



## **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF BUNKER FUEL OIL OF ARGOS CHINA LTD.**

These conditions are applicable to all offers, quotations, orders, agreements, services and deliveries except where expressly agreed in writing otherwise by the authorized representatives of Argos China Ltd.

These conditions represent the entire agreement between the Buyer and Argos China Ltd and shall supersede any prior representations made by the parties. Any variation to these conditions shall be agreed in writing and signed by the authorized representative of Argos China Ltd.

General trading conditions of another party shall not apply unless expressly accepted in writing by Argos China Ltd..

### **1. Definitions**

- a) "ACL": Argos China Ltd and/or any person, firm or company appointed by the said Argos China Ltd as supplier and authorized by it to make deliveries of Bunker Fuel Oil.
- b) "Buyer": any party asking offers or quotations or ordering or receiving delivery of Bunker Fuel Oil and/or services to be made to vessels including ship owners, charterers, operators, agents, brokers, designated representatives, representatives, subsidiaries or affiliates wherever applicable.
- c) Vessel: such vessel(s), ship, barge or off-shore unit as may be owned, managed, chartered, (whether by demise or otherwise howsoever) operated or otherwise controlled by Buyer including vessels of associated companies and vessels for which Buyer as an agent or broker orders Bunker Fuel Oil.
- d) Bunker Fuel Oil or Bunkers: ACL's commercial grades of bunker fuel oils as generally offered to ACL's customers for ordinary use at the time and place of delivery and/or services connected thereto.
- e) "Owner" includes the Vessel's manager, its registered Owner, bareboat charterer, charterer and operator.



## 2. Offers and quotations

- a) All offers and quotations, submitted by ACL are non-binding on ACL, unless stated to be otherwise by ACL.
- b) No agreement shall be binding on ACL unless it has first been confirmed by ACL in writing.
- c) ACL's offer is based on the applicable taxes, duties, costs, charges and price level of crude oil or components for bunkers existing at the time of the conclusion of the agreement (the time of ACL's confirmation). Any subsequent or additional tax, assessment, duty or other charge of whatever nature and however named, or any price increase of crude oil or components for bunkers or any addition costs borne by ACL whatsoever caused by any change in the ACL's contemplated source of supply or otherwise, coming into existence after the agreement has been concluded, shall be added to the agreed purchase price.

## 3. Specifications (quality - quantity)

- a) The specifications as given by ACL are average analyses, unless stated otherwise by ACL in writing.
- b) The quality and quantity of Bunker Fuel Oil shall be agreed between ACL and the Buyer and correspond to ACL's written confirmation.
- c) The Buyer shall have the sole responsibility for the nomination of the quality and quantity of the Bunker Fuel Oil, which shall correspond to ACL's written confirmation.
- d) Where standard specifications are being given or referred to, tolerances of 5% minimum/maximum in quality are to be accepted without compensation or other liabilities or consequences whatsoever.
- e) In respect of the quantity to be provided to the Buyer, ACL will be at liberty to provide, and, Buyer shall accept 10% more or less from the agreed quantity, and the Buyer shall pay for the actual quantity provided in accordance with the corresponding invoice from ACL.



4. Loading conditions and delivery

- a) Any time of delivery is given by ACL on an approximate basis, unless it has been otherwise specifically agreed in writing between the parties.
- b) Notwithstanding Clause 4 (a) above, the time of delivery will only be binding upon ACL when all information necessary for ACL to comply with its obligations hereunder, have been properly delivered to ACL in reasonable time prior to delivery.
- c) In any case the Buyer, unless otherwise agreed in writing, must give not less than seventy two (72) hours approximate notice of delivery, which is to be followed by forty eight (48) hours and twenty four (24) hours notice, where the last notice must specify the exact place of delivery. The notices of delivery must be given to ACL and/or ACL's representatives/agents.
- d) If delivery is required outside normal business hours or on local weekends, Saturdays, Sundays or local holidays, any extra expenses incurred as a result or incidental to such delivery shall be reimbursed by the Buyer to ACL as additional costs.
- e) Delivery of Bunker Fuel Oil to the Vessel shall be made in the order of their arrival at the port of loading, subject to the usual priority of mail vessels.
- f) ACL shall be entitled to deliver the Bunker Fuel Oil in special part deliveries. In that case each part delivery shall be construed as a separate delivery.
- g) ACL shall use its reasonable endeavors to bunker the Vessel in question as promptly as the circumstances permit. However, ACL shall not be liable for any demurrage paid or incurred by the Buyer or for any loss, damage or delay of the Vessel of any nature whatsoever.
- h) The Buyer shall ensure that the Vessel provides a free, safe and always afloat and accessible side for the delivery of bunkers and that all necessary assistance as required by ACL or the ACL's representative is rendered in connection with the delivery including the provision of supplies team, if necessary. The Buyer shall also ensure that the Vessel is in possession of all certificates required to comply with all relevant laws and regulations pertaining to delivery of Bunker Fuel Oil at the relevant place of delivery.



