

# GENERAL TERMS AND CONDITIONS FOR MARINE LUBRICANTS



Effective November 1, 2014 the following terms of sale and supply for marine lubricants shall constitute the General Terms and Conditions ("General Terms") of the World Fuel Services Corporation Marine Group of companies (collectively, "World Fuel Services") headquartered at 9800 N.W. 41st Street, Suite 400, Miami, Florida 33178, which includes all subsidiaries and affiliates of World Fuel Services Corporation who have sold, are selling or will sell marine lubricants and related services ("Marine Lubricants"), whether or not in existence on the effective date.

Unless otherwise agreed in writing, these General Terms shall apply to every sale of Marine Lubricants entered into between any World Fuel Services entity as seller and any buyer of such Products. These terms supersede all terms outlined in any other World Fuel Services General Terms and Conditions which may be or may have been previously applied to the sale of Marine Lubricants by any World Fuel Services entity.

## 1. **Definitions:** Unless the context otherwise demands:

"Buyer" means the party requesting the Seller either to sell and deliver to it or the Owner, or to arrange for the sale and delivery to it or the Owner whichever is applicable, Marine Lubricants.

"Confirmation" has the meaning attributed to it in section 2.

"Delivering Company" means a party requested by Seller to deliver to the Buyer or the Owner on Seller's behalf.

"Delivery" means the delivery of Marine Lubricants to a Buyer's or Owner's vessel at a Delivery Port. "Delivery Port" means the port or place at which Marine Lubricants are delivered to a vessel.

"Energy Institute" means the leading professional body for the energy industries which was created in 2003 by the merger of the two key energy organizations - the Institute of Petroleum and the Institute of Energy - and which is based in London.

"Nomination" has the meaning attributed to it in section 2.

"Owner" means the party on whose behalf the Buyer is acting for and is the registered owner of the vessels with legal and beneficial ownership.

"Pre-delivery Check List" means the check list prepared by Seller and signed by or on behalf of Seller (or the Delivering Company) and the Buyer to confirm agreement on the conditions and procedures under which physical delivery of the Marine Lubricants shall take place.

"Pollution Event" has the meaning attributed to it in section 8.7(a).

"Prohibited Country" means (i) any country which at the time of disposal is declared or is declared an embargoed destination by the government(s) of the United States of America, the European Union or the country in which the Marine Lubricants are produced or from which the Marine Lubricants are exported; or which is a destination prohibited by the terms on which Seller has acquired the Marine Lubricants; and (ii) (without prejudice to subparagraph (i)) shall include the countries outlined in the Confirmation and/ or any other countries as may be advised from time to time by the Seller in its discretion.

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“World Fuel Services Affiliate” means any company which is from time to time directly or indirectly controlled by World Fuel Services Corporation or the Seller. For this purpose:

- (a) a company is directly controlled by another company or companies if that latter company beneficially owns or those latter companies together beneficially own fifty per cent or more of the voting rights attached to the issued share capital of the first mentioned company;
- (b) a company is indirectly controlled by another company or companies if a series of companies can be specified, beginning with that latter company or companies and ending with the first mentioned company, so related that each company of the series (except the latter company or companies) is directly controlled by one or more of the companies earlier in the series.

“Ship’s Receipt” has the meaning attributed to it in section 9.

## **2. Nominations and Confirmations:**

**2.1** The Buyer or his agent shall, by fax, email or the Seller’s designated web portals, give the Seller or its designated representative notice (a “Nomination”) of a requirement by a vessel for delivery of Marine Lubricants specifying grades, quantities, method of delivery and expected date of arrival at a Delivery Port. Each sale of Marine Lubricants shall be confirmed by email, fax or other writing from the Seller to the Buyer (“Confirmation”). The Confirmation shall incorporate these General Terms by reference so that the General Terms thereby supplement and are made part of the particular terms set forth in the Confirmation. The Confirmation and the General Terms shall together constitute the complete and exclusive agreement governing the transaction in question (the “Transaction”). No other prior agreements or understandings, whether verbal or written, shall apply unless specifically referenced in the Confirmation. In the event of an inconsistency between the particular terms of the Confirmation and the General Terms, the Confirmation shall control for the purpose of that particular Transaction with the exception of Sections 7 and 18 below, which can only be modified by a mutually signed writing between Buyer and Seller.

**2.2** Unless otherwise agreed, a Nomination shall always allow the minimum number of working day’s notice as indicated in the Port Services Guide. If any circumstances arise which prevent the Seller or its Delivering Company from making a delivery then the Buyer shall be informed. The Seller or its Delivering Company will make reasonable efforts to satisfy the Nomination but shall otherwise have no liability.

