

## **GENERAL TERMS AND CONDITIONS OF MARINE FUEL SUPPLY**

Except as otherwise agreed in writing by Seller (Hyundai Oilbank Co., Ltd.), all sales of Marine Fuel shall be made according to the following conditions.

### **1. Price**

The price to be paid for marine fuel shall be as quoted by Seller and agreed by Buyer for each transaction. The prices so agreed shall apply to deliveries made at Seller's terminal into Buyer's vessel. Buyer shall pay for any and all applicable duties, goods and service tax, taxes, fees, costs (including those imposed by government authorities), barging fees, delivery charges and such other costs and expenses arising from the delivery.

### **2. Quality**

- a) The quality of marine fuels to be supplied hereunder shall substantially conform to the quality offered by Seller to other buyers in respect of the time and place of delivery and the particular grade or grades ordered by Buyer. Buyer shall, at its sole responsibility and cost, select the grade or grades of marine fuels for use in the vessel nominated.
- b) Each grade is as per ISO 8217, 2005 specification.
  - 1) IF380cst : within RMG380 plus sodium content below 50ppm and sulphur content below 4.0% M/M.
  - 2) IF280cst : within RME180 plus sodium content below 50ppm and sulphur content below 4.0% M/M and viscosity content below 280.
  - 3) IF180cst : within RME180 plus sodium content below 50ppm and sulphur content below 4.0% M/M.
  - 4) MDO : as per DMC
  - 5) MGO : as per DMA

### **3. Quantity Determination and Adjustments**

- a) Determination: The quantity of marine fuels delivered shall be determined at Seller's option from the gauge or meter of shore or barge tanks and such determination shall be conclusive and binding on the parties, provided Buyer shall have the right to be represented at the time of measurement or to appoint an approved petroleum inspector at Buyer's expense to inspect the marine fuels before delivery.
- b) Adjustments: The quantity delivered shall be adjusted to metric tons at 60° F or 15° C, as Seller may elect, under the prevailing ASTM-IP Petroleum Measurement Tables or the methods of any other similarly recognized standards authority at Seller's sole discretion.
- c) Definitions: For purposes of this Agreement, quantity shall be measured in accordance with

the following definitions: a "barrel" shall mean 42 U.S. gallons at 60° F or 15° C; and a "ton" shall mean a metric ton of 2,204.6 pounds, unless a "long ton" is specifically indicated, in which case it shall mean 2,240 pounds.

#### **4. Sampling**

- a) The Seller shall arrange for a representative sample of each grade for Marine Fuels to be drawn throughout the entire bunkering operation and that sample shall be thoroughly mixed and carefully divided into three (3) identical samples. The sampling shall be performed in the presence of both the Seller and the Buyer or their respective representatives. The absence of the Buyer or its representative shall not prejudice the validity of the samples taken.
- b) The sample shall be drawn at a point, to be mutually agreed between the Seller and the Buyer or their respective representatives, closest to the receiving Vessel's bunker manifold.
- c) The sample 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 sample being tampered with throughout the transfer period.
- d) The three (3) identical samples shall be securely sealed and provided with labels showing the Vessel's name, name of delivery barge, product name, delivery date and place and point of sampling and seal number, signed by the Seller's representative and the Master of the Vessel or his authorized representative.
- e) One (1) sample shall be retained by the Seller for minimum thirty (30) days after the delivery of the Marine Fuels to the Vessel or, on being requested in writing by the Buyer, for as long as the Buyer reasonably requires, and the other two (2) samples shall be retained by the Vessel.
- f) If the quantity is delivered by more than one Bunker Tanker, the sampling procedure shall be repeated as outlined in this Clause 4.

#### **5. Delivery**

- a) Deliveries shall be made into Buyer's vessel or barge at a terminal of Seller (or its suppliers) or into Buyer's vessel via Seller's (or its suppliers') barge.
- b) Buyer shall be responsible for providing safe reception for full quantity of marine fuels ordered and shall bear all risks and costs in connection therewith, including, without limitation, any damage or harm to Buyer's or Seller's (or its suppliers') property, servants, or agents, except those harm or damages directly attributable to either the negligence of Seller's servants or agents or the failure of, or defect in, the equipments of Seller's servants or agents.
- c) Delivery shall be made during regular business hours unless requested at other times and permitted by port regulations, in which event Buyer shall pay the expenses incurred in connection therewith.
- d) Where lighterage is employed, lighterage charges shall be paid by Buyer. Costs incurred in connection with, among others, deliveries of light diesel, gas oil and other grades of marine fuel on two or more barges will be subject to separate charges, and all such charges shall be paid by Buyer.
- e) Seller shall not be liable for delay in delivery, or failure to make delivery, of marine fuels unless Buyer proves that the delay or failure was solely caused by gross negligence on the part of Seller. Buyer shall give the local representative of Seller at least 48 hours' prior notice of delay in import of vessel. In case of longer than five days of delay in import of vessel, this order can be expired.
- f) Delivery into Buyer's vessel at terminal need not be made whenever, in Seller's opinion, clear

