

# Terms & Conditions

## General terms and conditions of sale

These terms and conditions are applicable to each and every sale of marine fuel and or gas oil and or lubricants sold by RIVIERA MARINE S.A.M., 25 Boulevard Albert 1er, MC 98000, Montecarlo, Principality of Monaco (hereinafter "seller") to all parties purchasing the product (hereinafter "buyer"). These terms and conditions shall override any other or different terms or conditions stipulated, incorporated or referred to by buyer, whether in his purchase order or in any negotiation, unless otherwise agreed to in a subsequent writing. No amendment to these terms and conditions shall be effective unless agreed in writing by both the buyer and the seller.

### 1) Definitions

Marine fuel is defined as a commercial grade of bunker fuel oil and/or marine gas oil or their mixtures offered at the time and place of delivery by seller.

### 2) Vessel's nomination

- A.** Buyer shall give seller at least seven (7) days prior written notice of the scheduled date of arrival of his vessel specifying the name of the vessel, vessel's agent, approximate date of arrival, bunkering port, grade and quantity of marine fuel and buyer's address for invoicing.
- B.** Buyer shall ensure that either the master of a nominated vessel or vessel's agent gives not less than two (2) working days advance notice to the seller's local office at each delivery port, which notice shall identify the buyer and specify the place where and the time when delivery is required. The master or the vessel's agent shall give immediate notice to seller of any delays in time of arrival. In case of failure to arrive at the scheduled date, seller will use reasonable efforts to reschedule buyer's vessel but shall not be responsible for any delays or for any damages resulting therefrom.
- C.** If any nomination is given by an agent for a buyer hereunder, then such agent shall be independently liable, as if it were the principal, for the performance of all the obligations hereunder. Should the quantity requested locally exceed by ten percent (10 %) the nominated quantity in any grade, buyer shall give seller fax/telex authorization to supply such increased quantity.
- D.** Seller does not warrant nor shall be deemed to warrant the safety of any place (s) or facility (ies) where buyer's vessel loads and assumes no liability in respect thereof, except for loss or damage demonstrably caused by his failure to exercise reasonable care.

### 3) Environmental protection

If a spill occurs while marine fuels are being delivered, buyer shall promptly take such action as it is reasonably necessary to remove the spilled marine fuels and to mitigate the effects of such spills. Buyer shall cooperate and render such assistance as is required by seller in the course of such action. 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 in HSE Data shall not excuse the buyer from its obligations under this article.

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 article. Physical supplier complies with marpol annex vi regulations 14 and 18, unless otherwise advised.

### 4) Quality and quantity determinations

**A.** Buyer shall have the responsibility for the selection and acceptance of marine fuels. The quality of each grade of marine fuel shall be the usual production quality of that grade being sold by seller at the time and place of delivery. The buyer shall have the responsibility for any determination of compatibility of marine fuel purchased from seller with marine fuel already on board the vessel.

**B.** The quality and quantity of the marine fuel shall be determined by seller's personnel, using seller's equipment according to seller's official methods, and in any case according to refinery/deposit's tickets, the custom's certificate and the bunker receipt. Buyer may be present or represented when such quality determinations and quantity measurements are taken, but whether or not buyer or buyer's representative accepts or declines such invitation, seller's determination of quality and quantity shall prevail and be binding.

**C.** Seller shall draw at least two representative sealed samples of each grade of marine fuel delivered. Buyer may attend or be represented during such sample taking in which event he shall countersign each sample and may retain one sealed and countersigned sample. The sealed samples shall be deemed conclusive and binding as to the quality of the delivered marine fuel.

**D.** Seller or seller's agent may inspect buyer's vessel in the event of any complaint, whether at the request of buyer or otherwise. Such inspection or any analysis made in connection therewith shall be made entirely without any obligation on behalf of seller to consider or act upon any claim or complaint by buyer or otherwise and shall be entirely without prejudice to seller's position.

**E.** If present at loading, buyer or buyer's representative shall furnish to seller's personnel such ship's data as available pertaining to the accuracy of the quantity and quality determinations initially made (e.g. dryness certificate, ship's ullage before and after loading, fuel oils retained on board from tank washing or cleaning or for other reason, vessel experience factors and sample from the cargo tanks).

