

# **Falzon Service Station Limited**

## **Terms of Sale for Marine Fuels**

### **1. Applicability**

Except as otherwise agreed to in writing the following terms and conditions shall apply to all sales of Marine Fuels; any reference made to supplies effected by barge shall be construed as to refer also to supplies effected by road tankers, and any reference to the master of the delivery barge shall be construed as to refer also to the operator / driver of the road tanker.

### **2. Prices**

- (a) The price to be paid for Marine Fuels shall be Seller's spot or posted price offered for a specific delivery. Spot prices offered are for deliveries made on, before or within three (3) days subsequent to vessel's specified ETA as advised by Buyer, if accepted by Seller at time of nomination; prices for delivery beyond this range are subject to amendment at Seller's option.
- (b) Barge charges for the supply of bunkers shall be charged at rates determined by the Seller and are subject to alteration by Seller without prior notice to Buyer.
- (c) All applicable taxes, duties, levies, port dues, berthing charges, jetty dues and other costs are for account of Buyer. Seller reserves the right to pass on to Buyer any increase imposed on Seller by any government authority subsequent to date price is offered or delivery is made whether retroactive or not and for this purpose Buyer expressly waives any applicable statute of limitations or prescriptive period.

### **3. Parties Obligated**

- (a) Should Marine Fuels be ordered by an agent or broker, then such agent or broker, as well as the Buyer, shall be bound by and liable for all obligations as fully and as completely as if the agent or broker were themselves the Buyer, whether such Buyer be disclosed or undisclosed, and whether or not such agent or broker purports to contract as agent or broker only, as the case may be. In all such cases the said agent or broker shall not have any right against the Seller.
- (b) The Owner and / or manager/s of the vessel, and the vessel receiving delivery of Marine Fuels under these terms of sale, shall be responsible for the performance of all of Buyer's obligations hereunder. If delivery of Marine Fuels is contracted for by an agent or manager of the owner, or by the operator or charterer of the vessel, then such agent, manager, operator or charterer, as well as the owner, shall be fully liable for the obligations of the Buyer.
- (c) Deliveries of Marine Fuels made hereunder, if sold on credit basis, are delivered not only on the credit of the Buyer but also on credit of the vessel receiving delivery of Marine Fuel, and it is agreed and Buyer warrants that Seller will have and may assert a lien or special privilege against the receiving vessel for the amount of the purchase of said Marine Fuel.

**4. Stems**

Bunker stems are valid for seven (7) days following date of stemming by the Seller.

**5. Quality and Warranty**

- (a) The Marine Fuels to be delivered hereunder shall be Seller's commercial grades of Marine Fuels generally offered to Seller's customers at time and place of delivery, and as indicated to Buyer by Seller in writing, but Seller otherwise makes no warranties of quality, merchantability or fitness for any particular purpose and any implied warranties or conditions whether statutory, legal or otherwise are expressly excluded.
- (b) Buyer shall have the sole responsibility for the selection of proper Marine Fuels for use in the vessel being supplied.
- (c) Notwithstanding 5(a) it is the duty of the Buyer to take all reasonable actions, including retention and burning of fuel to eliminate or minimise any costs associated with an off-specification or suspected off-specification supply. To this end Buyer shall cooperate with the Seller in achieving the most cost-effective solution. In any event Seller's obligation hereunder shall not exceed direct expenses incurred for removal and replacement of fuel and shall not include any consequential or indirect damages, including without limitations demurrage claims, loss of contract or loss of profit. If Buyer removes such fuel without the consent of the Seller then all such costs shall be for Buyer's account.

