative, and election of one remedy shall not exclude the other.

## **S. APPLICABLE LAW AND JURISDICTION**

Except as otherwise expressly agreed to in writing, the Agreement its performance and enforcement is governed by the Moroccan Law . All disputes arising in connection with this agreement or any agreement resulting hereof shall be referred to the Courts of Casablanca. For the sole benefit of the Seller, it is further agreed that the Seller may proceed against the Buyer, any third party or the vessel in such jurisdiction as the Seller in its sole discretion sees fit, inter all, for the purpose of securing payment of any amount due to the Seller from the Buyer