

## **METF BUNKER SERVICES Ltd.**

### **GENERAL TERMS AND CONDITIONS OF SALE FOR MARINE FUEL**

#### **Terms and the Conditions**

##### **Definitions**

- 1) In these General Terms and Conditions (hereinafter defined) the following terms shall have the following meanings;
  - a) "the Agreement" means these General Terms and Conditions together with the Special Terms which have been agreed in the fixture correspondence. Together they are incorporated in and form the complete sales Agreement.
  - b) one "barrel" or one "bbl" means 42 US standard gallons at 60 degrees Fahrenheit.
  - c) "Buyer" means a party obligated to buy Marine Fuel under the Agreement, including the parties named in the Special Terms together with the Registered Owner, Charterer, Manager, Agent, and any subsidiary or agent of any Buyer.
  - d) "delivery date" means the date on which the Marine Fuel is to be delivered to the Vessel by the Seller.
  - e) One "gallon" means one US standard gallon of 231 cubic inches at 60 degrees Fahrenheit.
  - f) "General Terms" means these General Terms and Conditions for the sale of Marine Fuel.
  - g) "Marine Fuel" means the type(s), quantity(ies) and commercial grades of bunker fuel oil, intermediate fuel oil ("IFO"), marine diesel oil ("MDO"), marine gas oil ("MGO") and/or other materials or petroleum products specified in the Special Terms which Seller has agreed to sell to the Buyer.
  - h) one "Metric ton" or one "MT" means a total of 2,204.6234 pounds avoirdupois.
  - i) "Seller" means METF Bunker Services Ltd.
  - j) "Special Terms" means any terms and/or conditions contained in any form of agreement or correspondence exchanged during negotiations, including without limitation, telex, letter, fax, and electronic message in any format whatsoever.
  - k) "Supplier" means the person or entity from whom the Seller procures Marine Fuel for resale to the Buyer.
  - l) "Supply Port" means the port at which the Marine Fuel purchased by the Buyer is delivered to the vessel.
  - m) "Vessel" means the marine vessel or vessels to which the Marine Fuel purchased by the Buyer is to be delivered.

##### **Measurements and Tests**

- 2) The quantity of Marine Fuel delivered shall be measured by the Seller or its Supplier. Such quantity shall only be determined by shore tank terminal gauges or, if such is not available, by barge calibrated meter, or if such is not available, by barge volume measurement figures.
- 3) The Buyer may be present or represented by a properly accredited agent at all measurements. Such agent or Buyer's representative to include the Chief Engineer of the Vessel. Save where the Buyer has proven there to be a manifest error in the measurement of the quantity of bunkers delivered to the Vessel, the Seller's determination of quantity shall be conclusive unless the Buyer;
  - a) is present or represented at the measurement;
  - b) makes a written note or otherwise records at the time of delivery, the alleged short delivery; and
  - c) details the alleged shortage on the delivery receipt retained by the Seller or its Supplier.
- 4) Three samples of the Marine Fuel shall be taken at the time of delivery from the terminal shore tank, load pipeline or delivery barge as appropriate, and immediately sealed. The samples shall be taken using line sampling devices, when available. One sealed sample will be handed to the Vessel's Master, Chief Engineer or other certificated engineering officer attending the stem on behalf of the Vessel, the second will be retained by the supplying barge, and the third will be retained by the Seller or its Supplier. Tests to determine quality shall be made only from the said samples and the analysis shall be made in accordance with standard test methods specified in the official publications of either the API, ASTM or IP, whichever is in use at the Supply Port. Another appropriate test method may be used where no methods are prescribed in API, ASTM or IP publications on the date of the Agreement.

##### **Price**

- 5) The price of Marine Fuel sold and delivered hereunder shall be the price set forth in the Special Terms. Unless otherwise agreed, all prices are for delivery ex-tank at the Supply Port and are exclusive of all delivery costs, taxes, duties, fees or other charges whatsoever, imposed or levied by any Government Authority at the Supply Port or any other place whatsoever.

### **Barging**

- 6) If the Vessel requires delivery by barge, the Seller shall furnish this service within inner harbour limits, unless agreed otherwise, at the Supply Port when and where Seller or its Supplier has the necessary barging facilities available to effect delivery. Buyer shall pay all barging charges at the rates established by the Seller from time to time plus transportation taxes, if any. If steam is required to effect delivery, the Vessel shall provide such steam free of charge. Any and all charges made for tug pumping, shall be for the account of the Buyer.

