



# 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/e-mail 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.
- E.** Buyer warrants that any vessel nominated by buyer to receive marine fuels shall at the time of nomination and through to completion of delivery of all marine fuels:

- (a) have in place full Protection and Indemnity (“P&I”) insurance with a recognised P&I Club; and
- (b) have in place insurance cover for oil pollution for a minimum amount of US\$ five hundred million (US\$500,000,000); and
- (c) have in place coverage without limitation for injury to or death of the Master and crew, wreck removal, full collision liability and cargo liabilities; and
- (d) be flagged and in class and in all respects compliant with any requirements of the flag country and classification society and have on board all classification certificates.

### **3) Environmental protection**

- A.** 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.
- B.** Buyer shall indemnify and hold seller and its representatives harmless against any damages, expenses, claims or liabilities of whatever nature, unless such spill or discharge is proven to be caused solely by seller’s negligence.
- C.** 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.
- D.** 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.** Seller does not provide any guarantee or warranty, whether express or implied, as to the merchantability, satisfactory quality, fitness or suitability of the marine fuel for any particular purpose.
- C.** 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 final and binding, save for fraud or manifest error.
- D.** Seller shall draw at least four (4) identical 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. The aforementioned samples shall be securely sealed and labelled by seller and at least two (2) of these representative samples shall be given to buyer, one (1) of which is for MARPOL compliance purposes. Two (2) samples shall be retained by seller or its representative for at least twenty-one (21) days following the date of delivery in a safe place for subsequent verification of the quality thereof, if required. Samples other than those drawn by seller shall not be admissible for the purposes of determining quality, notwithstanding that these samples may have been signed by an agent or representative of seller. The sealed samples shall be deemed conclusive and binding as to the quality of the delivered marine fuel.
- E.** 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.
- F.** 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).
- G.** Buyer or buyer's representative shall give written notice both to the terminal operator and to the seller at the time of loading of any claimed shortage in quantity. This notice shall be followed by a formal written notice of claim to seller containing satisfactory documentary evidence or relevant information to allow evaluation of the claim, within seven (7) days of the date of delivery, failing which such claim shall be conclusively deemed to have been waived and absolutely time-barred.
- H.** Seller shall also be notified in writing (such notice to be accompanied by supporting documentary evidence) of any alleged defect in the quality of the marine fuels delivered, within seven (7) days after delivery of the marine fuel to vessel, failing which, such claim shall be conclusively deemed to have been waived and absolutely time-barred.

- I. In the event a claim is raised pursuant to paragraph (H) above, the Parties shall have the quality of the marine fuel analysed by a mutually agreed, qualified and independent laboratory. If the Parties cannot agree on a laboratory within ten (10) calendar days of seller receiving such claim, seller may select a laboratory. Unless otherwise agreed, the expenses of the analysis shall be for the account of the party whose claim is found wrong by the analysis.
- J. Without prejudice to paragraphs (G) to (I) above, buyer shall take all reasonable measures to eliminate or minimise any costs associated with an off-specification or suspected off-specification supply of marine fuels.
- K. 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 shall use all reasonable efforts 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. If buyer cancels his order or fails to take delivery, in whole or in part, of the quantity to be delivered pursuant to the contract, buyer shall pay in full the contract price for the quantity set out in the relevant contract and buyer shall indemnify seller and hold seller harmless against any and all losses suffered and liabilities incurred as a result of buyer's failure, including, as the case may be, but not limited to barge costs, storage, demurrage, pump-back fees, lost profit and hedging costs.
- C. 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.
- D. Buyer shall be responsible to ensure that the delivery hose is properly connected to the vessel's manifold prior to the commencement of delivery and shall make all connections and disconnections between the delivery hose and vessel's intake pipe, including supplying any necessary adapter or other equipment, or furnish steam, if necessary, and provide sufficient tankage equipment to receive promptly all deliveries.
- E. 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.
- F. 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.