- i) The receiving Vessel shall moor, unmoor, hoist bunkering hose(s) from the barge(s) respectively, and lower hose(s) whenever required by ACL or ACL's representative, free of expenses, and in any way requested to assist barge equipment to ensure a smooth supply. The Buyer shall make and be responsible for all connections and disconnections between the delivery hose(s) and the Vessel's bunker intake manifold/pipe and ensure that the hose(s) are properly secured to the Vessel's manifold prior to commencement of delivery.

During bunkering the Vessel's scrubbers must be safely blocked, which blocking must be made by the Vessel's own crew. Furthermore the Vessel must ensure that all pipes and manifolds and receiving tanks are completely checked and being ready to receive the Bunker Fuel Oil, including but not limited to ensuring proper opening/closing of relevant valves, without any risk for spillages, etc. during the bunkering.

Local further special requirements for receiving Bunker Fuel Oil must be followed strictly by the receiving Vessel, whether advised or not by ACL or ACL's representatives, as it is always the Vessel and the Buyer who remains solely responsible for the awareness of such eventual additional requirements for safety reasons.

- j) In case that the Vessel is not able to receive the delivery promptly, the Buyer shall pay reasonable demurrage claim to the barging/supplying facilities.
- k) If possible, the Vessel shall provide segregated tankage to receive the contracted quantity of bunkers; and the Vessel shall always be able to perform its own blending on board.
- l) In case the Buyer for whatever reason is unable to receive the full quantity ordered and rendered at the place and time designated for delivery, ACL shall without prejudice to all its other rights be at liberty to either dispose of or store the Bunker Fuel Oil or take any other action it may deem appropriate at ACL's sole discretion. ACL shall also have the right to invoice the buyer for the loss incurred by having to transport the Bunkers back to the storage or by having to sell the Bunkers in a degraded form at a lower price than that applicable to the grade originally nominated by the Buyer. ACL may use these right without prejudice to ACL's other rights for damages or otherwise pursuant to these terms.



- m) The Buyer shall accept delivery of Bunker Fuel Oil at permanent intake connections of the Vessel at wharf or marine loading terminal at the port of loading or alongside lighters as the case may be, or upon passing of the ships' rail, whichever is the earlier. Delivery shall be deemed completed and all risk, including but not limited to loss damage, deterioration, depreciation, evaporation, or shrinkage as to the Bunkers delivered shall pass to the Buyer from the time the Bunkers reaches the flange connecting pipe lines/delivery hoses provided by ACL.
- n) If ACL at any time for any reason believes that there may be a shortage of supply at any place and that it as a result thereof may be unable to meet the demands of all its customers, ACL may allocate its available and anticipated supply among its customers in such a manner as it may determine to be most reasonable in its sole discretion.

#### 5. Measurements

- a) The quantity of Bunker Fuel Oil delivered shall be determined from the official gauge or meter of the bunkering barge or tank delivery or of the shore tank in case of delivery ex wharf. The Chief Engineer or his representative shall together with ACL's representative measure and verify the quantities of Bunkers delivered from the tank(s) from which the delivery is made. Should the Chief Engineer or his representative fail or decline to verify the quantities for whatever reasons, the measurements of quantities made by ACL shall be final, conclusive and binding and the Buyer shall be deemed to have waived any and all claims in regard to the variance.
- b) Adjustment in volume owing to differences in temperature shall be made in accordance with the Abridged Volume Correction table of the ASTM-IP Petroleum Measurement Tables.

