



## **GENERAL TERMS AND CONDITIONS FOR THE SALE AND DELIVERY OF MARINE FUEL FROM MARIN SELATAN SDN BHD**

### **GENERAL APPLICATION**

These General Terms and Conditions for the Sale and Delivery of Marine Fuel ("General Terms and Conditions") shall apply to any Contract of Sale and/ or Delivery of Marine Fuel Oil and related products of whatever type and grade between the Seller and the Buyer of such Marine Fuel. Where the Seller agrees expressly with the Buyer in writing for a particular term or terms to be included in their Contract, which are inconsistent with these General Terms and Conditions, such particular term or terms shall prevail over these General Terms and Conditions only to the extent of such inconsistency.

### **1. DEFINITIONS**

In these General Terms and Conditions, the following terms shall, unless the context otherwise requires, have the following meanings:

1.1 "Buyer" shall mean the company buying Marine Fuel under a Contract from the Seller and shall include its subsidiary, affiliate, authorized agent, or broker and designated representatives.

1.2 "Seller" shall mean MARIN SELATAN SDN BHD, its supplier, subsidiary, affiliate or nominee delivering or arranging for the delivery of Marine Fuel under a Contract and shall include any of its agents, and designated representatives.

1.3 "Marine Fuel" shall mean the different grades of Marine Fuel Oil, Intermediate Marine Fuels, Marine Fuel Oil, Thin Fuel Oil, Marine Diesel Oil, Light Marine Diesel Fuel and Gas Oil or any other type and grade of oil including marine lubricant contracted to be delivered or arranged to be delivered by the Seller.

1.4 "Contract" shall mean an agreement by the Buyer to buy and a corresponding agreement by the Seller to sell and deliver or to arrange for the sale and delivery of Marine Fuel of a specified quantity at a specified price.

1.5 "Delivery Port" shall mean a port at which the Seller delivers or arranges for the delivery of Marine Fuel under a Contract.

1.6 "Company" shall include a natural person, an unincorporated body, a governmental agency or a statutory corporation.

1.7 "Vessel(s)" shall mean the ship or vessel(s) nominated to take delivery, or taking delivery or having taken delivery of the Marine Fuel under a Contract on behalf of the Buyer and to which Marine Fuel is to be, has been or arranged to be delivered by the Seller.

### **2. SALE TRANSACTIONS**

2.1 Each sale of Marine Fuel shall be confirmed by a Marine Fuel Contract and/ or Sales Confirmation (Both referred to as the "Contract"). The Contract shall incorporate the General Terms and Conditions by reference. The Contract and the General Terms and Conditions together constitute the complete Contract of Sale of Marine Fuel. The Contract shall supersede any conflicting terms of other contracts which the Buyer may seek to enforce against the Seller. In particular, any terms not directly aimed at Marine Fuel sales transactions may not be enforced against the Seller to the effect they contravene the Contract. Should the Buyer disagree to any terms contained therein, the Buyer is under an obligation to object to the terms of the Contract immediately and in no event later than two (2) hours after circulation of the Contract.



2.2 Unless the person or entity with whom the Seller is corresponding specifically declares in writing to the Seller prior to dispatch by the Seller of the Contract that it is not the Buyer and at the same time provides in writing to the Seller the full name and address of the Buyer then the person or entity with whom the Seller is corresponding shall be deemed as the Buyer.

2.3 Before any sale is transacted, it is the Buyer responsibility to ensure the Seller representative is authorized and given the rights by the Seller's Managing Director to represent the Seller. If Buyer has any doubt, Buyer should get written verification from the Seller's Managing Director prior to such sale transaction. Any transaction done with any unauthorized personnel is at the Buyer own risk and the Seller will deem no responsibility to acknowledge or honour such sale if Seller think that the sale transaction is unfairly done.

2.4 If a purchase of Marine Fuel is contracted for by a broker, an agent, or a manager for a principle, an owner, or a charterer, each such broker, agent or manager shall be bound by and be fully liable for the obligations of the Buyer. Furthermore, delivery shall always take place for the account of the registered owners and for the account of the current charterers all of whom shall be jointly and severally liable for the payment of the delivery as Buyers. The Buyer warrants that it is authorized as agent to order the Marine Fuel for the delivery to the vessel, and that the Seller has a lien in the Vessel for its claim.