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- 2.3** If the vessel has not arrived at the Delivery Port within ten days after the expected date of arrival notified pursuant to section 2.1, the Nomination will be considered as cancelled by the Buyer. The Buyer shall, in addition to any liability under these terms and conditions, be liable to the Seller for any expense incurred by the Seller or its Delivering Company as a result of the Nomination. If the vessel arrives earlier than the expected date of arrival notified pursuant to section 2.1, the Seller shall exercise reasonable efforts to supply the vessel upon request but shall not be bound to do so until the expected date of arrival.
- 2.4** Where a Nomination gives notice of a requirement by a vessel for delivery in a Delivery Port of grades of Marine Lubricants that the Seller or its Delivering Company cannot supply in that Delivery Port from duty-free stocks, the Seller may advise the Buyer accordingly (which option must be exercised within a reasonable time) and upon such advice the Buyer may revise the Nomination. If the Buyer does not promptly revise the Nomination the Buyer shall be deemed to have requested to be supplied the grades in question from duty paid stocks and the provisions of section 4.1(e) shall apply.
- 3. Price:**
- 3.1** The price to be paid for Marine Lubricants delivered hereunder shall be the price shown in the Confirmation.
- 3.2** The Buyer shall be liable for all costs, expenses and/or charges incurred by Seller or its Delivering Company on account of the Buyer's failure, breach and/or non-compliance with its obligations under any Nomination as set out in section 2.
- 4. Charges:**
- 4.1** In addition to the prices payable for Marine Lubricants, the Buyer shall pay to the Seller the following charges:
- (a)** All charges for delivery ex-lighter / barge and packed deliveries;
  - (b)** Any expenses incurred as a result of the Master of the vessel rejecting, cancelling or significantly delaying the whole or any part of the delivery requested under a Nomination.
  - (c)** Any mooring or unmooring charges or port dues which may be incurred (whether at the Delivery Port or otherwise) in connection with any Delivery.
  - (d)** Any duties, taxes (other than taxes on profits), impositions, charges, freights, premiums, or other costs incurred (whether by the Seller or by the Delivering Company), or for which the Seller or the Delivering Company is accountable, in respect of a Delivery. For the avoidance of doubt, 'taxes' includes sales taxes, value added taxes and goods and services taxes.

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- (e) Where the Seller delivers to the Buyer from duty paid stocks in accordance with section 2.4, the amount of such duty.
  - (f) Any additional costs incurred in respect of a Delivery including but not limited to, payments for overtime, urgent order surcharge, small order surcharge, left-on-board surcharge, return order surcharge, and any associated surcharges.
- 4.2** If subsequent to the Confirmation, the Buyer cancels the order for any reason whatsoever, including circumstances entirely outside of Buyer's control, then Seller without prejudice to any other rights it may have, shall be entitled to recover a) any cancellation fees imposed by the physical supplier; b) any difference between the contract price of the undelivered product and the amount received by the Seller upon resale to another party (or, if another buyer cannot be found, any market diminution in the value of the product as reasonably determined from available market indexes); and c) all costs and damages arising from any underlying physical or derivative paper contracts which Seller has entered into in order to effect supply.

## **5. Invoices:**

- 5.1** The Seller shall invoice the Buyer in US dollars or in such other currency as may have been agreed between the Seller and the Buyer before delivery.
- 5.2** By agreement between the Seller and the Buyer the invoice may be submitted to the Buyer by electronic means including without limitation facsimile.

## **6. Payment:**

- 6.1** Unless otherwise provided in the Confirmation, all sales shall be on a cash in advance or irrevocable letter of credit basis. All letters of credit procured by Buyer in favor of Seller shall be in a form and substance acceptable to Seller and issued only by a bank acceptable to Seller.
- 6.2** Any individual transaction not requiring cash in advance shall require credit approval by Seller's Credit Department in Miami, Florida. This approval, which will occur prior to Seller's transmittal to Buyer of a Confirmation, shall be construed as the binding act in a transaction and it is agreed that contract formation has occurred in Florida. If payment of cash in advance is not required, the Buyer shall make payment in full on or before the due date set forth in the invoice, in immediately available U.S. dollars and in such manner as the Seller may designate in the invoice, without discount, set-off, or deduction. Invoices may be sent via fax, e-mail or any other means permitted by law. In the event that delivery documents are not available, Seller may invoice based on email or facsimile advice of delivery details in lieu of delivery documents.

Notwithstanding any disputes regarding quality, quantity, or other matter, the Buyer must initially pay the full amount due, and any disputes shall be resolved between the Buyer and the Seller after such payment has been made. Failure by Buyer to pay the full amount when due shall constitute a waiver of any claims by Buyer.