### **Payment terms**

- 7) Except when agreed in the Special Terms, all sales shall be on a cash in advance or irrevocable letter of credit basis. All letters of credit procured by the Buyer in favour of the Seller shall be in a form and terms acceptable to the Seller, issued by a bank acceptable to the Seller.
- 8) Payment to the Seller by the Buyer for all sales of Marine Fuel and for all charges related thereto, including and without limitation, delivery and all additional charges, shall be made in full, without any right of set off, discount or deduction. Payment shall be made in United States dollars by means of telegraphic transfer to the bank account identified in the Special Terms or in the Seller's invoice, as the case may be, for deposit to the Seller's account as specified therein. Such transfer shall quote Seller's invoice number or order number, Buyer's name, the Vessel supplied and Seller's account number into which funds are to be deposited.
- 9) If the Seller has extended credit to the Buyer, and if the applicable credit period expires on a Saturday, Sunday or any other day when the Seller's bank is closed for business, then the Buyer shall arrange for the payment to have been received and credited into the Seller's account by the last business day prior to the end of the applicable credit period when the Seller's bank and the Buyer's bank were both open for business.

### **Deliveries**

- 10) Deliveries of Marine Fuel shall be made during normal working hours on normal working days at the Supply Port. If the Buyer requires delivery or causes delivery to be made at any time other than during such periods, then the Buyer shall pay to the Seller all additional expenses and/or costs incurred by the Seller or its Supplier delivering the Marine Fuel outside the normal working hours.
- 11) If authority or a delivery permit is required from any Government Authority or any quasi Authority of the Supply Port or otherwise, or from any public or private port authority, for any delivery of Marine Fuel, then the Buyer shall be responsible for obtaining that authority or permit. No deliveries shall be made until such time as the Buyer has obtained such authority and all necessary delivery permits.
- 12) The Buyer shall give the Seller written notice of the Vessel's readiness to stem the Marine Fuel, at least forty eight (48) hours prior to the estimated delivery time and date when the Vessel will be ready to receive the Marine Fuel purchased by the Buyer. In such notice, the Buyer shall advise the Seller of any special condition, peculiarity, deficiency or defect concerning the Vessel and/or her equipment which may delay, hinder or otherwise affect the mooring, unmooring or bunkering of the Vessel. If the Buyer fails to provide this notice and the Vessel for whatsoever reason is unable or refuses to accept delivery of the Marine Fuel at the delivery time on the delivery date, or if the Buyer provides such notice but requests an extension to the delivery time and date of more than twenty-four (24) hours beyond twelve (12) noon on such delivery date, then the Seller may, at its option:
  - a) deliver the Marine Fuel to the Vessel at the requested new delivery time on a best endeavour basis, or
  - b) suspend delivery subject to the Buyer's agreement to a new price for the Marine Fuel, or
  - c) cancel the delivery altogether, without prejudice to the Seller's rights under the Agreement.
- 13) The Buyer shall make all connections and disconnections between the delivery hose and the Vessel's intake pipe, render all necessary and reasonable assistance and provide sufficient tankage and equipment to receive all deliveries of Marine Fuel supplied under the agreement. All mooring, and unmooring charges together with all port dues, shall be paid by the Buyer.
- 14) In the event that the Buyer cancels the Agreement, then the Seller reserves any and all of his rights to claim compensation
- 15) In the event that the Buyer fails to take delivery, in whole or in part, of the quantities nominated, then the Buyer shall be responsible for any and all costs resulting from their failure to take such delivery, as well as for any losses incurred by the Seller or its Supplier in having to downgrade the Marine Fuel that would have been supplied to the Vessel.

### **Risk**

- 16) Delivery shall be complete and risk of loss and liability of all Marine Fuel supplied hereunder shall pass from the Seller to the Buyer as the Marine Fuel passes the permanent manifold connection on the Vessel or, in the case of delivery by drum, as the Marine Fuel passes over the Vessel's rail.

### **Retention of Title**

- 17) Notwithstanding that delivery has taken place, the Marine Fuel shall remain the sole and absolute property of the Seller as legal and equitable Owner until the Buyer has paid to the Seller the agreed price together with all interest, costs and expenses, which may have accrued and is due. Both the Owner of the Vessel and the Buyer acknowledge that they are in possession of the Marine Fuel solely as bailee for the Seller, until such time as all the foregoing sums have been paid to the Seller.
- 18) The Buyer's right to possession of the Marine Fuel ceases if he does anything or fails to do anything, which would entitle a Receiver to take possession of any assets or which would entitle any person to present a petition for winding up.
- 19) The Seller may for the purpose of recovery of its Marine Fuel, enter upon any premises or the vessel where they are stored and may repossess the same. If Marine Fuel, the property of the Seller, is admixed or co-mingled with marine fuel, the property of the Buyer, then the comingled product thereof shall be deemed to be the sole and exclusive property of the Seller. If Marine Fuel, the property of the Seller is admixed or co-mingled with marine fuel, the property of any person other than the Buyer, then the comingled product thereof shall be deemed to be owned in common with such other person(s).

