

# BANLE INTERNATIONAL GROUP

## General Terms and Conditions for Marine Fuel Purchase (1<sup>st</sup> Jan. 2021 Edition)

These General Terms and Conditions shall apply to contracts entered into by any company within the Banle International Group as Buyer for acquiring Marine Fuel unless the Sellers expressly confirm otherwise in the Confirmation Note. Each delivery shall constitute a separate contract.

### 1. Definitions

Throughout this General Terms and Conditions, except where the context otherwise requires, the following definitions shall be applied:

“**Banking Day**” shall mean a day on which banks are open in the places of business of the Sellers and the Buyers and, where a remittance is in US dollars, in New York or, if other than US dollars, in the country of the price currency.

“**BDN**” means Bunker Delivery Note or Bunker Delivery Receipt.

“**Bunker Tanker**” means bunker barge or tanker supplying Marine Fuels to the Vessel.

“**Buyers**” means the companies within the Banle International Group contracting to purchase the Marine Fuel.

“**Confirmation Note**” means the Sellers’ written confirmation.

“**Contract**” means this contract of sale and purchase and delivery of Marine Fuels on the terms hereof as agreed by and between the Parties.

“**Day/days**” means a calendar day(s), unless otherwise stated.

“**Marine Fuels**” means products as stated in the Confirmation Note.

“**Parties**” means the Sellers and Buyers collectively.

“**Party**” means Sellers or Buyers.

“**Sellers**” means the Party contracting to sell and arrange delivery of the Marine Fuels.

“**Vessel**” means the vessel nominated by the Buyers to receive Marine Fuels.

## **2. Specifications/Grades/Quality**

- (a) The Buyers shall have the sole responsibility for the nomination of the specifications and grades of Marine Fuels fit for use by the Vessel.
- (b) The Sellers warrant that the Marine Fuels shall be of a homogeneous and stable nature and shall comply with the specifications and grades nominated by the Buyers. Unless otherwise agreed in the Confirmation Note, the Marine Fuels shall in all respects comply with the latest edition of ISO Standard 8217. Blending of FAME shall not be allowed.
- (c) 2020 Marine Fuel Sulphur Content (IMO)

For the purpose of this Clause, "Sulphur Content Requirements" means any sulphur content and related requirements as stipulated in MARPOL Annex VI (as amended from time to time) and/or by any other applicable lawful authority.

- (i) The Sellers shall supply fuels to permit the Buyers, at all times, to comply with any applicable Sulphur Content Requirements. All such fuels shall meet the specifications and grades set out in the Confirmation Note.
- (ii) The Sellers warrant that they and any other bunker suppliers, bunker craft operators and bunker surveyors used by the Sellers shall comply with the Sulphur Content Requirements.

The Sellers shall indemnify, protect, defend and hold harmless the Buyers from any and against all losses, damages, liabilities, delays, deviations, claims, fines, costs, expenses, actions, proceedings, suits, demands arising out of the Sellers' failure to comply with this Clause 2(c).

## **3. Quantities/Masurement**

- (a) Subject to the provisions of Sub-clause 6(c) and Clause 9 (Claims) hereunder, the quantities of Marine Fuels delivered shall be determined from the official gauge or manual sounding or calibrated mass flow meter of the Bunker Tanker effecting delivery, or in case of delivery ex-wharf, of the shore-meter or the like equipment.

- (b) The Sellers shall invite the Buyers or their representatives to witness the opening and closing gauge, or manual sounding or meter reading and the taking of bunker temperature of all bunker tanks on the Bunker Tanker and shall be given sufficient information and access to the official gauge or manual soundings or mass flow meter of the Bunker Tanker or shore-meter and relevant documentation to verify the volume delivered.
- (c) The Marine Fuels to be delivered under this Contract shall be measured and calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.