**6. Nominations and Deliveries**

- (a) Buyer shall nominate vessel at least five (5) working days in advance of expected date of arrival, specifying loading port, ETA, grades and quantities. When such nomination is accepted by Seller, indicated date of arrival shall become the accepted delivery date, and Seller binds himself to deliver within the day which has been accepted as the delivery date. Seller reserves the right to cancel any nomination without liability on the part of Seller and without prejudice to any rights Seller may have against Buyer if vessel does not arrive at delivery port and present itself for delivery within three (3) days of the accepted delivery date.
- (b) Buyer or vessel's local agent shall give Seller at least forty-eight (48) hours advance notice, excluding Sundays and holidays, of each delivery, confirming product and quantities and other delivery details. Where such delivery date is different from original delivery date, then acceptance must be in writing by Seller. Where 48 hours advance notice is not given, or where Seller does not accept different delivery date in writing, Seller shall in normal circumstances use reasonable efforts to make delivery in a timely manner.
- (c) Where delivery is required during other than regular business hours, and is permitted by applicable regulations, Buyer shall pay all overtime and extra expenses incurred.
- (d) Where lighterage is employed, all lighterage charges including overtime and other associated charges shall be for the account of the Buyer.

- (e) In the event Buyer fails to take delivery, in whole or in part, of the quantities nominated, Buyer shall be responsible for any costs resulting from Buyer's failure to take delivery as well as for any losses incurred by Seller to downgrade the fuels, without prejudice to Seller's rights for damages under these terms of sale or otherwise.
- (f) Seller shall always use reasonable efforts to adjust to changes in Buyer's schedule; however, Seller or Seller's supplier shall not be liable for demurrage paid or incurred by Buyer due to delays in furnishing berth or to any delay in delivery of Marine Fuels where:
  - (i) Seller did not accept delivery date as outlined in sections 6 (a) and 6 (b).
  - (ii) 48-hour notice as defined in section 6 (b) was not properly given.
  - (iii) Delivery barge arrived on accepted delivery date and performed properly.
  - (iv) Conditions beyond the control of Seller exist including but not limited to harbour congestion and dredging operations.
  - (v) Adverse weather conditions exist, which are determined to be such by the Master of the delivery barge.
  - (vi) Delays were not the result of Seller's inability to perform.
- (g) Notwithstanding anything to the contrary contained in these terms of sale, Seller reserves the right to reduce quantities of product to be supplied to Buyer where, on the basis of internal logistics and/or size of bunker barge available due to prior engagement, Seller in its sole discretion so determines. This clause shall override any previous exchange of written confirmation of bunker supply between Seller and Buyer so long as written notice of the reduced quantity is given to Buyer not less than 24 hours prior to vessel's estimated time of arrival.

## **7. Risk and Title**

Delivery shall be deemed completed and risk shall pass to Buyer as the Marine Fuels pass the flange of the receiving vessel's permanent hose connections. If delivery is made to barge, truck or coastal tanker nominated by Buyer, delivery shall be deemed completed and risk shall pass to Buyer at the last flange on Seller's or Seller's supplier's terminal property. Buyer shall be responsible for connection to intake of Buyer's vessel, barge or truck, and pumping shall be performed under the direction of the receiving vessel, barge or truck. Title to the product shall only pass onto Buyer on full payment of the price, and until such full payment Seller shall have the right to recall the product or to indicate its place of delivery; in the event that the product perishes or is destroyed or is lost after delivery without the price having been paid in full, Buyer shall still be responsible towards the Seller for the payment of the price or any unpaid portion thereof.

## **8. Inspection and Determination of Quantity and Quality**

- (a) The quantity of fuels delivered shall be determined by measurements in accordance with the ASTM Petroleum measurement tables of shore tanks and lighters, or meters at Seller's option, and Buyer will be charged on the basis of these measurements. Buyer has a right to have its representative or, at his own expense, an independent inspector present during measurement, but determination of quantity shall be made solely by the Master of the delivery barge, and such determination shall be conclusive.
- (b) All quantities referred to in the contract of sale are understood to be approximate with a margin of 10% more or less at Seller's option.

- (c) Sampling by Seller or Seller's supplier shall be done prior to product leaving shore tanks, tank trucks or barges. Buyer, at his own expense, shall have the right to appoint an approved petroleum inspector to witness the drawing of the sample and perform subsequent testing of product. Seller or Seller's supplier shall take three (3) representative samples of each grade of Marine Fuel(s) to be delivered. One sample shall be given to the Master of the vessel receiving the Marine Fuel; the Seller or Seller's supplier shall retain the other two samples for at least thirty (30) days from date of delivery in a safe place for verification of the quality thereof, if required. If buyer makes a claim or complaint within fifteen (15) days of date of delivery, one of the two remaining samples along with any other Seller's and Seller's supplier's relevant and representative samples shall be submitted for analysis to an independent laboratory. The analysis from the independent laboratory shall manifest the quality of the product delivered. The costs of analysis shall be borne by Buyer, unless the complaint as to the quality is shown to be justified.