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- 6.3** Past due amounts shall accrue interest at a rate equal to the lesser of 2.0 percent per month, or the maximum rate permitted by applicable law. All amounts more than 15 days past due shall incur an additional 5% administrative fee. All payments received from Buyer after an invoice is overdue shall first be applied to interest, legal collection costs and administrative fees incurred before they will be applied to the principal amounts on a subsequent delivery. Buyer may not designate application of funds to a newer invoice so long as there are any unpaid charges, interest, collection costs or administrative fees on a previous one. This shall not be construed, however, as preventing Seller's option to choose application of funds in instances where 6.8 below shall apply. Any waiver by Seller of interest charges or administrative fees on a particular invoice shall not be construed as a waiver by Seller of its right to impose such charges on subsequent deliveries.
- 6.4** If the payment due date falls on a weekend or any bank holiday in the country where payment is to be remitted (other than a Monday), payment must be made on the first prior available banking day. If the payment due date falls on a Monday which is also bank holiday, payment may be made on the next available banking day.
- 6.5** The Buyer and the Seller are responsible for their respective banking charges.
- 6.6** The Buyer agrees to pay, in addition to other charges contained herein, internal and external attorneys' fees on a full indemnity basis for the Seller's collection of any non-payment or underpayment as well as any other charges incurred by the Seller in such collection including, but not limited to, the cost of bonds, fees, internal and external attorneys' fees associated with enforcing a maritime lien, attachment or other available right, whether in law, equity or otherwise.
- 6.7** All unpaid invoices from Seller to Buyer shall immediately be considered overdue, upon the occurrence of any of the following events: (i) any invoice of Seller to Buyer is seven (7) days overdue; (ii) any vessel owned or operated by Buyer is arrested or attached by Seller or a third party for unpaid debts; or (iii) there is a change in the financial circumstances or structural organization of Buyer sufficient to cause Seller to reasonably believe that its likelihood of receiving payment from the Buyer is jeopardized or that its security interest in any of Buyer's owned or operated vessels is jeopardized.
- 6.8** In the event that more than one invoice is past due at the same time, Seller shall be entitled, at its sole discretion, to specify the particular invoice to which any subsequent payments shall be applied.
- 6.9** Seller reserves the right, in addition to all other rights and remedies available to it under applicable law, in equity, or otherwise, to suspend further deliveries of Marine Lubricants, and demand payment of all outstanding balances, if the outstanding balances due from Buyer (including estimates of unbilled sales) exceed the Buyer's applicable credit limit, or if Buyer fails to make any payment as herein provided or otherwise defaults under the General Terms.

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## **7. Credit:**

- 7.1** When cash in advance is not required prior to delivery, Marine Lubricants supplied in each Transaction are sold and effected on the credit of the Receiving Vessel, as well as on the promise of the Buyer to pay, and it is agreed and the Buyer warrants that the Seller will have and may assert a maritime lien against the Receiving Vessel for the amount due for the Marine Lubricants delivered. This maritime lien shall extend to the vessel's freight payments for that particular voyage during which the bunkers were supplied and to freights on all subsequent voyages. Disclaimer of lien stamps placed on a Delivery Receipt or Bill of Lading shall have no effect towards the waiver of such lien.
- 7.2** In the event of a breach of the warranty set forth in 7.1 above before delivery, the Seller shall be entitled to terminate the Transaction. Further, the Seller reserves the right to impose a cancellation fee in the amount set forth in 4.2 above.
- 7.3** If the purchase of Products is contracted for by an agent, then such agent, as well as the principal, shall be bound by and be fully liable for obligations of the Buyer in the Transaction, whether such principal be disclosed or undisclosed.
- 7.4** All sales made under these terms and conditions are made to the registered owner of the vessel, in addition to any other parties that may be listed as Buyer in the confirmation. Any Marine Lubricants ordered by an agent, management company, charterer, broker or any other party are ordered on behalf of the registered owner and the registered owner is liable as a principal for payment of the invoice.

## **8. Delivery and Health and Safety and Environmental Requirements:**

- 8.1** Subject to any special agreements between the parties as to the manner of delivery, the Seller or its Delivering Company shall arrange delivery in bulk or container at the nearest point to the vessel at which delivery is in the opinion of the Seller or its Delivering Company reasonably possible.
- 8.2** Delivery of Marine Lubricants will be made during customary hours of work at the Delivery Port.
- 8.3** The vessel will be supplied as promptly as circumstances permit, but neither the Seller nor its Delivering Company shall be liable for any loss, expense, damage, delay or demurrage whatsoever which may be suffered by the Buyer as a result of any delay arising from congestion at the terminal or to prior commitments of available barges, or when in the Seller's or in the Delivering Company's opinion clear and safe berth or the assistance of qualified staff to secure moorings is unavailable.
- 8.4** The Seller or its Delivering Company will deliver the Material Safety Data Sheet (MSDS) to the Buyer in accordance with industry standards. The Buyer must ensure its vessels or customers receive the MSDS before delivery of any Marine Lubricants and to provide any language translation as necessary.