#### **4. Sampling**

- (a) The Sellers shall invite the Buyers or their representatives (whether they be surveyors or otherwise) to witness the sampling of Marine Fuels.
- (b) The Seller shall arrange at least for four (4) identical representative samples of each grade of the Marine Fuels to be drawn throughout the entire bunkering operation in accordance with the procedures for determination of compliance with MARPOL 73/78 Annex VI or any subsequent amendments thereto.
- (c) Samples shall be drawn at a point to be mutually agreed between Sellers and the Buyers or their respective agents, closest to or at (where possible) the Vessel's bunker manifold.
- (d) The samples shall be drawn using a mutually accepted sampling device which shall be constructed, secured and sealed in such a way so as to prevent the sampling device and the samples being tampered with throughout the transfer period.
- (e) The aforementioned samples shall be securely double sealed by representatives of both parties and provided with labels showing the Vessel's name, identity of delivery facility, Marine Fuels name, delivery date and place, the seal number and date of sampling.
- (f) However, sample bottles must be fitted with two seal lugs to enable the Buyer representatives to counterseal the samples. In case the Seller cannot provide such sample bottles, the Buyer shall hand over said bottles to the Seller free of charge until further notice.

- (g) Two samples shall be retained by the Seller for ninety (90) days after delivery of Marine Fuels to the vessel or, on being requested in writing by the Buyer, for as long as the Buyer may reasonably require, and the other two (2) samples shall be retained by the Vessel or by the Vessel's representatives in Masters option.
- (h) If the quantity is delivered by more than one Bunker Tanker, the sampling procedure shall be repeated as outlined in this clause 4.
- (i) The samples issued in compliance with above procedure are deemed to be representative of the quality of the Marine Fuels delivered to the Vessel. Any samples drawn from the Vessel's tanks are not a valid indicator of the quality of Marine Fuel Delivered to the vessel.

## **5. Delivery**

- (a) The Marine Fuel shall be delivered to the Vessel ex wharf or ex bunker tanker in the option of the Buyers or Buyers representatives in case both alternatives exist.
- (b) If delivery by Bunker Tanker is requested, the Sellers will arrange for sufficient Bunker Tanker and pumping capacity for timely and speedy delivery.
- (c) The Bunker Tanker charge is for Seller's account when the prices are quoted free delivered to Buyer's vessel.
- (d) Delivery of the Marine Fuels shall be made day and night, Sundays and holidays included, at the port or place of delivery, subject always to the custom of that port or place.
- (e) The Seller and/or its representatives shall be in possession of all licences, permissions, authorisations, consents and permits required to comply with all relevant applicable laws, enactments, orders, regulations and all other instruments relating to the supply and delivery of Marine Fuel at the port or place of delivery and shall subject to local laws permitting.
- (f) The Buyers shall be responsible for making all connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold and to ensure that the hose(s) are properly connected to the Vessel's bunker manifold prior

to the commencement of delivery.

- (g) The Buyers shall ensure that the Vessel is in possession of all certificates required to comply with all relevant regulations pertaining to taking delivery of the Marine Fuels at the port or place of delivery and that the Master of the Vessel shall:
- (i) advise the Sellers in writing, prior to delivery, of the maximum allowable pumping rate and pressure and agree on communication and emergency shut-down procedures;
  - (ii) notify the Sellers in writing prior to delivery, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Marine Fuels;
  - (iii) Provide a free side to receive the Marine Fuels and render all necessary assistance which may reasonably be required to moor or unmoor the Bunker Tanker, as applicable.

