

PETROJAM LIMITED.

GENERAL TERMS AND CONDITIONS FOR THE SALE OF MARINE BUNKER FUELS BY BUNKER BARGE AND OR TANKER WAGON

VALID AS FROM 1ST JANUARY 2007

1. INTRODUCTION

- 1.1 This is a statement of the general standard terms and conditions (“General Terms and Conditions”) under which Petrojam Limited (“the Seller”) shall supply a Vessel with marine bunker fuels (“the Fuel”) via Bunker Barge and or Tanker Wagon.
- 1.2 These General Terms and Conditions shall apply to all offers, quotations, orders, agreements and all subsequent contracts of whatever nature regarding the supply of the Fuel to the Buyer, except where the parties otherwise agree in writing .
- 1.3 Without prejudice to Clause 1.2 above, each agreement with the Buyer for supply of the Fuel on every occasion will be specifically negotiated and set out in subsequent confirmation email of facsimile correspondence (“Confirmation Email/Fax”) by the Seller.
- 1.4 These General Terms and Conditions and the confirmation email/fax shall contain all the terms on which the Seller and the Buyer shall have agreed upon in relation to the sale of the Fuel and in the event of any conflict between these General Terms and Conditions and the terms of the confirmation Email/fax, the terms of the latter shall prevail.

2. 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 fulfilment, compliance or observance of these General Terms and Conditions or for the supply of the Fuel unless the context otherwise requires.

(b) Buyer - means the party/ies so described in the Confirmation Email/Fax together with any agent, principal associate, manager, partner, servant, parent, subsidiary, owner or shareholder thereof

(c) Vessel - means the vessel/ ship duly nominated to receive the Fuel as specified in the Confirmation Email/Fax

(d) Supplying Company - means the person/ company which physically supplies the Fuel 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 the Fuel is to be delivered as provided in the Confirmation Email/Fax, or as thereafter confirmed, advised or revised by the Seller or the Supplying Company.

(f) “Price” means the basic cost of the Fuel calculated by multiplying the unit price stated in the Confirmation Email/Fax by the quantity of product delivered to the Vessel

3. OFFERS & NOMINATION

- 3.1 An agreement for the supply of the Fuel by the Seller to the Buyer shall only be binding on the Seller upon receipt by the Buyer of the Seller’s Confirmation Email/Fax.
- 3.2 The Buyer shall provide to the Seller, in writing, all relevant information required for the due and proper delivery of the Fuel to the Buyer by the Seller, including the Vessel’s name, agents, Estimated Time of Arrival (ETA) and shall nominate the quantity and grade of the Fuel which shall be confirmed by the Seller in the Confirmation Email/Fax.
- 3.3 Any change to the above will be notified in writing by the Buyer to the Seller with such notice as is adequate to ensure delivery within the time period originally agreed.
- 3.4 In respect of quality or quantity agreed, the Buyer agrees to accept a 5% variation in same without consequences other than, where there is any variation in quantity supplied, there shall be a corresponding adjustment to the relevant invoice to the Buyer from the Seller.

4. DELIVERY

- 4.1 The time of delivery will only be binding on the Seller when all information necessary for the Seller to comply with its obligations hereunder, have been properly delivered to the Seller in accordance with the terms hereunder.
- 4.2 All deliveries are subject to the Vessel’s Master confirmation that weather conditions permit delivery in conformity with all relevant laws and regulations. The Seller shall not be held liable for any failure of delivery where, owing to no act or omission of the Seller, the Master determines that same cannot be conducted,