### **Demurrage and Delays**

- 20) Neither the Seller nor its Supplier shall be liable for any demurrage or loss incurred by the Buyer or the Vessel caused directly or indirectly by delays due to or resulting from weather (whether unusual or not), local congestion at the Supply Port affecting the Seller's delivery facilities (or those of its Supplier), the prior commitment, non-availability and/or malfunction of delivery barges, or any event of Force Majeure.
- 21) The Buyer shall be liable for demurrage at rates established by the Seller or its Supplier, also for losses incurred by the Seller or its Supplier resulting from any delay caused directly or indirectly by the Buyer or the Vessel's late arrival or delay in or during the delivery of Marine Fuel, securing barging facilities alongside or letting go the same and/or delay in vacating any berth.

### **Warranties**

- 22) The Buyer is solely responsible for specifying to the Seller, the type, grade and quantity of Marine Fuel to be supplied under the Agreement. The Seller warrants only that the Marine Fuel supplied shall conform to the specifications stated in the Special Terms and further, that the Seller will convey to the Buyer, title thereto free and clear of all taxes, liens and encumbrances existing or in favour of any third party. Other than the warranties stated herein, there are no guarantees or warranties express or implied of merchantability, fitness for purpose or suitability of the Marine Fuel for any intended or particular purpose.

### **Claims**

- 23) All claims as to shortage of quantity, defects in quality or otherwise must be made in writing by the Buyer to the Seller within fourteen (14) days of the delivery date. The Seller will in any event be discharged from all liability whatsoever in respect of the Marine Fuel unless suit is brought within thirty days from the delivery date. All claims by the Buyer are subject to the Agreement, in particular the Governing Law, at clause 38 of the General Terms.

### **Financial Responsibility**

- 24) All sales of Marine Fuel hereunder are made on the credit of the Vessel, as well as on the promise of the Buyer, including but not limited to the Registered Owner of the receiving Vessel, to pay any and all sums due. It is agreed and the Buyer warrants that the Seller will have and may assert a maritime lien on the Vessel (or any of her sister vessels) and/or a possessory lien on the Marine Fuel, wherever the Vessel(s) and the Marine Fuel may be found, for the full amount of the delivered price of the Marine Fuel supplied to the Vessel by the Seller, plus accrued interest, attorney fees and collection costs. The laws of the United States, including but not limited to the Commercial Instruments and Maritime Lien Act, shall always apply with respect to the existence of a maritime lien, regardless of the jurisdiction in which the Seller takes legal action. Nothing in the Agreement shall be construed to limit the rights or legal remedies that the Seller may enjoy against the Vessel or the Buyer, in any jurisdiction.
- 25) It is further agreed that the Seller's supply of Marine Fuel constitutes a supply of necessities to the Vessel and the Seller has a maritime lien on the Vessel for such supply of Marine Fuel.
- 26) If the Buyer in any way breaches the Agreement, defaults in the payment of any indebtedness to the Seller (whether arising out of the Agreement or otherwise) or becomes bankrupt or insolvent, or if the Seller at any time considers the financial condition of the Buyer to be unsatisfactory, then the Seller may, in addition to any other rights and remedies it may have, cancel or suspend deliveries hereunder until such time as the Buyer remedies such breach or default and/or provides suitable additional security and/or guarantees acceptable to the Seller.
- 27) If the Agreement is concluded between the Seller and an agent acting for or on behalf of a Principal or Principals (whether disclosed or undisclosed), as Buyer(s), then such agent shall be jointly and severally liable with the Buyer(s), as a Principal and not as an agent, for the due and proper performance of the Agreement and the prompt and punctual payment of all amounts due hereunder.

### **Interest and Collection**

- 28) Without limitation to the Seller's rights hereunder or otherwise, any payment not made when due shall bear interest at the rate of:
- a) one and a half percent (1.5%) per month, or
  - b) the maximum rate allowed by law, running from the due date until the date the payment is received by the Seller's bank.
- 29) In the event that the Seller institutes legal proceedings for collection of outstanding payments due from the Buyer then all expenses incurred by the Seller in connection with such proceedings shall be for the Buyer's account, including without limitation, attorney's fees and court costs. The Seller will be entitled to recover the same by way of an Order of the Court.