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- 8.5** In any case where delivery is ex lighter, the Buyer shall provide free of cost a clear and safe berth for the lighter(s) alongside the vessel's receiving lines and the assistance of qualified staff to secure the lighter(s) moorings. The receiving vessel shall provide a safe access to the lighter. This safe access means the use of the accommodation ladder. If the position of the lighter does not fit with the position of the accommodation ladder a pilot ladder should be rigged up. The receiving vessel is responsible for a safe access to and from the lighter. The Seller shall further have the right to refuse an ex-pipe delivery if the Buyer's vessel is deemed unsafe to receive such a delivery according to Seller's vetting process using industry-recognized databases.
- (a)**
- (b)** The Buyer will also provide ready and safe means of access to any equipment used for delivery of the Marine Lubricants at the Delivery Port and shall not obstruct access to the same. Delivery will not commence until such time as the Predelivery Check List has been jointly and satisfactorily completed and signed by or on behalf of both the Seller (or the Delivering Company) and the Buyer.
- 8.6** Neither the Seller nor the Delivering Company shall be required to supply or arrange to supply Marine Lubricants for the export of which a government permit is required but which has not been obtained by the Buyer or the Buyer's accredited representative.
- 8.7** If in the course of any delivery under a Nomination there is any escape or spillage of Marine Lubricants:
- (a)** The Buyer agrees that, if a Pollution Event occurs before, during or after delivery of the Marine Lubricants, Seller may at its sole discretion take reasonable steps to control and terminate the Pollution Event, contain and remove the escaped Marine Lubricants and clean the affected area. The Buyer must afford Seller and the Delivering Company its reasonable co-operation in implementing steps under this section. If the Pollution Event is caused by an act or omission of the Buyer, its servants or agents (other than Seller and the Delivering Company), the Buyer must indemnify Seller and the Delivering Company for the cost of any steps taken under this section 8.7(a). If the Pollution Event is caused by an act or omission of the Seller, its servant or agent, then the Seller must indemnify the Buyer on the same basis as per the immediate above. In this section 8.7(a), "Pollution Event" means any occurrence as a result of which the Marine Lubricants escaped onto or into land or water.
- (b)** The Buyer or his agent shall supply the Seller or its Delivering Company with any documents and information concerning the same or any program for the prevention thereof as are requested by the Seller or its Delivering Company or are required by law or regulations applicable at the Delivery Port.
- 8.8** The Buyer shall be fully responsible for the proper use, maintenance, and repair of any equipment that may be used for the delivery. The Buyer will immediately inform Seller of any defects, ruptures, spills, or other problems with or related to such equipment which occurs during the delivery process.
- 8.9** The Seller and the Buyer represent to each other that they are in compliance with all applicable laws and government regulations with respect to the environment and that they have policies of environmental responsibility in place concerning their respective Marine Lubricants processes.
- 9. Documents:**

On completion of a Delivery of Marine Lubricants to a vessel under a Nomination, the Master of the vessel or the Buyer's accredited representative shall sign a receipt for the grades and quantities delivered in a form required by the Seller or its Delivering Company ("Ship's Receipt") of which two copies shall be retained by the Master or such representative.

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## 10. Risk and Title:

- 10.1** Except as may be otherwise agreed, delivery of Marine Lubricants at a Delivery Port shall be deemed to be complete and title and risk shall pass to the Buyer either:
- (a)** for bulk Deliveries, when the Marine Lubricants pass the flange connecting the delivery facilities with the receiving facilities provided by the Buyer; or
  - (b)** for delivery in containers:
    - i)** when delivering to a quay or other point on land when the goods are landed from the delivery vehicle to the ground;
    - ii)** when delivering by a barge operated by the Seller and using the Seller's barge's lifting equipment, when the goods are landed on the deck of the customer vessel;
    - iii)** when delivering by barge or vehicle and using Buyer provided and operated lifting equipment, when the goods are lifted off the deck of the barge or off the vehicle; or
    - iv)** when delivering by barge and Buyer has contracted a third party service provider or operator to provide pump ex-drum service, immediately prior to such pump ex-drum service.
- 10.2** The responsibility for connecting the bulk delivery facilities provided by the Seller or its Delivering Company to the receiving facilities provided by the Buyer shall be in accordance with the custom of the Delivery Port.

## 11. Quality:

THE MARINE LUBRICANTS TO BE SUPPLIED HEREUNDER SHALL CONFORM WITH ANY SPECIFICATION OR DESCRIPTION AGREED BETWEEN SELLER AND THE BUYER IN RELATION TO THE MARINE LUBRICANTS. THIS SECTION CONSTITUTES THE WHOLE OF SELLER'S AND THE DELIVERING COMPANY'S OBLIGATIONS WITH RESPECT TO THE QUALITY OF THE MARINE LUBRICANTS TO BE SUPPLIED AND (SAVE TO THE EXTENT THAT EXCLUSION THEREOF IS NOT PERMITTED OR IS INEFFECTIVE BY OPERATION OF LAW) ALL STATUTORY OR OTHER CONDITIONS AND/OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE DESCRIPTION OR QUALITY OF THE MARINE LUBRICANTS OR ITS FITNESS FOR ANY PURPOSE ARE HEREBY EXCLUDED.

## 12. Measurement and Samples/Quantity and Quality Claims:

- 12.1** The quantity to be entered on the Ship's Receipt shall be in accordance with the measurements of the Seller or its Delivering Company. The quantities of Marine Lubricants delivered in bulk shall be measured by volume, and calculated at standard temperature at 15 degrees Celsius in accordance with the ASTM - IP Petroleum Measurement Tables or the methods of any other recognized standards authority at the discretion of the Seller or its Delivering Company.