- 4.3 The Buyer shall provide the Seller, either directly or through its Buyer's agent, with at least 48 hours prior written notice (excluding weekends and holidays) of the Vessel's readiness to receive delivery and the exact required quantity of the Fuel. Such notice shall be deemed cancelled if the Vessel has not arrived within 2 days after the Vessel's earliest estimated lifting date, as previously notified by the Buyer. In such event, the Seller reserves the right to refuse to deliver the Fuel on the terms previously nominated or may, at its option, renegotiate the prices/quantities.
- 4.4 The quality and quantity of the Fuel delivered by the Seller shall be as agreed between the Seller and the Buyer and shall correspond with the Seller's written confirmation.
- 4.5 Delivery of the Products shall be effected in one or more consignments at the Point of Delivery by bunker barge and or tanker wagon as the Seller shall deem appropriate in the circumstances.
- 4.6 The Buyer shall ensure that the Vessel provides a free, safe and accessible side for delivery of the Fuel, that the Vessel tanks are clean and cargo worthy and shall be responsible for making all connections or disconnections and provide all necessary equipment to receive promptly each and every consignment of the Fuel.
- 4.7 The Buyer shall ensure that the delivery of the Fuel is received into the Vessel's appropriate bunker tank. The Seller shall not be liable to the buyer for any loss or damage whereby Co- mingling of fuel has taken place into the vessel's bunker tank.
- 4.8 The Seller shall not be liable to the Buyer for any loss or demurrage incurred by the Buyer or for any loss, damage or delay of the Vessel of any nature whatsoever due to congestion at the terminal, prior commitments of available barges or tanker wagons or any other reason.
- 4.9 In the event that the Vessel is not ready to accept delivery of the Fuel or if, for any reason, the Buyer causes delays to Seller's or Supplying Company's facilities in effecting deliveries, the Buyer shall pay demurrage at the Seller's or Supplying Company's established rates, and reimburse the Seller or the Supplying Company for all other expenses in connection therewith.
- 4.10 The Buyer shall be charged for all proven additional expenses incurred by the Seller in connection with the Buyer's failure to take delivery of the full quantity of the Fuel ordered by the Buyer, including transportation costs or the costs associated with selling the Fuel in a degraded form at a lower price than that applicable to the grade originally nominated by the Buyer.
- 4.11 The Seller's responsibility shall be deemed completed, and all risk, including loss, damage, deterioration, depreciation, evaporation, shall pass to the Buyer from the time the Fuel reaches receiving Vessel's permanent flange connection.
- 4.12 If, at any time, the Seller believes that there may be a shortage of supply of the Fuel and that it may be unable to meet the demands of all of its customer of the product, the Seller may, at its option, allocate its

available and anticipated supply among its customers in such a manner as it may determine in its sole discretion.

5. MEASUREMENT

5.1 Before commencement of delivery the Seller shall present, for written acknowledgement by the Master of the Vessel or his authorized representative, a bunker requisition form or similar document, duly signed by the Seller or its representative, which shall contain the quantities to be delivered and all information required for the ASTM/ ISO test method reference or any subsequent amendments thereof, including, in particular, the values for:

- Viscosity
- Density
- Sulphur content
- API Gravity

5.2 A complete quality certificate shall be presented to the Master of the Vessel or his representative by the Seller or Seller's representative.

5.3 Once the delivery is completed and the quantities measured, a bunker delivery receipt ("BDR") will be presented by the Seller to the Master or his representative to be signed and stamped as acknowledgement of the actual volume(s) received. The original copy is to be retained by the Master of the Vessel and all other copies to be given to the Seller. The BDR shall include the following information:

- Name of vessel, buyer and place of delivery
- delivered quantity
- API Gravity
- Density
- Sulphur content
- Viscosity

5.4 In the event the Master of the Vessel does not agree with the quantity or any other matter concerning the Fuel or its delivery, he shall issue the Seller with a letter of protest prior to the Vessel's departure from the Point of Delivery.

5.5 Should the Master of the Vessel or his representative fail or decline to acknowledge the quantities as set out in Clause 5.4 above, the measurements of the quantities provided by the Seller shall be final, conclusive and binding and the Buyer shall be deemed to have waived any and all claims regarding variance.

•

6. PRODUCT QUALITY AND QUANTITY DETERMINATION

- 6.1 The Fuel shall meet specifications as agreed by the parties. The Buyer shall be solely responsible for the selection and acceptance of the Fuel tendered for delivery to the Vessel.
- 6.2 The Seller warrants that the Fuel shall be of a homogeneous and stable nature, shall comply with the grades nominated by the Buyer, unless otherwise agreed in writing by the parties.
- 6.3 The Fuel shall in all respects comply with ASTM /ISO Standards.
- 6.4 The quantity shall be determined from the gauge or metre of the delivering bunker vessel OR in the case of delivery via tanker wagon, from the loading ticket which bears a T-bar reading.
- 6.5 The Buyer and the Seller shall both have the right to be present or represented when measurements are taken. No quantity dispute will be accepted should the Vessel's representative refuse to witness the delivery of the Fuel.
- 6.6 Fuel to be delivered under this contract shall be measured and calculated with the ASTM –API Petroleum Measurement Tables which are recognized worldwide.
- 6.7 Any surveyors appointed by the Buyer shall be subject to the Seller's approval.