#### 6. Sampling

- a) ACL shall arrange for two (2) identical representative samples of each grade of Bunker Fuel Oil to be drawn throughout the entire bunkering operation. If practically possible such samples shall be drawn in the presence of both ACL and the Buyers or their respective representatives.



- b) In case that drip sampling is not available onboard barge, tanktruck or shore tank, samples shall be taken as a composite of each tank divided with 1/3 from each of the top/mid/bottom of the tanks.
- c) The samples shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, product name, delivery date and place and seal number, authenticated with the Vessel's stamp and signed by ACL's representative and the Master of the Vessel or his representative. The seal numbers shall be inserted into the BDR (Bunker Delivery Receipts), and by signing the BDR both parties agrees to the fact that the samples referred to therein are deemed valid and taken in accordance with the requirements as specified in this clause.
- d) One (1) sample shall be retained by ACL for thirty (30) days after delivery of the Bunkers, or if requested by the Buyer in writing, for as long as the Buyer reasonably required. The other sample shall be retained by the receiving Vessel.
- e) In the event of a dispute in regard to the quality of the Bunkers delivered, the samples drawn pursuant to Clause 6(d) above shall be deemed to be conclusive and final evidence as to the quality of the product(s) delivered. In case of disputes the samples retained by both parties shall be forwarded to a mutually agreed independent laboratory for final and binding analyses. The seal must be breached only in presence of both parties unless one/both in writing have declared that they will not be present; and both parties shall have the right to appoint independent person(s) or institute(s) to witness the seal breaking. No samples subsequently taken shall be allowed as (additional) evidence. If any of the seals have been removed or tampered with by an unauthorized person, such sample(s) shall be deemed to have no value as evidence.

## 7. Price

- a) The price to be paid by the Buyer for Bunker Fuel Oil ordered and delivered shall be the selling price of ACL, in effect at the time and place of delivery, for the applicable grade and quantity of Bunker Fuel Oil.
- b) The agreed prices are based on taxes, duties, costs and charges, as well as on the price level or crude oil or components for Bunker Fuel Oil, existing all the time that the



agreement has been concluded. Any later or additional tax, assessment, duty or other charge, or any increase of an existing tax, assessment, duty or charge, or an price increase of (crude) oil or component for Bunker Fuel Oil and any increase in additional costs borne by ACL caused by any change in ACL's contemplated source of supply, coming into existence after the agreement has been concluded shall be added to the selling price.

- c) All prices and/or tariffs are exclusive VAT, unless specifically stated otherwise.

## 8. Claims

- a) Claims concerning quality delivered shall be submitted by the Buyer to ACL in writing within seven (7) days after delivery, failing which the rights to complain or claim compensation of whatever nature shall be deemed to have been waived and barred.
- b) Claims concerning quantity delivered shall be submitted by the Buyer or Master of the Vessel to ACL or its representative immediately upon completion of delivery in the form of a statement or letter of protest, failing which such claim shall be deemed to have been waived and barred.
- c) The Buyer shall be obliged to make payment in full and fulfill all other obligations in accordance with the terms hereof, whether or not they have any claims or complaints of whatever nature. The Buyer's obligation to pay ACL shall be absolute and shall not be subject to any deduction or set-off in relation to any claim or counter-claim the Buyer may have.
- d) In any case, any rights or claims the Buyer may have against ACL under or in connection with the delivery of Bunker Fuel Oil shall be extinguished and time-barred unless legal proceedings have been instituted before the Competent Court within 12 (twelve) months after the date of delivery, or the date that delivery should have commenced pursuant to the written confirmation from ACL.

## 9. Payment terms

- a) Payment of ACL's invoice is due immediately and in any case shall be received within 30 days after date of delivery. Payment shall be credited as per the invoice terms into



ACL's account with Bank of China (Hong Kong) Ltd. (Acct No. 012-888-08013373) in US-dollars. Payment shall be made in full, without set-off, counterclaim, deduction and/or discount free of bank charges.