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- 12.2** The Buyer or Buyer's accredited representative shall be at liberty to witness and check the weights and measurements at the time of delivery.
- 12.3** If the Buyer's representative or the Master of the vessel disputes the quantity delivered in any Delivery, he may at the time of signing the Ship's Receipt (but not later) annotate the Ship's Receipt accordingly, giving brief particulars of the quantity he alleges to have been delivered.
- 12.4** A clean Ship's Receipt once signed shall be conclusive evidence of the quantity delivered unless the party challenging the receipt can prove manifest error. In the event that a Ship's Receipt is annotated in accordance with section 12.3 above, Buyer shall be required to make timely payment in accordance with Seller's or its Delivering Company's figures (which shall in the absence of contrary proof be deemed correct) provided that such payment shall not prejudice Buyer's right to make any claim with respect to quantity provided further that such claims shall be made in writing (in addition to the Ship's Receipt annotation) as soon as possible and in any event within thirty days of the date of delivery, in default of which the Buyer shall be deemed to have waived such complaint or claim. Any unresolved disputes shall be determined in the same manner as set out for quality disputes in section 12.8 below.
- 12.5** During bulk deliveries, the original supplying Company shall take a representative sample of the Marine Lubricant from the original supply tank. The supplier or its Delivering Company will retain a sample for a 30 day period or the minimum period allowable under applicable law, whichever is the longer, from the date of delivery in a safe place where they will not deteriorate. At the end of the said period the remaining samples may be discarded unless the Buyer has made a complaint or claim under section 12.6 within the said period, in which case one of the samples shall be retained by the Seller or its Delivering Company for its own use and the other sample shall be retained by the Seller or its Delivering Company for analysis by the expert referred to in section 12.8.
- 12.6** Any complaint or claim on the part of the Buyer with regard to the quality of Marine Lubricants delivered must be made to Seller in writing as soon as possible and in any event within seven (7) days after the date of delivery, in default of which the Buyer shall be deemed to have waived all complaints or claims in relation to the quality of the Marine Lubricants so delivered.
- 12.7** No claim for any defects in quality may be made in respect of Marine Lubricants that have been transported or stored in containers provided by the Buyer.
- 12.8** Any dispute as to quantity or quality of Marine Lubricants delivered shall, save for in instances of manifest error or fraud, be determined finally and conclusively by an independent expert appointed jointly by the Buyer and the Seller or, if they cannot agree to such an appointment, then an expert appointed by the President for the time being of the Energy Institute. In the case of quality disputes, the expert shall be requested to analyze one or more of the quality samples taken in accordance with section 12.5 above and where possible, base his or her decision upon the results thereof.

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## **13. Technical Service:**

- 13.1** In addition to technical advice and services which may be provided by the Seller or its Delivering Company upon the Buyer's request and at its cost (which advice and service shall be provided not pursuant to these terms and conditions but pursuant to a separate services agreement), the Buyer may avail himself of certain technical advice and services which are provided free of charge by the Seller or its Delivering Company. Such free services are provided voluntarily and not as an obligation under this contract.
- 13.2** Neither the Seller nor its Delivering Company shall be liable for any loss or damage suffered by the Buyer or its servants or agents in respect of or arising from the provision by the Seller or its Delivering Company of any advice or services provided voluntarily as aforesaid.

## **14. Restrictions on Use:**

To the extent that Marine Lubricant is sold or to be sold to the Buyer on a duty or tax exempt basis, Buyer shall comply with all local requirements and shall execute all such documents necessary to permit the sale on such basis, including any declarations on use of the Marine Lubricant. To the extent that a claim is made by any authorities against the Seller or Delivering Company on the basis that such Marine Lubricant was liable for duty or taxes and such claim arose partly or wholly due to the action, omission or fault of the Buyer, then the Buyer shall indemnify Seller and Delivering Company against any claims, losses, costs (including costs as between Attorney or Solicitor and Client), damages, liabilities, fines, penalties and expenses attributable to such action, omission or fault of the Buyer.

## **15. Expectations:**

- 15.1** Neither the Seller nor the Buyer shall be responsible for any failure to fulfill their respective obligations under a contract governed by these terms and conditions (other than the payment of money) if fulfillment has been delayed, hindered, interfered with, curtailed or prevented by any circumstance whatsoever which is not within the reasonable control of the Seller, the Delivering Company or the Buyer, including but not limited to:
- (a)** any act of God, fire, explosion, landslide or earthquake; or any storm, hurricane, flood, tidal wave or other adverse weather condition; or any war (whether declared or not), revolution, act of civil or military authority, riot, blockade, embargo, trade sanction, terrorism, sabotage, or civil commotion; or any epidemic or quarantine restriction; or
  - (b)** any curtailment, failure or cessation of supplies of Marine Lubricants or the petroleum or other substances from which such Marine Lubricants are derived or any of the Seller's or the Delivering Company's sources of supply (whether in fact sources of supply for the purposes of these terms and conditions or not) or packages into which they might be filled, provided that such curtailment, failure or cessation is related to a circumstance which is outside the reasonable control of the Seller or the Delivering Company; or
  - (c)** compliance with any law, regulation or ordinance, or with any order, demand or request of any international, national, port, transportation, local or other authority or agency or of any body or person purporting to be or to act for such authority or agency or any corporation directly or indirectly controlled by any of them; or
  - (d)** any strike, lock-out or labor dispute (whether or not the Seller or the Delivering Company or the Buyer as the case may be is party thereto or would be able to influence or procure the settlement thereof).