2.5 Any notice or any stamp in the Marine Fuel/ Bunker Delivery Receipt or similar cannot waive the Seller's maritime lien on the Vessel.

2.6 Without the prior written approval of the Seller, Buyer shall not assign its interest in the Contract. The Seller may assign alternatively, novate the Contract and shall thereafter give notice to the Buyer. By entering into the Contract, the Buyer hereby consents to any subsequent novation.

### **3. PRICE**

3.1 The price of Marine Fuel shall be the price in United States Dollars (or any equivalent currency as the Seller may require) quoted by the Seller and accepted by the Buyer as confirmed in the Contract for the relevant type of Marine Fuel delivered or to be delivered.

3.2 The Buyer shall also pay the Seller for all and any VAT, taxes, levies, duties, expenses, delivery charges, barging fees, surveyor fees and other costs (including without limitation, those imposed by governments and authorities) arising out of or incurred by the delivery of such Marine Fuel under the Contract which shall be included in the Seller's invoice to the Buyer.

### **4. DELIVERIES**

4.1 All deliveries under a Contract shall be made ex-wharf or ex-lighter/barge in accordance with the instructions given by the Buyer or the Master of the Vessel, subject to the Seller's agreement to such instructions, which agreement shall be reached before commencement of the time for delivery by the Seller under the Contract. The Seller is entitled to suspend delivery of the Marine Fuel under the Contract until such agreement is reached, and if no such agreement is reached within 14 days from the time of delivery under the Contract, the Seller shall be entitled to terminate the Contract but without prejudice to the Seller's right to claim damages from the Buyer.

4.2 The Buyer shall give the Seller, unless otherwise agreed to or requested by the Seller, at least two (2) days' advance notice of requirements (excluding Saturdays, Sundays and Public Holidays, unless waived by the Seller) prior to the time of requested delivery. Such notice shall identify the Buyer and Contract and shall specify all delivery details, including but not limited to, the port, name of Vessel, the agent of Vessel, its estimated time of arrival, approximate date of delivery, location of Vessel, method of delivery and confirmation of the grade and quantity of Marine Fuel ordered. The Buyer or the agent of the Vessel shall give the Seller at least Forty-Eight (48) hours' confirmation notice (excluding Saturdays, Sundays and Public Holidays, unless waived by the Seller) of the exact quantity of Marine Fuel required and the exact location and exact time at which delivery is required. Notwithstanding the foregoing, the Buyer shall be liable for any costs or expenses incurred by the Seller resulting from the failure by the Buyer to take delivery of or rejecting in part or in full the quantity of Marine Fuel ordered under the Contract.



4.3 Though the Seller may provide information to the Buyer regarding the characteristics of Marine Fuel, the Buyer shall have the sole responsibility for selecting and accepting the actual Marine Fuel purchased. Any information provided by the Seller as to the characteristics of Marine Fuel shall not be construed as specifications of Marine Fuel to be delivered under a Contract to the Buyer and shall be regarded as ex-gratia only.

4.4 Delivery of Marine Fuel by the Seller to the Buyer shall be carried out, inter alia, subject to any regulations, requirements and procedures (including any amendments and revisions thereof) as may be prescribed from time to time by any governmental authority at the port at which the Seller accepts delivery nominations. The Buyer shall, in any event, be solely responsible for ascertaining, acquainting itself and complying with inter alia, all such regulations, requirements and procedures which are applicable at the Delivery Port and in complying with all relevant berth restrictions and requirements.

4.5 All deliveries shall be in accordance with the Singapore Basic Code of Practice for Bunkering SS600:2014 or its latest edition.

4.6 Should the Vessel's arrival date deviate from the contractual stem date, the Seller will only deliver on the Seller's best commercial endeavour basis and shall not be liable for any delay, demurrage and incidental cost.

4.7 On completion of delivery of Marine Fuel to any Vessel under a Contract, the Master of the Vessel or the Buyer shall provide the Seller a signed bunker delivery receipt in the form required by the Seller.