- b) Notwithstanding any agreement to the contrary, payment shall become due immediately in case of the Buyer's bankruptcy, liquidation, suspension of payment, arrest of assets and/or third party claims brought against the Buyer. Payment will also be due immediately in any other situation, which ACL considers to adversely affect the Buyer's financial position.
- c) Payment shall be deemed to have been made on the date of which ACL has received the full payment and such payment is available to ACL. If payment falls due on a non-business day, the payment shall be made on or before the business day nearest to the due date. If the preceding and the succeeding business days are equally near to the due date, then payment shall be made on or before the preceding business day.
- d) In case of late or non payment (in full or in part) of any amount due to ACL, the Buyer will be considered to be in default, without any notice being required. In this case ACL has the right to cancel discount, if any, interest per month at a rate as stated in ACL's subject invoice, will be due on the outstanding amount from the date payment should have been received until the date of full payment. Payments made by the Buyer shall at all times be credited in the following order : (1) costs, (2) interest and administrative fee, and (3) prices stated in the invoices in their order of age, regardless of whether such invoice are due for payment.
- e) All costs borne by ACL in connection with the collection of overdue payments, whether made in or out of Court, and in general all costs in connection with any breaches of this agreement by the Buyer, shall be for the Buyer's sole account.
- f) ACL shall at all times be entitled to require the Buyer to grant ACL what ACL considers in its sole discretion to be sufficient security for the proper performance of all its obligations under the agreement. Failure to provide such security upon request shall entitle ACL to stop any further execution of any agreement(s) between the parties until such time as the Buyer has provided the required security.





## 10. Liability

- a) ACL shall not be liable for any physical injury, property loss or damage, delay in making deliveries or rendering services unless it can be conclusively proved that such loss or damage was caused by the willful intent of its employees or agents.
- b) Liability of ACL for consequential damage and economic loss is excluded. In any event and notwithstanding anything to the contrary herein, the liability of ACL shall under no circumstances exceed the invoice value of the Bunker Fuel Oil supplied under the relevant agreement to the relevant Vessel.
- c) The Buyer shall be liable to ACL, and herewith undertakes to indemnify ACL for any and all damages and/or costs suffered or otherwise incurred or to be so suffered or otherwise incurred by ACL due to a breach of contract and/or fault or neglect of the Buyer, its agents, servants, representatives, (sub)contractors employees and the officers, crews and/or other people whether or not on board the respect Vessel(s). The Buyer further undertakes to hold ACL harmless in case of any third party claims whatsoever brought against ACL whether the same be directly or indirectly related to any agreement regulated by these terms and conditions. Third party shall mean any other (physical or legal) person/company other than the Buyer.
- d) No servant or agent of ACL (including independent (sub) contractors from time to time employed by ACL) shall under any circumstances whatsoever be under any liability to the Buyer for loss, damage or delay, while acting in the course of or in connection with their employment, and/or agency. Without prejudice to the above, every exemption, limitation, condition and liberty herein contained, and, every right, exemption from liability, defence or immunity or whatever nature applicable to ACL or to which it is entitled hereunder shall also be available and shall extend to protect every such servant or agent of ACL acting as aforesaid.

## 11. Force majeure

- a) Force majeure shall be considered to exist in all those circumstances which restrict or render impossible the execution of the agreement or any part thereof, insofar as such circumstances occur beyond the reasonable control of one or both parties.