## **6. Documentation**

- (a) Before commencement of delivery, the Sellers shall present for written acknowledgement by the Master of the Vessel or the Master's authorized representative, a bunker requisition or similar document, duly signed by the Sellers or their representative, which shall contain the quantities to be delivered and all information required in accordance with IMO/ISO recommendations and specifications, including in particular actual values for: viscosity; density; sulphur content; flash point; pour point and delivery temperature. In addition, and if available, similar information shall be provided for vanadium, ash content, and water content.
- (b) Once the delivery is completed and quantities measured, a BDN shall be signed and stamped by the Master of the Vessel or the Master's authorized representative, and returned to the Sellers or their representative, as acknowledgement of the delivery only and a duplicate copy shall be retained by the Master of the Vessel. The BDN shall contain the following minimum information which is warranted by the Sellers: delivered quantity in volume

units; density in kg/m<sup>3</sup> at 15°C; actual delivery temperature; flash point; sulphur content in % m/m; and viscosity. The BDN needs to be in compliance with the latest Appendix V of MARPOL Annex VI requirement.

(c) In the event the Master of the Vessel is not satisfied with the sampling, quantity or any other matter concerning the Marine Fuels or their delivery, the Master shall on completion of delivery:

- (j) make appropriate remarks in the BDN detailing the complaints and/or referring to a separate letter of protest; or
- (ii) if remarks in the BDN are not permitted, issue a separate letter of protest receipt of either or which shall be acknowledged in writing by the Sellers' representative.

## **7. Price**

(a) The price of Marine Fuel delivered shall be in the amount as agreed, expressed per unit and in the currency stated in the Confirmation Note for each grade of Marine Fuels delivered into the Vessel's tanks free delivered/ex-wharf as applicable and stated in the Confirmation Note. In the event the price is quoted in volume units, conversion to standard volume shall be at fifteen (15) degrees Celsius.

(b) Should any and all additional charges incurred by the Sellers be designated for the Buyers' account, such charges should have been specified in Sellers' quotation and Confirmation Note and accepted by the Buyers in writing.

## **8. Payment**

(a) Payment for the Marine Fuels shall be made by the Buyers within thirty (30) days or, if otherwise agreed, within the number of days after the completion of delivery as stated in the Confirmation Note. In the event payment has been made in advance of delivery, such payment shall be adjusted on the basis of the actual quantities of Marine Fuels delivered and additional payment and/or refund shall be made within seven (7) days after the completion of delivery.

(b) Payment shall be made in full, without set-off, counterclaim, deduction and/or

discount, free of bank charges. Nonetheless, in circumstances where the Buyers have incurred loss or damage due to the supply by the Seller of Marine Fuel which failed to comply with the required quantity, quality, description, specification or fitness for purpose of clause 2 of this general terms, the Buyer shall be entitled to set-off, deduct or withhold from payment of the price under any other contracts to which these purchase terms apply the amount of the Buyers' claim, pending resolution of such claims pursuant to clause 9 below.

- (c) If payment falls due on a non-Banking Day, then payment shall be made on the next Banking Day immediately after the due date.
- (d) Any delay in payment and/or refund shall entitle either Party to interest at a rate as agreed and stipulated in the Confirmation Note.
- (e) In the event of non-payment or non-refund, the non-defaulting Party reserves the right to pursue such legal remedies as may be available to them to recover the amount owed.

## **9. Claims**

### **(a) Quantity**

- (i) Any dispute as to the quantity delivered must be noted at the time of delivery in accordance with 6(c). If no claim for such quantity dispute is presented to the Sellers by the Buyers in writing within thirty (30) days from the date of delivery any such claim shall be deemed to be waived and barred
- (ii) The Sellers shall have the right to charge the Buyers for all proven additional expenses incurred by the Sellers in connection with the Buyers' failure to take delivery of the full quantity of the Marine Fuels ordered by the Buyers within a reasonable time.
- (iii) The Buyers shall have the right to charge the Sellers for all proven additional expenses incurred by the Buyers in connection with the Sellers' failure to deliver in time the full quantity of the Marine Fuels agreed as per the Confirmation Note unless the quantity is amended by the Master in writing.