## **5. QUANTITY AND QUALITY DETERMINATION**

5.1 The quantity of bunkers delivered shall be determined from the official gauge/ sounding or oil meter (if available) of the barge effecting delivery or shore tank as nominated by the Seller. Buyer has the right to be represented at the time of measurement. If Buyer or its representative is not or do not wish to be present at the time of measurement, then any complaint of wrong measurement or short delivery shall be deemed to be waived. The quantity shall be measured under prevailing guideline set in the Basic Code of Practice for Bunkering SS600:2014 or its latest edition.

5.2 The Marine Fuels to be delivered shall be Seller's commercial grades of Marine Fuels currently offered to all its customers at the time and place of delivery. Buyer shall have the sole responsibility for the choice and acceptance of bunkers, including determination of compatibility with bunkers existing onboard the vessel. All samplings taken at the time of bunkering shall be done in accordance to the procedures as set in the Basic Code of Practice for Bunkering SS600:2014 or its latest edition. Any sample taken outside of these procedures shall not be recognized as the legal and binding sample.

5.3 The quality of each grade of Marine Fuel shall be the usual quality of that grade offered for sale or being sold by the Seller at the time and place of delivery. THERE ARE NO GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS OR SUITABILITY OF THE MARINE FUEL FOR ANY PARTICULAR PURPOSE OR OTHERWISE, WHICH EXTEND BEYOND THE DESCRIPTION CONTAINED HEREIN.

5.4 Any claim pertaining to shortages in quantity shall be notified to Seller immediately upon discovery. If Buyer fails to give any initial notice or formal written notice is not received by the Seller, within fifteen (15) days after the date of delivery of the Marine Fuel, all claims will be conclusively deemed to have been waived.

5.5 Any claim pertaining to the quality of Marine Fuel delivered under the Contract must be based on tests made as soon as possible by an independent laboratory from the Seller's retained samples taken at the time of delivery from the shore tank or barge from which such delivery is made. Such claim must be received by the Seller together with full details of the claim arising therefrom and the supporting documents thereof as soon as possible but in no event later than fifteen (15) days from the date of such delivery. The costs of any tests carried out at such independent laboratory shall be borne by the Buyer if the results favour the Seller or by the Seller if the results favour the Buyer. Such test results shall be conclusive and binding between the Seller and the Buyer.

5.6 Should the Buyer submits any claim pertaining to the quantity or quality of Marine Fuel delivered under the Contract, the Seller or the appointed representatives shall be entitled and the Buyer shall allow the Seller to



board the Vessel and investigate the Buyer's claims, in particular, to check the Master's logs or the Vessel's records and to make copies of documents which the Seller may consider necessary for its investigations.

5.7 The Buyer's submission of any claim does not, by itself without Seller's express agreement in writing, relieve the Buyer of responsibility to make payment in full under the Contract when such payment falls due.

## **6. PAYMENT**

6.1 Payment for delivery under the Contract shall be made by the Buyer shall be in full, without deduction or discount in United States Dollars to the Seller as stated in the Contract. The Seller shall provide the Buyer with a documentary invoice, email invoice, fax invoice and/ or telex invoice based upon the Contract price. The Buyer upon receipt of such invoice shall make payment in full when it falls due as directed by the Seller either at the Seller's address or by electronic or telegraphic transfer of funds to a bank account nominated by the Seller.

6.2 The Buyer shall not be entitled to assert any right to set-off or counter-claim in making any payment or, in any legal proceedings by the Seller against the Buyer for payment of price of deliveries, or any monetary claims or damages asserted by the Buyer unless the same is admitted by the Seller.

6.3 Payment shall be deemed to have been made in the case of a direct payment to the Seller on the date of receipt of good funds at the Seller's address or, in the case of an electronic or telegraphic transfer, on the date the payment is credited in full to the Seller's nominated bank account, free of all bank and incidental charges. If payment due date falls on a non-business day, weekend, public or bank holiday, the nearest business day before the due date shall apply for the payment to be made by the Buyer.

6.4 In cases of default or if substantial changes in the Buyer's financial situation occur or if circumstances which diminish the Buyer's credit standing arise after delivery to the Buyer, the Seller shall be entitled to demand – in derogation of any original agreement governing payment – immediate payment in cash for such delivery and the Seller shall have the further right, at its option to suspend any further deliveries hereunder or under other contracts with the Buyer, notwithstanding that payment is not due yet in respect of such delivery, or terminate the Contract and/ or any other contracts with the Buyer.