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- 15.2** If by reason of any of the causes referred to in section 15.1 above, either the availability from any of the Seller's or its Delivering Company's sources of supply (wherever situated) of Marine Lubricants, whether deliverable under a contract governed by these terms and conditions or not, or the normal means of transport of such Marine Lubricants is delayed, hindered, interfered with, curtailed or prevented, then the Seller shall be at liberty to withhold, reduce, suspend or cancel supplies under a contract governed by these terms and conditions to such extent as the Seller may in its absolute discretion think fit, and the Seller shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers. Any additional quantities which Seller does acquire from other suppliers or from alternative sources may be used by the Seller at its complete discretion and need not be taken into account by the Seller for the purpose of determining the extent to which it is to withhold, reduce or suspend deliveries under a contract governed by these terms and conditions.
- 15.3** The Buyer shall be free to purchase from other suppliers any deficiencies of deliveries of Marine Lubricants caused by the operation of section 15.2 but Seller shall not be responsible for any additional cost thereby incurred by the Buyer.
- 15.4** The Seller reserves the right to increase the price charged for any Marine Lubricants (whether the price was originally determined by reference to the Seller's prices or separately agreed in writing) if there is any increase in the costs incurred or to be incurred by the Seller or the Delivering Company in making the relevant supply due to factors which are beyond the control of the Seller or the Delivering Company. These factors include without limitation any increased taxes, duties, the making of any law, order, bye-law or other regulation, the occurrence of any currency fluctuation affecting the cost of any imported items, and material increase in the costs of underlying base components from which Marine Lubricants are produced.
- 15.5** No curtailment or suspension of deliveries, or acceptance of deliveries, pursuant hereto shall operate to extend the term of a contract governed by these terms and conditions or to terminate such contract, unless such curtailment or suspension lasts for a continuous period of 30 days, in which case either party shall be entitled to terminate such contract forthwith on written notice to the other party. Neither the Seller, the Buyer nor the Delivering Company shall be liable for any damage, loss, expense, claim or costs incurred by the other party as a result of such termination. Such termination shall be without prejudice to any right, obligation or liability which has accrued prior to the effective date of such termination. Shipments of Marine Lubricants or any portion thereof, the delivery or acceptance of which has been prevented by any of the causes referred to in section 15.1 above, shall be deducted from the amount required to be delivered and received hereunder unless otherwise agreed. Performance under such contract shall resume to the extent made possible by the end or amelioration of the cause(s) referred to in section 15.1 above.
- 16** [Indemnity/Liability:](#)
- 16.1** The Buyer will indemnify the Seller and its Delivering Company against any claims, losses, costs (including costs as between Attorney or Solicitor and Client), damages, liabilities, fines, penalties and expenses incurred or sustained arising out of or in connection with a contract governed by these terms and conditions and/or a Nomination (including but not limited to recovery of any sums due hereunder) for claims, losses, costs, damages, liabilities and expenses that arise through the negligent act or omission of the Buyer, its representatives, agents, employees, invitees and subcontractors (other than Seller).
- (a)**

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(b) The Seller will indemnify the Buyer against any claims, losses, costs (including costs as between Attorney or Solicitor and Client), damages, liabilities, fines, penalties and expenses incurred or sustained arising out of or in connection with a contract governed by these terms and conditions and/or a Nomination (including but not limited to recovery of any sums due hereunder) for claims, losses, costs, damages, liabilities and expenses that arise through the negligent act or omission of the Seller.

16.2 The Seller and its Delivering Company shall have no liability to the Buyer under or in connection with a contract governed by these terms and conditions and/or a Nomination for:

- (a) loss of actual or anticipated profit;
- (b) demurrage;
- (c) losses caused by business interruption;
- (d) loss of goodwill or reputation; or
- (e) any indirect, special, extraordinary or consequential cost, expense, loss or damage even if such cost, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by the Seller or its Delivering Company or the Buyer and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise.

16.3 Without prejudice to the above provisions, the Seller and the Delivering Company's maximum aggregate liability to the Buyer, and the Buyer's maximum aggregate liability to the Seller and its Delivering Company, under or in connection with any delivery howsoever arising shall not exceed in aggregate the price payable by the Buyer for such delivery.

## 17. Agents:

If a Nomination is made by an agent acting for or on behalf of the Buyer, whether such agency is disclosed or undisclosed then such agent shall be liable (as well as the Buyer) not only as agent but also as principal for the performance of all the obligations of the Buyer.