(b) Quality/Specification

- (i) Any claim as to the quality or specification of the Marine Fuels must be notified in writing promptly after the circumstances giving rise to such claim have been discovered. If the Buyers do not notify the Sellers of any such claim within sixty (60) days of the date of delivery, such claim shall be deemed to be waived and barred.
- (ii) In the event a claim is raised pursuant to sub-clause 9(b)(i), the Parties hereto shall have the quality of the Marine Fuels analyzed by a mutually agreed, qualified and independent laboratory. The Buyers have the option to request a full ISO 8217 analysis in a laboratory with ISO 17025 accreditation or equivalent and the Marine Fuels tests should be part of the accreditation schedule. Buyers and Sellers shall agree on one of the mutually agreed samples stated in the BDN that will be sent to the agreed laboratory and the results derived shall be final and binding. If ISO grades have been specified, the analysis shall be established by tests in accordance with the latest edition of ISO 8217 and ISO 4259 or any subsequent amendments thereof. Unless otherwise agreed, the expenses of the analysis shall be for the account of the Party whose claim is found wrong by the analysis.

(c) Delay

In the event of any delay resulting from:

- (i) The Buyers' Vessel failing to receive Marine Fuels at the pumping rate and pressure to comply with the notices given pursuant to sub-clause 5 (g)(i), or;
- (ii) The Sellers' failure to commence delivery of the Marine Fuels promptly in accordance with the Buyers' required delivery time and actual ETA of the vessel and/or the Sellers' failure to deliver the Marine Fuels in accordance with the minimum hourly pumping rate and pressure referred to in the Confirmation Note.

then the Party suffering such delay shall be entitled to compensation from the other Party for any documented loss suffered as a result of that delay.



(d) Time Bar

Unless arbitration proceedings have been commenced, in each and every case any and all claims by the Buyers, except those under Sub-clauses 9(a)(i) and 9(b)(i), shall be time barred within twelve (12) months from the date of the BDN or the day that delivery should have commenced as per the Conformation Note.

**10. Risk/Title**

Risk and title in the Marine Fuels shall pass to the Buyers once the Marine Fuels have passed the permanent flange connecting the Vessel's bunker manifold with the delivery facilities provided by the Sellers; and that at the time the Sellers will have the right to sell the Marine Fuels, and that the Marine Fuel will be supplied free of any charge or encumbrance.

**11. Compliance with Laws and Regulations**

The Parties will not do or permit to be done anything which might cause any breach or infringement of the laws and regulations of the Flag State, or the places where the Vessel trades or takes bunkers.

**12. Sanctions Compliance Clause**

(a) The following provisions shall apply where any sanction, prohibition or restriction is imposed on any specified persons, entities or bodies including the designation of any specified vessels or fleets under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union or the United States of America.

(b) The Buyers and the Sellers each warrant that at the date of entering into contract governed by these general terms until delivery of the Marine Fuels and Payment by the Buyers to the Sellers in full:

- (i) neither Party is subject to any of the sanctions, prohibitions, restrictions or designation referred to in sub-clause (a) which prohibit or render unlawful any performance under the relevant contract;
- (ii) the Sellers are selling and the Buyers are purchasing the Marine Fuels as principals and not as agent, trustee or nominee of any person with

- whom transactions are prohibited or restricted under sub-clause (a);
- (iii) the Buyers further warrant to its best knowledge that the Vessel is not a designated vessel and is not and will not be chartered to any entity or transport any cargo contrary to the restrictions or prohibitions in sub-clause (a) above;
  - (iv) the Sellers further warrant that the Marine Fuels are not of an origin or have been exported as a product from a place that is subject to any of the sanctions, prohibitions, restrictions or designation referred to in sub-clause (a) above.
- (c) If at any time during the performance of the relevant contract, either Party becomes aware that the other Party is in breach of warranty as aforesaid, the Party not in breach shall comply with the laws and regulations of any Government to which that Party or the Vessel is subject and follow any orders or directions which may be given by any regulatory or administrative body, acting with powers to compel compliance. In the absence of any such orders, directions, laws or regulations, the Party not in breach may terminate the relevant contract forthwith.
- (d) Notwithstanding anything to the contrary in this Clause, Buyers and Sellers shall not be required to do anything which constitutes a violation of the laws and regulations of any State to which either of them is subject.
- (e) The Buyers and the Sellers shall be liable to indemnify the other Party against any and all claims, including return of any Payment losses, damage, costs and fines whatsoever suffered by the other Party resulting from any breach of warranty as aforesaid and in accordance with the relevant contract.