### **Limitation of Liability**

- 30) The Seller and its Supplier shall not be liable for special, indirect, punitive or exemplary damages of any kind whatsoever arising out of or in connection with the performance or non-performance of the Agreement.

### **Environmental Protection**

- 31) The Buyer represents and warrants that the Vessel is properly equipped, maintained and operated so as to avoid the escape, spillage and/or discharge of oil (a "spill") at the time of any delivery of Marine Fuel hereunder. If a spill does occur whilst Marine Fuel is being delivered by the Seller or its Supplier to the Buyer and/or the Vessel, then the Buyer and the Vessel shall promptly take such action as is reasonably necessary to remove the spill and mitigate the effects of such spill.
- 32) Notwithstanding the cause and/or responsibility for such spill, Seller and/or its Supplier is hereby authorised at their option, but for the sole account of the Buyer and/or the Vessel, to take such measures and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonably necessary to remove the oil and mitigate the effects of the spill. In the event that the Seller and/or its Supplier exercise their option to remove the spill and/or mitigate the effect of such spill, Buyer agrees to reimburse the Seller and/or its Supplier for all expenses incurred and to cooperate and render all necessary assistance as requested by the Seller and/or its Supplier.
- 33) All expenses, damages, costs, fines and penalties arising from a spill or any pollution caused thereby shall be the responsibility of and paid by the Buyer and/or the Vessel. The Buyer shall furnish to the Seller and/or its Supplier, photocopies of all documents requested by the Seller and/or the Supplier together with any information required concerning any spill counter measures, or any program for the prevention thereof, that is reasonably required by the Seller and/or its Supplier, or required by any law or regulation applicable at the Supply Port on the delivery date.

### **Force Majeure**

- 34) Neither the Buyer nor the Seller nor its Supplier shall be responsible for damages caused by force majeure or failure to perform in whole or in part, any obligation hereunder (other than the payment of money), or noncompliance with any of the terms of the Agreement if and only if such delay, failure or noncompliance is due to or results from an act of God, fire, flood, perils of the sea, war, civil war, civil commotion, terrorism, embargo, accident, strike, labour dispute, failure or shortage of barge service normally available to the Seller or its Supplier, breakdown of or damage to, or shortage in facilities used for production, refining, transportation or storage of Marine Fuel, or of any act in compliance with any request of any governmental authority or person purporting to act under such authority, or any similar causes whatsoever.
- 35) Notwithstanding the provisions of this clause, the Buyer shall not be relieved of any obligation to make payment of any sum due under the Agreement.

### **Notices**

- 36) All notices, statements or other communications to be given by the Buyer to the Seller or vice versa shall be sufficient if given in writing by registered airmail, courier or fax as follows;
- a) To the Buyer: at the address stated in the Special Terms or, if the Agreement is concluded by or through an agent of the Buyer, to the Agent.
  - b) To the Seller:  
METF Bunker Services Ltd  
C/O: Suite 7  
23A Villiers Street  
London, WC2N 6AR  
United Kingdom

**Assignment**

- 37) The Buyer may not assign any of its rights or obligations under the Agreement without the Seller's prior written consent. The Seller may, however, assign any of its rights and obligations hereunder without the Buyer's prior written consent.

**Governing Law**

- 38) This Agreement shall be governed by and construed in accordance with the procedural and substantive general maritime law of the United States of America before a court of competent jurisdiction in the State of New York. The Buyer submits to the jurisdiction of the United States Federal Court for the Southern District of New York. Notwithstanding the foregoing, the Seller has the right to take action to enforce its maritime lien in accordance with Clause 24 in any jurisdiction where the Vessel may be found. U.S. law shall apply with respect to the existence of a maritime lien, regardless of the country in which the Seller takes legal action.

**Miscellaneous**

- 39) To the extent that the General Terms are at variance with the Special Terms, the Special Terms will prevail.
- 40) The Agreement may not be modified, discharged or terminated except by an instrument in writing signed by the Seller and the Buyer.
- 41) Waivers of performance by one party of any of the obligations of the other party under the Agreement, or by default of such party of any of its obligations hereunder, shall not operate as a waiver of performance of any other obligations of such party or a future waiver of the same obligation, or a waiver of any future default.
- 42) The Agreement shall extend to, be binding upon, and inure to the benefit of the heirs, successors, administrators, legal representatives, and permitted assigns of the respective parties hereto.
- 43) The descriptive headings contained herein are for convenience only and shall not control or affect the meaning or construction of any provision of the Agreement.
- 44) The Agreement as defined, constitutes the entire understanding and agreement between the parties hereto and supersedes all prior oral or written agreements, representations and/or warranties.

October 2020