- b) ACL or ACL's supplier shall not be liable for any loss, damage or demurrage due to any delay or failure in performance when the supply of Bunker Fuel Oil or any facility of production, manufacture, storage, transportation, distribution or delivery contemplated by ACL is interrupted, unavailable or inadequate for any cause whatsoever not within the control of ACL or ACL's supplier, including (without limitation) if such is caused by any act of God or the public enemy, hostilities, conditions of war (declared or undeclared), mobilization insurrections, riots and civil commotions, perils of navigations, government measures, expropriation, confiscation, requisition, or of blockades, embargoes, labor conflicts, strikes, shortage of labor, fire, flood, storm, snow, frost, swell and other catastrophes of nature accidents, prohibition of manufacturing and supply, non-observance of obligations and/or breach of contract by (sub) suppliers, prohibition of export or import, failure to obtain export of import licenses, unforeseen economic conditions, market disturbing governmental measures of national or international nature, quarantine, epidemics, contagious disease, veterinary measure, as well as circumstances which aggravate any disturbance, including all other circumstances considered as force majeure in the trade. Non-provision by the Buyer of relevant data for ACL in connection to the fulfillment of ACL's obligations will also be deemed to constitute force majeure.
- c) In case of force majeure, ACL or ACL's supplier shall not be required to make any deliveries omitted in accordance with this clause at any later time.
- d) The party who invokes force majeure shall immediately notify the other party in writing of the occurrence and cessation of any circumstances as aforesaid. If the Buyer exercises reasonable diligence, the Buyer shall not be liable for failure to receive any particular delivery if prevented therefrom by force majeure.
- e) The Buyer shall indemnify ACL or ACL's supplier for any damage caused by the Buyer, the Buyer's agent or employees in connection with deliveries hereunder.
- f) In the event that ACL as a consequence of force majeure does not have sufficient quantities of Bunker Fuel Oil available to supply all its Buyers, ACL shall have the right to choose which obligation(s) to meet and in which order, and/or to pro-rate the quantity of Bunker Fuel Oil available between the various Buyers, whereby ACL shall not be



required to purchase Bunker Fuel Oil to replace its supplies so curtailed or to make use of other than its normal transportation and/or other facilities.

- g) In the event that ACL, as a result of force majeure, can only deliver a superior grade of Bunker Fuel Oil, ACL is entitled to offer the said grade, and the Buyer must accept delivery thereof and pay the applicable price, failing which the Buyer will be deemed to be in breach.

## 12. Breach/Cancellation

ACL shall have the option to immediately cancel the agreement in full or in part, or to store or procure the storage of the Bunker Fuel Oil in whole or in part for the account and risk of the Buyer and to charge the Buyer the expenses thereby incurred, or to hold the Buyer fully to the agreement or, to take any other measure ACL deems appropriate, without prejudice to its rights to indemnification, in any (but not limited to) one of the following cases:

- a) When the Buyer, for whatever reason, fails to accept the Buyer Fuel Oil in part or in full at the price and time designated for delivery.
- b) When the Buyer fails, in part or in full, to comply with its obligations to pay any amount due to ACL and/or provide security as set out in Clause 9 (f) herein.
- c) When, before the date of delivery, it is apparent that the financial position of the Buyer, in ACL's judgment, entails a risk for ACL.
- d) When, in case of force majeure, ACL is of the opinion that the nature of the duration of the circumstances is such that the execution of the agreement is no longer feasible.

## 13. Title

- a) Title in and to the Bunker Fuel Oil delivered and/or all property rights in and to such Bunker Fuel Oil shall remain vested in ACL until payment has been received in full by ACL of all amount due, and of all claims, of whatever nature, which ACL has or may have against the Buyer. Although the products remain ACL's property until paid for, they shall be at the Buyer's risk from the time of delivery and the Buyer shall insure them against loss or damage accordingly.



- b) Until full payment of all amounts due to ACL has been made, the Buyer shall not be entitled to use the Bunker Fuel Oil other than for the propulsion of the Vessel, nor mix, blend, sell, encumber, pledge, alienate or surrender the Bunker Fuel Oil to any other third party Vessel.
- c) In case of breach hereof by the Buyer, ACL is entitled to take back the Bunker Fuel Oil without prior judicial intervention, without prejudice to all other rights or remedies available to ACL.
- d) Where title in and to the Bunker Fuel Oil delivered has passed to the Buyer and/or any third party before full payment has been made to ACL, the Buyer shall grant a pledge in such Bunkers to ACL. The Buyer further undertakes to grant a pledge in any other bunkers present in the respective Vessel, including any mixtures of the delivered Bunker Fuel Oil and other bunkers. Such pledge will be deemed to have been given for any and all claims, of whatever origin and of whatever nature, that ACL may have against the Buyer.
- e) In the event that the Bunker Fuel Oil has been processed, blended or mixed or worked up with or, as the case may be - into other products, the Buyer shall be deemed to have transferred to ACL his rights/joint rights of ownership and/or to those other products as security for all amounts due to ACL in connection to the delivery of Bunker Fuel Oil and/or otherwise. Also, in case such security does not provide a valid title, the Buyer will be deemed to have given to ACL a pledge upon such other products.
- f) In case the Bunker Fuel Oil, in part or in full, can no longer be identified or is or has become distinct from other Bunker Fuel Oil, ACL has the right to attach the Vessel and/or sister ship and/or any other assets of the Buyer (or the Owner of the Vessel) wherever situated in the world without prior notice.