### **13. Indemnity**

- (a) Without prejudice to any other claims arising hereunder or in connection herewith and notwithstanding the provisions of sub-clause 9(d), if loss is suffered or a liability is incurred by either Party hereto as a direct result of compliance with directions given by the other Party, during or for the purposes of the Parties' obligations hereunder, then the injured party is to be indemnified by the other in respect of such loss or liability; unless such loss or

liability arises due to a negligent act or omission by the Party incurring the loss or liability.

- (b) Where claims arise under sub-clause 9(c) and sub-clause 13(a), compensation payable in accordance with sub-clause 9(c) shall be taken into account in assessing sums payable under sub-clause 13(a)

#### **14. Safety and Environment**

- (a) In the event of any spillage, which shall mean any leakage, escape, spillage or overflow of the Marine Fuels, causing or likely to cause pollution occurring at any stage of the bunkering operation, the Buyers shall assist and the Sellers shall be responsible to take immediate actions as necessary to effect clean up and which shall always be conducted in accordance with such local laws and regulations that may compulsorily apply.
- (b) Where it is a compulsory requirement of the law of the port or place of delivery of the Marine Fuels that the Sellers shall have in place their own oil spill contingency plans, the Sellers shall ensure that valid oil spill contingency plans approved by the relevant authorities are in effect to the extent that is so required.
- (c) The Sellers hereby agree to indemnify and hold the Buyers harmless for any claims, losses, damages, expenses, penalties or other liabilities incurred by the Buyers under the United States Oil Pollution Act of 1990, or other pollution legislation of any state of the United States of America or any other country or jurisdiction, as a result of any spillage occurring whilst the Marine Fuel is being transported directly to or from the Buyers Vessels' manifold save to the extent that such spillage is caused by and fault on the part of the Buyers.
- (d) The Buyers shall similarly indemnify the Sellers where any of such spillage occurs once risk in the Marine Fuel has passed the Buyers Vessel's manifold save to the extent that such a spillage is caused by any fault on the part of the Sellers.
- (e) The Sellers shall ensure that the Suppliers is insured for oil spillage damages up to a minimum amount per incident required by the Applicable local statutory rules or regulations. If such coverage or insurance is not obtained by the

suppliers it shall be the sole responsibility of the Sellers to establish such coverage for their account.

- (f) Proof and conditions of such coverage, whether established by the suppliers or by the Sellers shall be made available to the Buyers at their request, as soon as practically possible and before the delivery of the Marine Fuels.

## **15. Force Majeure**

Neither Party shall be liable for any loss, damage or delay due to any of the following force majeure events and/or conditions at the port of delivery to the extent the Party invoking force majeure is prevented or hindered from performing any or all of their obligations under the relevant contract, provided they have made all reasonable efforts to avoid, minimize or prevent the effect of such events and/or conditions:

- (a) Acts of God;
- (b) Any Government requisition, control, intervention, requirement or interference;
- (c) Any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;
- (d) Riots, civil commotion, blockades or embargoes;
- (e) Epidemics;
- (f) Earthquakes, landslides, floods or other extraordinary weather conditions;
- (g) Strikes, lockouts or other industrial action, unless limited to the employees of the Party seeking to invoke force majeure;
- (h) Fire, accident, explosion except where caused by negligence of the Party seeking to invoke force majeure;
- (i) Any other similar cause beyond the reasonable control of either Party.