and safe berth for the vessel is unavailable, or when, for any other reason, delivery would, in Seller's opinion, be unsafe or inadvisable.

- g) Where a time of delivery is indicated, Seller shall deliver as soon as practical thereafter, in due consideration of all relevant factual circumstances including, among others, congestion affecting Seller's (or its suppliers') delivery facilities and the prior commitment of bunkering barges or other delivery vehicles.
- h) Previous order with port changes shall be regarded as a new order with new price. The applicable issue shall be the publication on the one day before the notice of port change.
- i) Both parties acknowledge and agree that marine fuel is delivered hereunder on the credit of both Buyer and the vessel receiving delivery of marine fuels. Buyer shall procure that Seller will have and will be entitled assert a maritime lien against the receiving vessel for the amount of the purchase price of said marine fuels together with all delivery and other charges incurred in connection therewith pursuant to this Agreement.
- j) Deliveries shall otherwise be on terms and conditions customary in the industry for this type of transaction.

## **6. Documentation**

- a) Before commencement of delivery the Seller shall present for written acknowledgement by the Master of the Vessel or his authorized representative, a bunker requisition form or similar document, duly signed by the Seller or its representative, which shall contain the quantities to be delivered and information including, in particular, the values for:
  - viscosity
  - density
  - sulphur content
  - flash point
  - delivery temperature
- b) Once the delivery is completed and quantities measured, a receipt shall be signed and stamped by the Master of the Vessel or his authorized representative, and returned to the Seller, or its representative, as acknowledgement of the actual volume and the actual delivery temperature only and a duplicate copy shall be retained by the Master of the Vessel. This receipt shall contain the following minimum information which is warranted by the Seller:
  - delivered quantity in volume units
  - density in kg/m<sup>3</sup> at 15° C as per ISO 3675
  - delivery temperature
  - flash point
  - sulphur content in % m/m as per ISO 8754
  - viscosity
- c) In the event the Master of the Vessel is not satisfied with the sampling, quality, quantity or any other matter concerning the Marine Fuels or their delivery, he shall make appropriate remarks in the receipt either detailing the complaints or referring to a separate letter of protest to be issued and delivered immediately.

## **7. Payment**

- a) After the completion of delivery, payment for the Marine Fuels shall be made by Buyer within the period and in the currency agreed by the parties for each transaction. Payment by Buyer shall be made directly to Seller or through an agent or trader of the Marine Fuels, if any, who

is authorized by Seller to collect payment from Buyer on behalf of Seller.

- b) Payment shall be made in full, without set-off, counterclaim, deduction and/or discount, free of any and all charges.
- c) If the payment due date falls on a Sunday, or on a Monday which is a bank holiday in the place where payment is to be made, payment shall be made on the immediately following banking day. If the payment due date falls on a Saturday or on a bank holiday other than a Monday in the place where payment is to be made, payment shall be made on the immediately preceding banking day
- d) If full payment is not received by Seller within the Payment Date, the outstanding amount shall be subject to a default interest at a rate agreed by the parties for each transaction, which shall accrue from the due date until the date full payment is received by Seller.

## **8. Nomination**

- a) The order for marine fuels shall be considered firm and binding on both parties upon Buyer's acceptance of price quoted by Seller. Confirmation in writing by Seller of price may be provided to Buyer, but the absence of such confirmation shall not void or otherwise lessen the binding effect of this Agreement.
- b) The Buyer shall give the Seller at least 48 hours' prior notice, exclusive of Saturdays, Sundays and holidays, of the vessel's readiness to receive delivery of Marine Fuel, specifying in such notice the exact quantity, quality, price, place and date of delivery, name of vessel and local agent.
- c) Buyer shall be liable for any expenses incurred by Seller, resulting from Buyer failing to take delivery of, or rejecting, in part or whole, any quantity ordered.
- d) In case of change in name of vessel, Seller could place a new order under new name of the original vessel.
- e) Cancel Charge: Buyer shall give Seller at least 72 hours' prior notice of cancel or the marine fuel Buyer ordered shall not yet be loaded in barge ship when Buyer declares cancellation of the order. Otherwise, Buyer shall pay cancel charge, US\$5/MT, unless otherwise mutually agreed in writing, for the amount of the cancellation.