**F.** Buyer waives all claims against seller with respect to any claimed shortage in quantity, unless buyer or buyer's representative shall give written notice both to the terminal operator and to the seller at the time of loading. Seller shall also be notified in writing of any claimed defect in the quality immediately after such alleged defect is discovered. Each of the foregoing preliminary notices shall be followed by a formal written

notice of claim to seller containing all details necessary to allow evaluation of the claim. If buyer fails to give any initial notice or if the formal written notice is not received by the seller within seven (7) days after delivery of the marine fuel to vessel, any claim shall be conclusively deemed to have been waived.

**G.** Claims, if any, are to be settled separately from payment of the invoice, which, in all cases, has to be honoured in full without delay.

## **5) Delivery**

**A.** Seller will do his best to bunker the vessels of the buyer as promptly as possible, but shall bear no liability for any demurrage, detention or any other damage due to any delay beyond his force, including but not limited to delay caused by weather (whether usual or unusual), congestion at the terminal or prior commitments of available barges or existing facilities, howsoever caused.

**B.** Buyer shall without charge immediately furnish clear and safe berth alongside vessel's receiving lines and shall render all other necessary assistance to the barge effecting delivery on 24 hours per day basis.

**C.** Buyer shall make all connections and disconnections between the delivery hose and vessel's intake pipe, or furnish steam, if necessary, and provide sufficient tankage equipment to receive promptly all deliveries.

**D.** Seller shall in no event be liable for any damage, demurrage, detention or delays resulting from causes beyond his control or avoidable by due care on the part of the buyer or his vessel.

**E.** The delivery shall be made during normal working hours unless required and available at other times (holidays, Saturdays and Sundays) and permitted by port regulations, in which event buyer shall reimburse seller for any and all additional expenses incurred in connection therewith, including overtime.

**F.** All deliveries shall be deemed complete and title and risk of loss shall pass to buyer when the marine fuel has passed the flange connecting the delivery facilities provided by seller. Thereafter, seller shall in no event be responsible nor liable for any loss or damage.

**G.** Buyer shall indemnify seller against any and all damages and liabilities arising out of or resulting from any act(s) or omission(s) of buyer, his servants, agents, vessel's officers or vessel's crew in connection with marine fuel delivery. Indemnification shall include all costs, reasonable attorney's fees and other damages, including, but not limited to, the cost of compelling buyer to comply with these terms and conditions.

**H.** If buyer, his agents, servants, vessel's officers or vessel's crew cause any delay to seller's facilities in effectuating deliveries of fuel oils, buyer shall pay demurrage to seller at seller's established rates and reimburse seller for any and all other expenses in connection therewith.

## **6) Price**

**A.** Price will be that which has been agreed between buyer and seller at the time of concluding the contract and confirmed in writing by seller and will be valid for deliveries at the agreed dates. **B.** Price excludes any local government duties or taxes that may be levied. Such duties or taxes, if any, shall be paid in addition to stipulated price.