## **9. Claims**

Any claim as to shortage in quantity must be noted on the appropriate Notification of Bunker Supply form and signed by the Buyer or his representative/s at the time of delivery and presented by Buyer in writing to Seller within ten (10) days thereafter. Any other claims by Buyer including deficiency in quality of Marine Fuels delivered by Seller must be made as soon as possible, and in no event shall Seller be responsible for claims more than fifteen (15) days from date of delivery. Buyer must furnish necessary details required by Seller to satisfactorily evaluate claim. Seller shall not be responsible for any claim arising in circumstances where there is or has been commingling of fuel delivered by Seller with other fuel aboard Buyer's vessel. Seller agrees to respond promptly to any complaint or claim by Buyer with intent to settle any such claim within forty-five days of receipt of such claim. Where Buyer and Seller cannot come to an agreement on such claims within sixty days, Buyer or Seller can invoke arbitration as provided for in clause 18. Such arbitration shall apply to disputes arising under this clause only. Any recourse to refer the matter to Arbitration under this article shall be made by either party within sixty days after delivery, otherwise the ordinary courts shall have jurisdiction to decide on claims under this article.

## **10. Payment**

- (a) Payment shall be made by Buyer in United States Dollars, without discount, setoff or deduction, upon receipt by Buyer of written, telegraphic or other notification of quantities delivered and amounts due. Subsequent adjustments, if any, will be made upon receipt by Seller of Marine Fuel delivery receipt. Any deduction for claims related to such delivery shall be a breach of Buyer's obligation hereunder and all reviews / discussions / settlements on such claims shall be suspended until Buyer makes payment in full for the quantity delivered as notified by Seller. Seller may immediately recover any amount withheld from the full payment and Buyer agrees that any claims related to the delivery do not constitute a valid defence against Seller's claim to the withheld amount.
- (b) Payment shall be made by Buyer by means of an electronic or telegraphic transfer to a bank designated by Seller in the individual Contract of Sale for Marine Fuels concluded between Seller and Buyer.
- (c) Payment shall be considered overdue if not received by Seller within thirty (30) days from date delivery commences. Overdue payments shall be subject, at Seller's sole discretion, to interest of 1.5% per month, or to the

maximum rate of interest permitted under applicable law, whichever is the less.

- (d) If at any time Seller considers Buyer's financial condition inadequate to meet Buyer's obligation hereunder, cash payment in advance or security acceptable to Seller may be required before delivery and Seller may declare any amount then outstanding from Buyer to be immediately due and payable.
- (e) If it has been agreed that payment shall be made by instalments, and if Buyer falls into arrears, in whole or in part, in respect of two consecutive instalments, the entire remaining balance shall become immediately due and payable.