#### 14. Spillage, Environmental Protection

If a spill occurs while the Bunker Fuel Oil is being delivered, the Buyer shall promptly take such action as is necessary to remove the spilled Bunker Fuel Oil and mitigate the effects of such spill. Without prejudice to the generality of the foregoing ACL is hereby authorized in its full discretion at the expense of the Buyer to take such measures and incur such expenses



(whether by employing its own resources or by contracting with others) as are necessary in the judgment of ACL to remove the spilled Bunker Fuel Oil and mitigate the effects of such spill. The Buyer shall cooperate and render such assistance as is required by ACL in the course of the action. All expenses, claims, costs, losses, damages, liability and penalties arising from spills shall be borne by the party that cause the spill by the negligent act or omission. If both parties have acted negligently, all expenses, claims, losses, damages, liability and penalties shall be divided between the parties in accordance with the respective degree of negligence. The burden of proof to show ACL's negligence shall be on the Buyer. The Buyer shall give ACL all documents and other information concerning any spill or any program for the prevention thereof that are required by ACL, or are required by law or regulation applicable of the time and place of delivery.

#### 15. Arrest Of The Vessel

- a) Notwithstanding anything to the contrary herein and without prejudice to any rights or remedies otherwise available to ACL, the Buyer, by its acceptance of these conditions, expressly authorizes ACL to arrest the Vessel in question and/or any other Vessel owned or operated by the Buyer, under the laws of the relevant jurisdiction as security for the obligations of the Buyer. Should the Buyer fail to make any payment to ACL immediately when due, ACL may dispose of such arrested Vessel whether by sale or otherwise as applicable under the laws of the relevant jurisdiction. Any costs or expenses of whatever kind incurred whether directly or incidentally by ACL in respect of such arrest shall be for the sole account of the Buyer and shall be added to the claim for which arrest is made.
- b) ACL shall have the right to obtain a payment guarantee from the Owner as set forth in Clause 9(f). If such guarantee has been given by the Owner and the Owner has not paid the outstanding amount to ACL within five(5) business days after proper written notice has been given, ACL has the right to arrest the Vessel and/or any other Vessel owned or operated by the Owner. ACL shall further have the right to dispose of such Vessel as set forth in Clause 15(a) above.

#### 16. Severability



If any provision (or part thereof) of these terms of conditions is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision (or part thereof) shall be deemed to be modified or amended to the extent necessary, in the opinion of a Counsel appointed by ACL, to remedy such unenforceability, illegality or invalidity or if this is not possible then such provision (or part thereof) shall be severed from these terms and conditions, in either case without affecting the enforceability, legality or validity of any other provision of these terms and conditions.

17. Most favorable terms

If for the supply and/or delivery of Bunker Fuel Oil, ACL is for any reason obliged to abide by some or all of the general terms and conditions of suppliers and/or the party arranging delivery, either the general terms and conditions of such parties or the current general conditions of sale and delivery shall apply, whichever, in the opinion of ACL, are more favorable to ACL.

18. Rights Cumulative

The rights provided for by these terms and conditions are cumulative with and not exclusive of any rights under the relevant law. No exercise by ACL of any specific right, power or remedy under these terms and conditions, or under the relevant law shall operate so as to prevent the full exercise by ACL of any other right, power or remedy.

19. Law and jurisdiction

- a) The contract in these conditions shall be governed by and construed in accordance with the laws of Hong Kong.
- b) ACL may sue anywhere in the world and the Buyer shall submit to any jurisdiction chosen by ACL and shall not apply to stay the action and/or suit for any reason whatsoever.
- c) ACL may sue the Buyer in the High Court of Hong Kong and for that purpose, ACL may serve any process and/or Writ on the Vessel or sister ship of the said Vessel (anywhere in the world) and/or local agents of the Buyers or may send a copy of such process to the Buyer's registered office or principal place of business and such service shall be accepted by the Buyer and deemed to be good service.