## **9. Risk and Title**

Delivery shall be deemed completed and title and risk for the product shall pass to Buyer upon the fuel passing the permanent intake connection of Buyer's vessel. Buyer shall, at its sole responsibility and cost, handle all connections or disconnections of delivery hose to the intake of Buyer's vessel or barge, and pumping of fuels shall be performed under the direction of Buyer or Buyer's vessel.

## **10. Claims**

- a) Any claim by Buyer as to shortage in quantity must be noted on the marine fuel delivery receipt signed by the Master or Chief Engineer at time of delivery or in the letter of protest referred to in sub-clause 6(c).
- b) Any claim by Buyer with respect to deficiency in quality of marine fuels delivered by Seller must be made as soon as possible, and in no event more than 30 days from the date of delivery to the Buyer's vessel. Unless such claim is accompanied by necessary and/or appropriate details to enable Seller to satisfactorily evaluate claims, Buyer shall be deemed to

have waived such claim. Seller shall in no event be responsible for any claim arising out of or in connection with the commingling of marine fuels delivered by Seller with other fuels or substances aboard Buyer's vessel.

- c) In the event a claim is raised pursuant to sub-clause 10 (b), the parties hereto shall have the quality of the Marine Fuels analyzed by a mutually agreed, qualified and independent laboratory. The Seller shall provide the laboratory with its sample retained as per sub-clause 4(e). The reports by such independent laboratory shall be final and binding on both parties.
- b) Claim of whatever nature shall not relieve Buyer of responsibility to make full and timely payment of all amounts billed by Seller.
- c) In no event may Buyer assert a claim for any reason whatsoever after the goods are used, sold, cut, processed or otherwise altered. In the event either party breaches any of its obligations under this Agreement, the breaching party shall be liable to the other party for the damages thereby sustained by the other party.
- d) In no event shall Seller be liable for prospective profits, or indirect, special, incidental, consequential or punitive damages. Seller's total liability in contract, tort or otherwise arising directly or indirectly under or in connection with this Agreement shall not exceed in aggregate an amount equal to the contract amount of the goods supplied under this Agreement in respect of which the claim arises.

## **11. Health, Safety and the Environment**

Buyer shall provide Seller at the time and place of delivery a copy of all laws and regulations of Buyer's jurisdiction and an explanation of the most pertinent provisions thereof, dealing with the delivery, sale, or transport of marine fuel, including, but not limited to, laws and regulations on health, safety and environment.

If a spill occurs while marine fuels are being delivered, Buyer shall promptly take such action as is reasonably necessary and/or appropriate to remove the spilled marine fuels and mitigate the effects of such spills. Seller (or its supplier) is hereby authorized, at its option, upon notice to and at Buyer's account, to take such measures and incur such expenses (whether by employing its own resources or by contacting with others) as are reasonably necessary and/or appropriate in the judgment of Seller to remove the spilled marine fuels and mitigate the effects of such spills, in which case Buyer shall fully cooperate and render such assistance as may be required or requested by Seller (or its suppliers) in connection therewith. All expense, claims, loss, damage, liability and penalties arising from any spill shall be borne by the party that caused the spill by a negligent act or omission. If both parties have acted negligently, all expense, claim, loss, damage, liability and penalties shall be divided between the parties in proportion to the respective parties' degree of negligence. The burden of proof to show Seller's (or its suppliers') negligence shall be on Buyer.