6.5 If at any time the Seller is of the opinion before delivery to the Buyer that adequate assurance of the Buyer's ability to perform its obligations under these General Terms and Conditions is lacking, or that the financial ability of the Buyer is impaired or unsatisfactory, the Seller may, in its absolute discretion, request the Buyer to pay cash in advance or to put up security acceptable to the Seller, and the Seller may withhold delivery until the Buyer complies with such requests, or failing the Buyer's compliance with such request within 3 working days from the date of request, the Seller shall be entitled to terminate the Contract but without prejudice to the Seller's right to claim damages from the Buyer.

6.6 Marine Fuel are delivered under the Contract on the faith and credit of the Vessel to which they are delivered as well as on the faith and credit of the Buyer and if at any time, the Buyer has failed to make payment in accordance with the Contract, the Seller shall be entitled to assert all their rights against the Buyer and/or the Vessel including but not limited to the arrest of such Vessel as security for the Seller's claim against the Buyer and/ or the assertion of a maritime lien where one is recognised by the laws of the country in which the Seller seeks to assert such rights against the Vessel. The taking of any additional security measures by the Seller shall not operate as a waiver of this provision.

6.7 Without prejudice to any other rights of the Seller, the Seller shall at its option be entitled to apply, in satisfaction of any obligation owing hereunder by the Buyer, the amount of any monies which may then be or thereafter become owing from the Seller to the Buyer.

6.8 Overdue payments shall bear interest at the rate of two percent (2%) per month as pro-rated from the date payment falls due until full payment is made, unless the Buyer and the Seller have agreed in writing to some other rate in which event such other rate shall apply. Such interest shall be payable as directed by the Seller. All overdue payments may be applied, at the discretion of the Seller, first towards settlement of interest outstanding before application to the principal payment sum under the Contract.



## 7. FORCE MAJEURE

7.1 The Seller shall not be liable for any loss, damage or demurrage howsoever arising and/or from any breach, delay or non-performance of the Contract and/or these General Terms and Conditions to the extent such is caused by any governmental act or compliance by that party with any order, request, or control of any governmental authority or person purporting to act thereof whether or not such order or request is later determined to be invalid (including compliance with or implementation of any order, request, plan or program of any authority created by governments).

7.2 The Seller shall not be liable for any loss, damage or demurrage howsoever arising and/or from any breach, delay or non-performance of the Contract and/or these General Terms and Conditions to the extent such is caused by the interruption, unavailability, or inadequacy of Marine Fuel, or any constituent thereof, or any facility of production, manufacture, storage, transportation, distribution or delivery, because of wars, hostilities, public disorders, acts of enemies, sabotage, strikes, lockouts, labour or employment difficulties, fires, acts of God, accidents, breakdowns, weather conditions, or any other cause whatsoever which is not within the control of the Seller including, but not limited to, the failure, cessation, termination or curtailment in whole or in part of any of the existing or contemplated sources of supply of the Seller of Marine Fuel, or the crude oil or petroleum products from which Marine Fuel is derived.

7.3 The Seller shall not be required to remove any such cause or replace the affected source of supply or facility, and, in the event of an actual or anticipated shortage of supply that directly or indirectly prevents the Seller from fulfilling its own requirements as well as those of its customers including its affiliated companies and the Buyer, the Seller may allocate available quantities of Marine Fuel to it, its customers and the Buyer in its absolute discretion.

## 8. LIABILITY

8.1 Without prejudice to clause 8.3, the Seller's liability for any damage whatsoever arising under this Contract whether caused by negligence or not, whether based in tort or contract and whether falling on the Buyer or 3<sup>rd</sup> party shall be limited to the value of the Marine Fuel as set out in the invoice. For the avoidance of doubt, the foregoing shall include product liability claims.

8.2 The Seller shall under no circumstances be held liable for any consequential losses whatsoever, including, without limitation, delay, detention, demurrage, charter hire, crew wages, pilotage, towage, port charges, loss of profits or increased costs or expenses for obtaining replacement fuel. In no event shall the Seller be liable for punitive damages.