The party seeking to invoke force majeure shall notify the other Party in writing within two (2) days of the occurrence of any such event/condition.

## **16. Termination**

Without prejudice to accrued rights hereunder, either Party hereto shall be entitled to terminate this Contract in the event of:

- (a) Any application being made or any proceedings being commenced, or any order or judgment being given by any court, for
  - (i) the winding up, dissolution, liquidation or bankruptcy of either Party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver or administrator is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors; or
  - (ii) the appointment of a receiver, liquidator, trustee, administrator, administrative receiver or similar functionary of the other Party of all or a substantial part of its assets (otherwise than for the purpose of a reconstruction or amalgamation); or
- (b) Any act being done or event occurring which, under the applicable law thereof, has a substantially similar effect to any of the said acts or events described above; or
- (c) Either Party is in breach of the provisions of Clause 12 (Sanctions Compliance Clause); or
- (d) If a force majeure event as defined in Clause 15 (Force Majeure) prevents or hinders the performance of the Contract for a period exceeding ten (10) consecutive days from the time at which the impediment begins to prevent performance if notice is given with delay or, if notice is not given without delay, from the time at which notice thereof reaches the other Party.

## **17. Confidentiality**

- (a) Neither Party shall disclose to third parties any confidential information relating to pre-contractual discussions and/or the terms and conditions of this Contract, except with the prior written consent of the other Party, or to the extent required by law, or by a request of a government or its agency thereof.
- (b) The Parties shall take reasonable precautions to ensure that no unauthorized disclosure of confidential information takes place.

- (c) If a Party is uncertain as to whether information is confidential, the Sellers or the Buyers (as the case may be) shall consult with the other Party.
- (d) Should either Party be required by law to disclose confidential information, the disclosing Party will notify the other party and shall disclose only the minimum confidential information required to satisfy legal requirements.
- (e) Information is not confidential for the purposes of this Clause if it was in the possession of the Party prior to receipt from the other Party; becomes publicly available other than as a result of a breach of this Contract by one of the Parties; or is lawfully received from a third party.
- (f) This Clause shall survive termination of this Contract.

### **18. Third Party Rights**

No third parties may enforce any term of this Contract.

### **19. Assignment**

Neither Party shall assign any of their rights under this Contract without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

### **20. Partial Validity**

If any provision of this Contract is or becomes or is held to be illegal, invalid or unenforceable in any respect under any law or jurisdiction, the provision shall be deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if such amendment is not possible, the provision shall be deemed to be deleted from this Contract to the extent of such illegality, invalidity or unenforceability, and the remaining provisions shall continue in full force and effect and shall not in any way be affected or impaired thereby.

### **21. Notices**

Any Party giving notice under this Contract shall ensure that it is effectively given and such notice shall be treated as received during the recipients' office hours. If such notice is sent outside the recipients' office hour it shall be treated as received during the recipients' next working day.

## **22. Entire Agreement**

- (a) The written terms of this Contract comprise the entire agreement between the Buyers and the Sellers in relation to the sale and purchase of the Marine Fuels and supersede all previous agreements whether oral or written between the Parties in relation thereto.
- (b) Each of the Parties acknowledges that in entering into this Contract it has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether or not made negligently) other than as is expressly set out in this Contract.
- (c) Any terms implied into this Contract by any applicable statute or law are hereby excluded to the extent that such exclusion can legally be made. Nothing in this Clause shall limit or exclude any liability for fraud.

## **23. Law and Regulation**

The arbitration shall be conducted in accordance with the London Maritime Arbitration Association (LMAA) Rules in force at the time that the arbitration proceedings are commenced. This Contract shall be covered by and construed in accordance with English Law and any dispute arising out of this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force. Unless the Parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint a third arbitrator, the decision of the three-man tribunal thus constituted or any two of them, shall be final. On the receipt by one party of the nomination in writing of the other party's arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single arbitrator appointed shall be final.