## 7) Payment

- A.** Buyer shall effect payment in full (without any deduction, discount or setoff whatsoever) in cleared funds in u.s. dollars (or euros if stated into the bunker nomination) to seller's account at a bank designated by seller. Payment shall be deemed to have been effected on the date when full amount of seller's invoice is credited to seller's account. Buyer may not at any time or for any reason whatsoever assert a setoff or invoke any counterclaim or other right as a basis for withholding payment.
- B.** When marine fuel is supplied on a credit basis, full payment shall be received by the due date specified in seller's fax/telex invoice. If the established credit period expires on a Saturday or a Sunday, the buyer shall arrange payment on the Friday, or on the immediately preceding day when banks are open. Seller will in due course provide buyer by ordinary mail with a commercial invoice and a copy of the bunker receipt.
- C.** Seller's fax/telex invoice shall be based on advice as to the quantity delivered and of other charges and surcharges if incurred and payment made pursuant to (a) above shall be subject to such subsequent adjustment as may be necessary on receipt by the seller of further delivery details.
- D.** If marine fuel is supplied on a credit basis and full payment is not received by the due date as per seller's invoice, buyer shall immediately be in default. A service charge of 2 pct pro-rata per month will be assessed on all late payments and shall be payable as subsequently directed by seller. This shall be in addition to any other remedies which seller may take by reason of such default.
- E.** If buyer is in default of full payment, if his financial condition in the seller's opinion becomes impaired, or if proceedings in bankruptcy or insolvency are instituted by and or against buyer, or in the case of liquidation or dissolution of buyer, any and all postponed or deferred payments including interest thereon, shall become immediately due and payable and seller reserves the right to offset same against debts to buyer or his affiliates. Vessel's owners are the final responsible for payment in case of default by buyers.
- F.** Notwithstanding anything to the contrary expressly or impliedly elsewhere herein, the seller (without prejudice to its other rights) may at its sole discretion terminate the contract forthwith on notifying the buyer either orally (confirming such notification in writing) or by notice in writing in the event that: (i) the seller has reasonable grounds to believe that the buyer will not honour his obligations under the contract; or (ii) a liquidator, trustee in bankruptcy, receiver or receiver and manager or equivalent officer is appointed in any jurisdiction in respect of any assets or undertaking of the buyer or any of its associated companies, or the buyer or any associated company enters into an arrangement or composition with its creditors, or any similar appointment, arrangement or composition is made under any applicable law, or if the seller has a reason to anticipate any such appointment arrangement or composition.
- G.** Ownership of bunkers. It is well understood that the seller remains the sole owners of bunkers supplied until payment of the relevant bunker invoice is fully received by their bankers.

## 8) Force majeure

No failure or omission by the seller or the buyer to carry out or observe any of these conditions shall give the right to rise any claims against that party or be deemed to be a breach of these conditions if the same shall arise out of causes not reasonably within the control of that party, whether or not foreseen, including (but not limited to) such causes as labour disputes, strikes, governmental intervention, the seller's response to the

insistence or request of any governmental body or person purporting therefore, war, civil commotion, fire, flood, accident, storm, earthquake or any act of god. This provision however does not excuse the buyer from his obligation to make payment for all amounts due to the seller on account of marine fuel previously delivered hereunder.

## **9) Notices**

Unless otherwise provided, all notices, statements and other communications, including invoices to be given, submitted or made hereunder by either party to the other, shall be sufficiently given in writing and sent by post or by telegraph, fax/telex or cable to the address designated by buyer for invoicing or to the address designated by seller. Either party may change its designated address by giving fifteen (15) days prior written notice of its address to the other party.

## **10) Seller's liability**

The seller shall not be liable for any consequential, indirect, incidental, punitive or special losses or special damages, arising out of or in any way connected with its performance of, or failure to perform the contract howsoever arising, whether as a result of breach of this agreement, negligence, gross negligence, or wilful default. This includes, without limitation, loss of profit or anticipated profit, loss of time or hire, loss of schedule costs of substitute vessel(s), loss related to the loss of operational use of vessel, physical loss or damage (in whole or in part) of or to cargo, loss of contract(s) or losses associated with business interruption. Nothing in this sub-section (d) shall exclude or limit seller's liability for death or personal injury caused by seller's negligence.

## **11) Application of these general terms and conditions**

- (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, noncompliance 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, including this terms and conditions, is invalid, void or unenforceable, this will not affect the validity, legality or unenforceability of any other provision of the contract.
- (d)** without excluding any liability for fraudulent misrepresentation, this agreement constitutes the entire agreement between the seller and buyer in relation to its subject matter.

## **12) Rights of third parties**

Except for any provision of these terms and conditions 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 Contract (Right 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.



### **13) Governing law and settlement of disputes**

**A.** These general terms and conditions, the contract, its performance and enforcement, except as otherwise expressly agreed to in writing, shall be governed by English law. Buyer expressly accepts and submits any disputes arising out of or in connection with the contract to the jurisdiction of the English Courts and waives any claim for security for costs in case of legal proceedings. However, the seller also has the option to file and pursue his claims before any other jurisdiction (including arbitration in London under the LMAA rules) as he may deem fit or appropriate in order to secure or recover his claims.

**B.** These general terms and conditions contain the entire agreement of the parties with respect to the subject matter hereof and there are not other promises, representations or warranties affecting it.

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