7. SAMPLING

- 7.1 The Seller shall arrange for the collection of a representative sample of the Fuel which is to be supplied.
- 7.2 The sample shall be drawn using a mutually accepted sampling device which shall be constructed, secured and sealed in such a way so as to prevent the sampling device and the sample from being tampered with throughout the transfer period.
- 7.3 The sample shall be taken from a mutually agreed point closest to the receiving Vessel's bunker manifold and collected throughout the entire bunkering operation
- 7.4 The sample shall be thoroughly mixed and carefully divided into four (4) identical sub-samples. Each sub- sample container shall be securely sealed and labelled with the Vessel's name, product name, delivery date, place and point of sampling and seal number. The label shall have the Vessel's stamp and shall be signed by the Seller and the Buyer or their authorized representative.
- 7.5 Two (2) samples shall be retained by the Seller for a minimum of (60) days after delivery unless the Buyer requests in writing that a different period is required. The other (2) samples shall be retained by the Vessel, one of which shall be specifically labelled Marpol

8. RESTRICTIONS TO USE

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

9. PRICES

- 9.1 The Price payable by the Buyer to the Seller is that stated by the Seller on the Confirmation Email/Fax for each grade of the Fuel, and it shall remain effective until the completion of delivery.
- 9.2 The Price is valid for a 5 days range commencing two (2) days before and ending two (2) days after the Vessel's earliest ETA (or as per Nomination Email/Fax).

10. FURTHER COSTS

Without prejudice to Clause 4, the Buyer shall provide the Seller with at least twenty four (24) hours written notice in the event that the Vessel is unable, for any reason, to receive the nominated Fuel. Failure to provide such notice shall entitle the Seller to charge the Buyer with cancellation charges of Four Hundred United States Dollars (US\$400.).

11. PAYMENT AND FINANCIAL RESPONSIBILITY

- 11.1 The price being charged by the Seller for the Fuel together with extra charges, if any, shall be paid by the Buyer to the Seller in full without any set off or counterclaim, within thirty (30) calendar days from the date of delivery or as otherwise agreed and always according to Seller's payment instructions and in the currency shown in the relevant invoice. Should the due date for payment fall on Saturday, Sunday or Public Holiday in Jamaica, then payment should be received by the previous banking day.
- 11.2 Unless otherwise agreed, payment shall be made by irrevocable telegraphic transfer and all banking charges will be for the Buyer's account. Delivery documents shall be provided to the Buyer wherever possible; provided however that payment shall not be conditional until upon receipt of such documents.
- 11.3 Overdue payments will attract a financial charge of 18% per annum on the outstanding sum calculated on a daily basis from the due date until the full payment is received by the Seller's bank.
- 11.4 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 with immediate effect by giving notice to this effect to the Buyer.
- 11.5 Where the Fuel is supplied to a Vessel, the parties understand and acknowledge that in addition to any other security, the Agreement is entered into and the Fuel is 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 price of the Fuel being supplied pursuant hereto. The Buyer, if not the owner of the Vessel, hereby expressly warrants that he had 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 Confirmation Email/Fax to the Buyer.
- 11.6 No disclaimer stamp of any type if applied on the delivery receipt will change or waive the Seller's rights against the Vessel, or waive the Vessel's ultimate responsibility for the debt incurred through the Agreement.
- 11.7 All payments made by the Buyer shall be credited by the Seller towards any expenses owed by the Buyer as the Seller sees fit.
- 11.8 All costs borne by the Seller in connection with any sums owed to it by the Buyer, including collection costs, shall be for the account of the Buyer.

12. TITLE

- 12.1 Title in and to the Fuel delivered and/or property rights in and to such product shall remain vested in the Seller until payment has been received by the Seller of all amounts due in connection with the respective delivery.
- 12.2 In the event that the Fuel has been mixed with other products on board the Vessel, the Seller shall have the same rights as above to such part of the mixed product as corresponds to the quantity of Product delivered.