- G.** All deliveries shall be deemed complete 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. Title to the marine fuel shall pass to buyer upon full payment for the value of the marine fuels delivered, pursuant to the terms of clause 7. Until such full payment has been made, seller shall have a lien over the vessel and her bunkers for the value of the marine fuels delivered.
- H.** 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.
- I.** 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 and all additional charges, including but not limited to wharfage charges, barging charges including demurrage or other similar charges, mooring charges or port duties, any overtime charges incurred if delivery takes place outside of regular working days and hours at the port of delivery (if such delivery is permitted by port regulations), local government duties or taxes that may be levied. Such duties or taxes, if any, shall be paid by buyer 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/e-mail 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/e-mail 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. All late payments shall entitle the seller to interest at the rate of 2 pct pro-rata per month. Such default interest shall be compounded on a monthly basis for so long as amounts remain outstanding. This shall be in addition to any other remedies which seller may take by reason of such default.
- E.** If buyer's credit is deemed by seller to be impaired or unsatisfactory, seller may (without prejudice to its other rights) require buyer at seller's option either to pay cash before delivery, or to provide security satisfactory to seller. In the event the buyer fails to comply with seller's requirement, seller shall have no obligation to make delivery and may terminate the contract by giving notice to this effect to buyer.
- F.** If buyer, or his affiliates, is in default of full payment, if his, or his affiliates', financial condition in the seller's opinion becomes impaired, or if proceedings in bankruptcy or insolvency are instituted by and or against buyer, or his affiliates, or in the case of liquidation or dissolution of buyer, or his affiliates, any and all postponed or deferred payments including interest thereon, shall become immediately due and payable and all grace periods which applied to such payment obligations shall become null and void. Without prejudice to the above, 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.
- G.** 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.
- H.** 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. Where a force majeure cause (as defined in this Clause) hinders, delays or prevents the performance of the parties' obligations under the contract, and such cause continues for a continuous period of more than one (1) month, the Seller may terminate the affected delivery(ies) by written notice to the buyer, provided that the seller shall be indemnified by the buyer in respect of any costs and/or expenses whatsoever he incurred in relation to the delivery(ies).

## 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, fax or e-mail 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.

Any such notice or communication above shall be deemed to have been received at the time of delivery (or the time of transmission for emails).

## 10) Seller's liability

- A. 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 (whether such losses are direct or otherwise).
- B. The liability of seller for any loss, damage, claim or other expenditure arising out of or in connection with the failure by seller to perform its obligations under this contract shall not exceed and shall be limited to:
- i. the removal at a reasonable location to be agreed between seller and buyer of any off-spec marine fuels delivered, and either the replacement by seller of such marine fuels, or reimbursement of the cost of such marine fuels; and
  - ii. the reasonable repair costs of any components that are physically damaged as a direct result of using any off-spec marine fuels supplied by seller; and
  - iii. those losses, damages, claims or expenses arising from the death or personal injury to any person caused by seller's sole negligence.
- C. Seller shall not be responsible for any claim arising from commingling of marine fuels delivered by seller with other fuel aboard the vessel.

D. Seller's maximum aggregate liability to buyer under or in connection with any delivery howsoever arising shall not exceed in aggregate the price payable by buyer for such delivery.

## **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.

(e) Assignment of any right or delegation of any obligation hereunder by either party without the other party's prior written consent shall be void.

## **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 to the exclusion of any other law which may be imputed in accordance with choice of law rules applicable in any jurisdiction. 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, 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.

#### **14) Sanctions**

- A.** Buyer warrants and represents that the vessel is employed at all times in full compliance with all trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism and similar laws, regulations, decrees, ordinances, orders, demands, requests, rules or requirements issued or enacted by the United States of America, the United Nations, the European Union and/or Singapore ("Trade Sanctions").
- B.** In particular, Buyer warrants and represents that:
- i.** neither buyer nor the vessel are included on the Specially Designated Nationals and Blocked Persons List published and amended from time to time by OFAC or the equivalent lists published by the European Union and Singapore (collectively, "Sanctions Lists");
  - ii.** neither buyer nor the vessel are owned or controlled or acting for or on behalf of any individual or entity which is included on any Sanctions List;
  - iii.** no individual or entity with any interest in any cargo on board the vessel is included on any Sanctions List;
  - iv.** the vessel will not be chartered to any entity in breach of any Trade Sanctions; and
  - v.** every cargo carried on board the vessel can be loaded, carried and discharged without infringing any Trade Sanctions.
- C.** Buyer shall at the request of seller, provide bills of lading, seaway bills or other applicable documentation evidencing carriage of any cargo on board the vessel.
- D.** Notwithstanding anything contrary to this Clause, seller shall not be obliged to perform any obligation otherwise required by the contract (including without limitation an obligation to perform, deliver, accept, sell or receive monies to, from, or through a person or entity, or engage in any other acts) if this would be in violation of, inconsistent with, or expose seller to any punitive measure whatsoever under any Trade Sanctions.
- E.** Where any performance by buyer would be in violation of, inconsistent with, or expose seller to any punitive measures whatsoever under any Trade Sanctions, buyer shall, as soon as reasonably practicable, give written notice to seller of its inability to perform. Once such notice has been given buyer shall be entitled:
- i.** immediately to suspend the affected obligation until such time as he may lawfully discharge such obligation; and/or



- ii. where the inability to discharge the obligation continues (or is reasonably expected to continue) until the end of the contractual time for discharge thereof, to a full release from the affected obligation, provided that where the relevant obligation relates to payment for marine fuels which have already been delivered, the affected payment obligation shall remain suspended until such time as buyer may lawfully resume payment (without prejudice to seller's entitlement to further relief including but not limited to interest or any damages for breach of contract, penalties, costs, fees and expenses).
- F. Buyer shall be liable to indemnify seller against any and all claims, including return of any payment, losses, damage, costs and fines whatsoever suffered by seller resulting from any breach of warranty as aforesaid and in accordance with the contract.

*Last update – May 2021*