8.3 Any liability for damages to the Vessel, including liability for any proven claim for off-specification or defective product, shall be limited to the costs of repair or replacement of machinery components of the Vessel. In the case if replacement or repair, 20 percent of the invoiced value of the spare parts shall be deducted from the claim for each year or fraction of a year the replacement part has been in use.

8.4 The Buyer undertakes to indemnify the Seller against any claims, losses or costs of whatever kind related to the Contract instituted by 3<sup>rd</sup> parties against the Seller to the extent such claims exceed the Seller's liability towards the Buyer according to clause 8.

8.5 The Seller shall under no circumstances be held liable for any operating loss, loss of time, loss of profits or other similar indirect losses.



## 9. CANCELLATION CHARGES

9.1 Should the Buyer cancel the Contract for any reason whatsoever, a cancellation fee of USD6.00 per MT will apply. In addition, if the price (based on the Average Mean of Platts published for Singapore or other Platts references made for the Contract) on the date of confirmation is higher in value compared to the date of cancellation, this price difference will be imposed by the Seller to the Buyer.

9.2 Should the Vessel's arrival fall more than three (3) days from the contractual stem date, the Seller reserves the right to cancel the Contract and impose a cancellation fee as per clause 9.1.

## 10. SAFETY AND ENVIRONMENTAL PROTECTION

10.1 It shall be the sole responsibility of the Buyer to ensure that the Vessel, its crew and those responsible for its operation and management observe and comply with all health, safety and environmental laws and regulations with regards to the receipt, handling and use of the product(s). The Buyer warrants that the Vessel is in compliance with all national and international trading and pollution regulations.

10.2 In the event of a spill (which for the purpose of this clause shall mean any leakage, escape, spillage or overflow of the product) or discharge occurring before, during or after delivery of the product, the Buyer and the Seller shall immediately notify the appropriate governmental authorities and shall jointly, and regardless as to whether the Buyer or the Seller are responsible, immediately take actions as are reasonably necessary to effect clean up and which shall always be conducted in accordance with such local laws and regulations which may compulsory apply. If the Buyer fails to take such immediate action, the Buyer authorizes the Seller and others appointed by the Seller, to take such action on behalf of the Buyer, at the Buyer's risk and expense, and the Buyer shall indemnify and hold the Seller and others harmless against any damages, expenses, claims, or liabilities, of whatever nature.

## 11. MISCELLANEOUS

11.1 Notice to either party shall be mailed to it at its indicated address, and shall be deemed given at the expiration of normal delivery time. These General Terms and Conditions contain the entire Contract between the parties covering the subject matter except as otherwise agreed to in writing by the Seller.

11.2 No waiver by either party of any breach of any of the General Terms and Conditions herein contained to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or of any other of these General Terms and Conditions.

11.3 In the event that payment of the Contract is not received in full by the Seller from and within the terms stated in the Contract, from and including the date of delivery of Marine Fuel ("the due date") supplied by the Seller to the Buyer, the Buyer agrees to assign and do so assign, effective from the due date, all rights, interests and claims, including rights of action in rem against any receiving vessel(s) and/ or her owners/ bareboat charterers. For the avoidance of doubt, the Seller may if it so wishes bring any action against the receiving vessel of the Marine Fuel in the Buyer's name or jointly in the names of Seller and Buyer. The Buyer irrevocably consents to have itself named as the Plaintiff or Co-Plaintiff in such action and hereby authorizes all steps to be taken in connection with the commencement a continuance of such an action. A receiving vessel refers to the vessel to which the Buyer shall deliver or agree to deliver or has delivered, pursuant to any contract of sale or supply of Marine Fuel between him (i.e. the Buyer) and any third party (including the owner or bareboat charterers of such vessel).

11.4 The Contract made in accordance herewith, its performance and enforcement shall be governed by the laws of Malaysia and both the Buyer and the Seller shall submit to the non-exclusive jurisdiction of the Malaysia Courts. Should any provision hereof be finally determined to be inconsistent with or contrary to applicable laws, such provisions shall be deemed amended or omitted, but only to the extent necessary, to conform with such applicable laws without affecting any other provision hereof or the validity of such agreement.