## 18. Governing Law and Jurisdiction:

These General Terms and each Transaction shall be governed by the General Maritime Law of the United States and, in the event that the General Maritime Law of the United States is silent on the disputed issue, the law of the State of Florida, without reference to any conflict of laws rules which may result in the application of the laws of another jurisdiction. The General Maritime Law of the United States shall apply with respect to the existence of a maritime lien, regardless of the country in which Seller takes legal action. Any disputes concerning quality or quantity shall only be resolved in a court of competent jurisdiction in Florida. Disputes over payment and collection may be resolved, at Seller's option, in the Florida courts or in the courts of any jurisdiction where either the Receiving Vessel or an asset of the Buyer may be found. Each of the parties hereby irrevocably submits to the jurisdiction of any such court, and irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum or its foreign equivalent to the maintenance of any action in any such court. Seller shall be entitled to assert its rights of lien or attachment or other rights, whether in law, in equity or otherwise, in any country where it finds the vessel. **BUYER AND SELLER WAIVE ANY RIGHT EITHER OF THEM MIGHT HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING FROM OR RELATED TO THE GENERAL TERMS OR ANY TRANSACTION.**

# GENERAL TERMS AND CONDITIONS FOR MARINE LUBRICANTS



## **19** Notices:

- 19.1** Except where expressly stated otherwise, a notice, demand, request, statement, or other communication under or in connection with these terms and conditions shall only be effective if it is in writing. Faxes and e-mail are permitted provided however that any notice of breach sent by email must be followed by a fax or letter.
- 19.2** Notices, demands, requests, statements, or other communications under or in connection with these terms and conditions shall be sent to a party at the addresses or numbers specified from time to time by the party to whom the notice is addressed.
- 19.3** Any notice given under a contract governed by these terms and conditions shall be effective only upon actual receipt at the appropriate address specified as per section 19.2.
- 19.4** Any notice given under a contract governed by these terms and conditions outside working hours in the place to which it is addressed shall be deemed not to have been given until the start of the next period of working hours in such place.
- 19.5** No notice given under a contract governed by these terms and conditions may be withdrawn or revoked except by notice given in accordance with this section.
- 19.6** Where a Nomination is made by an agent acting for the Buyer then notice may be given either to the agent or to the Buyer at the option of the Seller.

## **20** Succession and Assignment:

- 20.1** Any contract governed by these terms and conditions shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. The Buyer shall not assign all or any part of the benefit of, or any rights or benefits under, a contract governed by these terms and conditions without the prior written consent of the Seller, which consent shall not be unnecessarily or unreasonably withheld or denied.
- 20.2** The Seller may at any time assign all or any part of the benefit of, or its rights or benefits under, a contract governed by these terms and conditions. Seller may at any time sub-contract or enter into any arrangement whereby another person is to perform any or all of its obligations under a contract governed by these terms and conditions.

## **21** Prohibited Countries:

- 21.1** Buyer acknowledges that it is familiar with and will comply with all applicable laws and regulations relating to the use, diversion, trade, export or re-export of Marine Lubricants. Without prejudice to the foregoing, where requested to do so by Seller, Buyer will supply Seller with evidence that controls are in place, which actively support such compliance
- 21.2** Without prejudice to section 21.1, Buyer undertakes not to export, re-export, divert, trade, ship, import, transport, store, sell, supply, deliver or re-deliver, whether directly or indirectly, the Marine Lubricants to or in any Prohibited Country and not to do the same to or for the end use by any entity or vessel associated with any Prohibited Country.

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**21.3** If Buyer is, or is likely to be, prevented by any law, policy, demand or request to which it is subject or any governmental policy, demand or request by which Buyer reasonably considers it is bound, from complying with the above, then (without prejudice to Buyer's obligations as set out in this section 21) Seller and Buyer shall meet and discuss the implication for Buyer and Seller and, pending resolution of any difficulty which such law causes or is likely to cause, Seller may at its discretion, and without liability therefore, suspend in whole or in part supplies hereunder without prejudice to any claims that Seller may have under this Agreement.

**21.4** Buyer further undertakes that the prohibition stipulated in this section 21 shall also be imposed by Buyer on any resale customers of Buyer, together with a communication to such resale customers to communicate such said prohibition on any resale customer of theirs.

## **22** New and Changed Regulations:

**22.1** The parties are entering into a contract governed by these terms and conditions in reliance on the laws, rules, regulations, decrees, agreements, concessions and arrangements (hereinafter called "Regulations") in effect on the date hereof, insofar as such Regulations affect Seller, its Delivering Company or the Marine Lubricants sold hereunder.

**22.2** If, during the term of a contract governed by these terms and conditions, any changes to the Regulations or any new Regulations become effective, and the effect of such changed or new Regulations (a) is not covered by any other provision of these terms and conditions, and (b) has a material adverse economic effect upon Seller or the Buyer, the affected party shall have the option to request renegotiations of the prices or any other pertinent provision of these terms and conditions. Said option must be exercised by written notice to the other party, such notice to contain details of the desired new prices or terms. If the parties do not agree upon new prices or terms within thirty (30) days after the relevant party has given such notice, that party shall have the right to terminate a contract governed by these terms and conditions at the end of the said thirty (30) day period. Any Marine Lubricants lifted during such thirty (30) day period shall be sold and purchased at the price and on the terms applying hereunder without any adjustment in respect of the new or changed Regulations concerned.