13. INDEMNITIES

- 13.1 The Buyer agrees to indemnify the Seller against all damages and/or all costs suffered or otherwise incurred by the Seller or liabilities arising from a breach of these General Terms and Conditions and/or fault or neglect of the Buyer, its agents, servants, (sub)contractors, representatives, officers, crews and/or other people whether or not onboard of the respective Vessel(s) and use of the Fuel after delivery by the Seller. Furthermore, the Buyer undertakes to hold the Seller harmless in the event that any third party institutes a claim of any kind against the Seller with direct or indirect relation to any agreement regulated by these General Terms and Conditions.
- 13.2 In the event that these General Terms & Conditions are 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 the principal hereunder.
- 13.3 In no event shall the Seller shall not be liable for damages of whatever nature or for the delay of delivery of the Fuel whether occasioned by the Seller, its servants, agents or (sub)contractors.
- 13.4 A liability of the Seller for consequential damages is excluded herein. In any event and notwithstanding anything to the contrary herein, the liability of the Seller shall, under no circumstances, exceed the invoice value of the Fuel supplied under the relevant agreement to the relevant Vessel. Further, in relation to any indemnity given by the Seller herein, the Buyer undertakes and guarantees that the Fuel supplied by the Seller hereunder shall not be used by the Buyer in any way other than for the bunkering requirements of the Vessel to which it is being supplied.

14. CLAIMS

- 14.1 Claims concerning the quality of the Fuel supplied shall be submitted to the Seller in writing within 30 days after 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.
- 14.2 In the event a claim is raised as to quality of the Fuel, the samples drawn in accordance with Clause 7.4 and retained by the Seller pursuant to Clause 7.5 above, shall be deemed final and conclusive evidence of the Fuel provided and the parties hereto shall have the quality of the relevant sample of the Fuel retained by the Seller analyzed by a mutually agreed, qualified and independent laboratory with costs to be shared equally between the Buyer and the Seller. The results of the analysis shall be binding on both parties.
- 14.3 It is a precondition to the payment of any compensation by the Seller that all sums due to the Seller from the Buyer are first paid and settled.

15. FORCE MAJEURE

- 15.1 All orders hereunder shall be filled with reasonable promptness. Neither the Seller nor the Buyer shall be held responsible for any losses resulting from the non-fulfilment or delay in fulfilment of any terms or provisions hereof where such delay or non-fulfilment is a consequence of (a) 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 (b) when the supply of the Fuel or any facility of production, manufacture, storage, transportation, distribution or delivery contemplated by the Seller's supplier is interrupted, unavailable or inadequate for any cause whatsoever is not within the immediate control of the Seller or the Seller's supplier including where same is caused by labour disputes, strikes, governmental intervention, wars, acts of enemies, strikes, lockouts, fires, floods, storm,

- adverse weather, acts of God, arrest or restraint of princes, perils of the sea, accidents or navigation, breakdowns or injury to ships, failure of or interference with supply from Seller's 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.
- 15.2 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 Fuel, then 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 good any deliveries omitted in accordance with this section.
- 15.3 If the Buyer exercises reasonable diligence, the Buyer shall not be liable for failure to receive the particular delivery of the Fuel if prevented therefrom by an event of *force majeure*.
- 15.4 In the event that the Seller, as a result of an event of *force majeure*, can only deliver a superior grade of the Fuel, then the Seller shall be entitled to offer the said grade to the Buyer and the Buyer must accept delivery thereof and pay the applicable price.

16. ENVIRONMENTAL PROTECTION

If a spill occurs while the Fuel is being delivered hereunder, the Buyer shall promptly take such action as is reasonably necessary to remove the spilled Fuel and minimize the effects of such spills. The Seller is hereby authorized, at its option, upon giving 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 Fuel and minimize the effects of such spills. The Buyer shall cooperate and render such assistance as is required by the 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, where same results from the negligent, reckless or wilful act or omission of the party, its agents, servants or (sub)contractors. 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 liability. The Buyer shall bear the burden of proving that the acts of the Seller resulted in the spilled Fuel.

17. BREACH/CANCELLATION

The Seller shall have the option to immediately cancel the agreement for the supply of the Fuel to the Buyer and to charge the Buyer the expenses thereby incurred, without prejudice to its rights of indemnification, where:

- 17.1. The Buyer fails to accept the Fuel in whole or in part at the Point of Delivery;
- 17.2 The Buyer is in breach of any of the provisions of these General Terms and Conditions, including to provide requisite security; and

17.3 When, before the date of delivery, it is apparent, in the opinion of the Seller, that the financial position of the Buyer entails a risk to the Seller.

18. APPLICABLE LAW AND JURISDICTION

Except as otherwise expressly agreed to in writing, these General Terms and Conditions and the entire agreement between the parties for the supply of the Fuel, its performance and enforcement is governed by Jamaican Law. All disputes arising in connection with this agreement or any agreement resulting hereof shall be referred to the Courts of Jamaica. 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 alia, for the purpose of securing payment of any amount due to the Seller from the Buyer.