## **11. Safety and Environment Protection**

- (a) Buyer is familiar with the health effects related to the Marine Fuels supplied hereunder and with appropriately protective safety and health procedures for handling and use of such Marine Fuels. Buyer shall adhere to such safety and health procedures while using or handling Seller's Marine Fuels. Buyer shall also facilitate the dissemination of such health and safety information to all employees, users and others potentially exposed to the Marine Fuels sold hereunder. Buyer shall be responsible for compliance by its employees, agents and other users with all health and safety requirements or recommendations related to the Marine Fuels supplied hereunder, and shall exert its best efforts to assure that any of its employees or agents, users and others potentially exposed to avoid frequent or prolonged contact with or exposure to Marine Fuel, both during and subsequent to delivery. Seller or Seller's supplier accepts no responsibility for any consequence from failure by Buyer, its employees or agents, any users or other party to comply with such health and safety requirements or recommendations or arising from such contact or exposure.
- (b) In the event of a spill during fuelling, Buyer shall promptly take and / or shall assist and co-operate with Seller or Seller's supplier in taking any necessary action to remedy or mitigate the consequences thereof. Any of the measures taken by Seller or its designee shall be deemed taken on Buyer's authority, and shall be at Buyer's expense except to the extent that such escape or discharge was caused or contributed to by Seller or Seller's supplier, provided that if Buyer considers that such measures should be discontinued, and any governmental authorities having jurisdiction concur, Buyer shall so notify Seller, and thereafter neither Seller nor its designee shall have any right to continue such measures under the provisions of this article.
- (c) Buyer shall supply Seller with all such documents and information concerning any escape or spillage or any programme for the prevention thereof as are required by Seller or are required by law or regulations applicable to the contract port.
- (d) Buyer warrants that the Marine Fuel purchased hereunder is for the operation of the nominated vessel, and that vessel only.
- (e) Buyer warrants that the vessel nominated is in compliance with all national regulations. Vessel to be bunkered is subject to Seller's acceptance and will not be moored at wharf or alongside other marine loading facilities of Seller or Seller's supplier unless free of all conditions, difficulties, peculiarities, deficiencies or defects which might impose hazard in connection with the

mooring, unmooring or bunkering of vessel. Seller has the right to refuse to effect delivery to the vessel if, at Seller's sole discretion, it is probable that such delivery will result in adverse consequences of any kind whatsoever.

**12. Indemnity**

Buyer shall indemnify and hold Seller and Seller's supplier harmless from and against any and all claims, demands, suits or liability for damage to property, for injury or death of any person or for non-compliance with any requirement of any government arising out of or in any way connected with fault of Buyer or its agents or servants or third parties in receiving, using, storing or transporting Marine Fuels delivered hereunder or due to exposure thereto.

**13. Force Majeure**

Buyer and / or Seller will be excused from all its obligations herein to the extent that performance is delayed or prevented by circumstances beyond its control or force majeure including but not limited to acts of God, weather, fire, explosions, mechanical breakdown, strikes, plant shutdowns, civil disturbances and government regulations. Such force majeure shall not include Buyer's obligation to make payment for products received. Seller shall not be liable for any demurrage or other costs resulting from any such delay or failure to perform on part of the Buyer.

In case of force majeure Seller shall be released from its obligations under contract. Seller shall be released during the time when the force majeure lasts or shall be released forever, in Seller's option.

**14. Miscellaneous**

In the event Seller's capacity to perform becomes impracticable for any reason, including but not limited to requests or suggestions by any official body relating to supplies, priorities, rationing or allocations of any product, Seller may reduce or stop deliveries in such a manner as it may in its sole discretion determine and shall be relieved of its obligation and incur no responsibility of whatsoever nature to perform hereunder. Seller's right to require strict performance by Buyer of any and / or all obligations imposed upon Buyer by its agreement shall not in any way be affected by any previous waiver, forbearance, or cause of delaying.

**15. Duty-free Bunkers**

Any duty-free bunker supplies shall only be used by the Buyer in strict accordance with the current relevant Maltese Customs regulations.

**16. Termination**

Seller may terminate the contract of sale concluded by Buyer in whole or in part, at its own discretion, upon the breach of any provision hereof by Buyer. Seller reserves the right to recover from Buyer all damages and costs resulting from any breach of these terms by Buyer, including but not limited to loss of profit.

**17. Changes in terms of sale**

Seller reserves the right to review or otherwise change these terms of sale as it deems necessary from time to time.

**18. Jurisdiction**

This agreement shall be governed and construed in all particulars by the laws of Malta. Any claim arising in terms of article 9 shall be referred to arbitration through

the offices and methods contemplated by the Malta International Arbitration Centre in terms of the Arbitration Act 1996. Each party undertakes to nominate an Arbitrator within two weeks from request and the Arbitrators shall nominate an independent Chairman, being a person of legal qualifications and experience. The Arbitrators shall decide according to law and equity.

Any other dispute arising from any matter connected with or ancillary to this agreement between Buyer and Seller shall be referred to the Maltese courts for settlement.