## **23** Information:

**23.1** Data supplied by Buyer, and/or relating to Buyer's or Owner's account, whether personal or otherwise, may be held and processed by the Seller for the Seller's internal purposes, as required by applicable law or any regulatory authority or as Seller otherwise considers appropriate. Such processing may continue after the relevant contract governed by these terms and conditions has ended. The Buyer or Owner may also be required to complete checks to satisfy credit assessments, money laundering or fraud detection requirements.

**23.2** The Seller may disclose such data to (a) one or more financial institutions to satisfy credit assessments, for debt tracing or fraud prevention purposes; (b) to any agent, sub-contractor or Delivering Company of the Seller performing services in connection with the Buyer's or Owner's account; (c) to any guarantor or person providing security in relation to the Buyer's or Owner's obligations under a contract governed by these terms and conditions; (d) as required or permitted by law or any regulatory authority; or (e) as Seller otherwise considers appropriate .

**23.3** If any information provided by the Buyer or Owner to the Seller is materially inaccurate, without prejudice to any other termination provisions contained in a contract governed by these terms and conditions, all monies due and owing by the Buyer and/or Owner to the Seller shall become due and payable forthwith .

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## **24. Confidentiality:**

**24.1** Each party shall treat as confidential all information obtained as a result of entering into or performing a contract governed by these terms and conditions which relates to:  
(a) the subject matter of these terms and conditions; or  
(b) the other party.

**24.2** Each party shall:  
(a) not disclose any such confidential information to any person other than any of its directors or employees who needs to know such information in order to discharge his/her duties;  
(b) not use any such confidential information other than for the purpose of satisfying its obligations under a contract governed by these terms and conditions; and  
(c) procure that any person to whom any such confidential information is disclosed by it complies with the restrictions contained in this section as if such person were a party to a contract governed by these terms and conditions.

**24.3** Notwithstanding the other provisions of this section, either party may disclose any such confidential information:  
(a) if and to the extent required by law or for the purpose of any judicial proceedings;  
(b) to a Delivering Company;  
(c) to its affiliates, professional advisers, auditors and bankers;  
(d) if and to the extent the information has come into the public domain through no fault of that party; or  
(e) if and to the extent the other party has given prior written consent to the disclosure, such consent not to be unreasonably withheld.

**24.4** Any information to be disclosed pursuant to sub-section 24.3(a) shall be disclosed only after notice to the other party.

**24.5** The restrictions contained in this section shall continue to apply after the termination of a contract governed by these terms and conditions without limit in time.

## **25. Waiver:**

No failure or delay by a party to enforce any provision or partial provision of any contract governed by these terms and conditions shall constitute a waiver of that provision, unless it is expressly stated in writing by that party to be a waiver. No waiver of any breach of contract shall be held to be a waiver of any other breach or a continuing waiver of any further breach of a contract.

## **26. Severability:**

If any provision or part-provision of a contract governed by these terms and conditions is declared or becomes invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provisions(s), to the minimum extent necessary to make it valid, legal and enforceable and to most accurately reflect the intents and purposes of the contract. The validity of the remaining provisions shall not be affected.

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## **27. Amendments & Variations:**

These terms and conditions may not be amended or modified orally and no amendment or modification shall be effective unless it is in writing and signed by authorized representatives of each of Seller and the Buyer.

## **28. Termination:**

**28.1** Without prejudice to any other rights and remedies, Seller may by notice to Buyer terminate a contract governed by these terms and conditions with immediate effect if:

(a) Buyer should go into liquidation or should do or suffer any similar act or thing under any applicable law, such as (a) the making of a general assignment for the benefit of creditors by the other party; or (b) the entering into of any arrangement or composition with creditors (other than for the purposes of a solvent reconstruction or amalgamation); or (c) the institution by Seller of proceedings seeking to adjudicate as bankrupt or insolvent, or seeking protection or relief from creditors, or seeking liquidation, winding up, or rearrangement, reorganization or adjustment of its debts (other than for purposes of a solvent reconstruction or amalgamation), or seeking the entry of an order for the appointment of an administrator, a receiver, trustee or other similar official or for all or a substantial part of the Buyer's assets; or (d) the institution of any proceeding of the type described in (c) above; or (e) there is a Change in Control of Buyer; or

(b) where applicable, any of the events described in paragraph (a) happens to or in relation to the Owner.

**28.3** Subject to section 28.4, a Change of Control shall occur for the purpose of these terms and conditions where:

- (a) a person acquires control of the Buyer where no person previously had control of the Buyer; or
- (b) the ultimate parent company of the Buyer ceases to have control of the Buyer; or
- (c) a person acquires Control of the ultimate parent company of the Buyer; or
- (d) a person who is not under the control of the ultimate parent company of the Buyer acquires control of the Buyer.

**28.4** For the purposes of these terms and conditions, Control means, in relation to any company, having legal and beneficial ownership of not less than 50 percent of the voting rights attached to the issued share capital of that company.

**28.5** On termination of a contract governed by these terms and conditions all sums owed to Seller shall become immediately due and payable.

**28.6** Without prejudice to any other rights or remedies, Seller may suspend deliveries or vary the stipulated method of payment with immediate effect if the Buyer is in breach of any of its obligations under any contract governed by these terms and conditions.