## **12. Contingencies**

- a) Seller shall not be in breach of its obligations hereunder to the extent that performance is prevented, delayed or (in the sole but reasonable judgment of Seller or its suppliers) made substantially more expensive as a result of any of following contingencies:
  - 1) Any cause beyond the reasonable control of Seller;
  - 2) Labor disturbance whether involving the employees of Seller or otherwise, and regardless whether the disturbance could be settled by acceding to the demands of the relevant labor group;

- 3) Compliance with a request or order of any governmental authority or person purporting to act therefore;
  - 4) Shortage in raw material, transportation, manufacturing capacity, etc. or of marine fuels from Seller's then contemplated supplier or source thereof, which is reasonably not attributable to Seller's lack of due diligence and so demonstrated to Buyer;
  - 5) Any prohibition of export or import, flood, typhoon, Act of God, fire, war whether declared or not, armed conflict, civil commotion, riot, peril or accident of the sea, inability to obtain containers or transportation facilities without litigation or the payment of penalties or unreasonable prices, or the acceptance of unreasonable terms and conditions.
- b) Whenever performance is prevented or delayed by such a contingency, Seller will be entitled, in its sole discretion, to reduce deliveries in such manner as it deems fit.
  - c) Whenever performance is made substantially more expensive by such a contingency, Seller shall have the option either (i) to reduce or stop deliveries from one or more facilities and reduce deliveries as provided above or (ii) to continue deliveries and increase prices in a manner which fairly apportions the increased cost of operating under such a contingency.
  - d) Buyer shall bear demurrage resulting from such a contingency.
  - e) Performance will be excused as provided herein even though the occurrence of the contingency in question may have been foreseen or be foreseeable at the time of the contracting or subsequently become foreseeable.
  - f) Quantities not sold or purchased due to the occurrence of such a contingency need not be made up later.
  - g) Nothing in this Clause 12 shall excuse Buyer from its obligation to make payments when due as provided above.

### **13. Indemnity**

Buyer shall hold Seller harmless from any and all expense, claims, loss, damage and liability (including attorneys' fees) arising out of or in connection with any of the following:

- a) Buyer's receipt, use, storage or transportation of marine fuels delivered hereunder, unless the same be due in its entirety to Seller's negligence, or
- b) Buyer's failure to take delivery of full quantity of marine fuel ordered or tendered, whichever is less.

### **14. Disclaimer or Warranties**

Any implied warranties whatsoever, whether statutory or otherwise, including (without limitation) the warranties of merchantability and fitness for a particular purpose or of condition and any oral or implied agreements or understandings inconsistent with this Agreement are expressly excluded and disclaimed.

### **15. Assignment**

Seller may assign all or any its rights or obligations hereunder. Any assignment by Buyer without Seller's written consent shall be void.

### **16. Notice**

All notices in connection with this Agreement shall be in writing sent by registered or certified airmail, postage prepaid, or by electronic means to the addresses as the respective parties may so designate. All notices shall be deemed given upon receipt.

## **17. Governing Law and Settlement of Dispute**

- a) This Agreement shall be governed and construed in all particulars by the law of the Republic of Korea including, where applicable, principles of general maritime law as applied in the Courts of Korea. Unless otherwise specified herein, all trade terms used in this Agreement shall be interpreted in accordance with the latest INCOTERMS of the International Chamber of Commerce.
- b) Except as set forth in Subsection 17(c) below, any dispute arising out of or in connection with this Agreement, including any issues regarding its existence, validity or termination, shall be referred to and finally settled by arbitration under the Rules of the Korean Commercial Arbitration Board. The tribunal shall consist of three arbitrators. The arbitration shall take place in Seoul, Korea.
- c) The pendency of an arbitration pursuant to Subsection 17(b) above shall not:
  - 1) prevent either party from filing a suit solely to obtain or enforce discovery in connection with the arbitration ; or
  - 2) relieve Buyer of, or otherwise affect, its obligation to make full payment for the marine fuels billed to Buyer, which payment shall be without prejudice to the rights of either party in the arbitration. If Buyer fails to make payment for the marine fuels delivered as provided in Clause 7 herein, Seller may institute suit for collection whether or not Buyer or Seller has already instituted arbitration proceeding. Any such suit shall be without prejudice to the rights of either party in an arbitration relating to matters other than payment for marine fuels pursuant to Clause 7. Such suit for collection shall not be subject to a stay order and shall not be merged with the pending arbitration. Buyer consents to jurisdiction of the Seoul Central District Court for resolution of fuel payments.

## **18. Termination**

Either party may terminate this Agreement by notice in writing, without prejudice to any remedy it might have against the other party for breach thereof, (i) if the other party fails to comply with any of the provisions of this Agreement and does not remedy such failure within [thirty (30)] days after it has been notified thereof or (ii) if any proceeding for insolvency, bankruptcy or any other analogous event is instituted by or against the other party or a receiver is appointed for the other party.

**Hyundai Oilbank Co., Ltd.**  
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