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## **GENERAL SALES TERMS AND CONDITIONS**

### **APPLICATION**

- A. These General Sales Terms and Conditions (the "Conditions") shall apply to and govern each and every contract (the "Contract") for the sale of Marine Fuel made or caused to be made by FRATELLI COSULICH BUNKERS (S) PTE LTD, 79 Robinson Road, #17-01/02 Singapore 068897 (the "Seller" which term shall include its servants, agents and designated representatives) to any purchaser of Marine Fuel (the "Buyer" which term shall include its servants, agents and designated representatives), unless otherwise agreed in writing between the Seller and the Buyer.
- B. These Conditions shall override and exclude all other terms and conditions including any terms and conditions which any Buyer may introduce or purport to apply under any purchase order, confirmation of order or other pre-or post contractual document.
- C. Any variation to these Conditions (including the inclusion of special terms) shall not be applicable and will be of no effect unless expressly agreed to in writing between the authorized representatives of the Seller or the Buyer.

### **1. DEFINITIONS**

- 1.1 The "Seller" means in this contract "Fratelli Cosulich Bunkers (S) Pte Ltd".
- 1.2 The "Buyer" means the person, party, entity or corporation who accepts a quotation of the Seller for the sale of Products or whose order for Products is accepted by the Seller.
- 1.3 "Products" means products which the Seller shall supply including but not limited to marine fuel oil, intermediate fuel oil, marine diesel oil, and marine gas oil in accordance with these Terms and Conditions.
- 1.4 The "Contract" means the agreement between Seller and Buyer subject to the terms and conditions hereunder.
- 1.5 "Vessel" means the vessel nominated by the Buyer to receive the Products purchased from the Seller under the Contract.

### **2. PRICE**

- 2.1 The Price shall be the agreed price in US dollars as set forth in the Contract. Unless otherwise expressly agreed upon in the Contract the Price is exclusive of applicable taxes (including Goods and Services Tax), levies, duties, wharfage dues, barging/jetty fees, delivery charges, and all other costs and expenses arising out of or incurred in connection with the supply and/or delivery of the Products, all of which shall be borne by the Buyer. The Seller may include all these other taxes, levies, duties, dues, fees, charges, costs and expenses in its invoice or including the same in its invoice for the Price.

### **3. NOMINATION**

3.1 The Buyer shall give the Seller at least seventy-two (72) hours' (exclusive of Saturdays, Sundays and Public holidays) Notice of Delivery to the Buyer's nominated Vessel. The notice shall include the following information.

- 3.1.1 The name and flag of the Vessel;
- 3.1.2 A confirmation of the mode of delivery, i.e ex-wharf or ex-barge tanker;
- 3.1.3 Where delivery is ex-barge tanker, the location of the Vessel for delivery;
- 3.1.4 The name and contact person of the Vessel's local agent;
- 3.1.5 The date and estimated time of arrival of the Vessel;
- 3.1.6 A confirmation of the quantity and grade of fuel ordered.
- 3.1.7 Any other information sought by the Seller,

3.2 The Notice of Delivery referred to above must be sent during normal working hours (9am to 5pm local time). Notices sent after working hours shall be deemed to have been received on the next working day.

3.3 Unless the 72 hours Notice of Delivery above is sent to the Seller, under no circumstances shall the Seller be liable for any claims whatsoever arising out of a failure to supply marine fuel bunkers to the Buyers and/or their nominated Vessel.

### **4. DELIVERIES**

4.1 Delivery shall be made ex-wharf or ex-barge tanker at the option of the Seller who shall bunker the vessel as promptly as circumstances will permit. Seller shall use its best endeavors to deliver the Products to the Vessel on the nominated date and time of delivery.

4.2 Where delivery of the Products is carried out by barge/tankers to vessels in Singapore, the bunkering operation shall be subject to and shall follow the procedures prescribed by the Code of Practice for bunkering by bunker barges/tankers ("SS 600 : 2008") issued by the Singapore Productivity and Standards Board, current edition.

4.3 For ex-wharf deliveries where SS 600 : 2008 does not apply, the bunkering operation shall follow the Sellers' procedures and directions of its authorized personnel.

4.4 Seller shall not be liable for loss, damage, delay or demurrage whatsoever incurred by the Buyer caused by, due to or which results from bad weather, congestion at delivery location, breakdown of tanker barge/tanker, breakdown or malfunction of delivery equipment, incompatibility of delivery and receiving facilities/equipment or from any other circumstance beyond the Sellers' reasonable control.

4.5 Sellers may deliver the Products in one consignment or in partial lots, with each lot deemed to form part of the Contract.

4.6 If the Buyer causes delay to deliveries, the Buyer shall compensate the Seller on the basis of the actual costs incurred including any other damage and expense arising therefrom.

4.7 Delivery shall be made during normal working hours unless otherwise required and permitted by port regulations, in which event Seller shall charge buyer with all additional expenses arising therefrom. In case government permission is required for delivery, the Buyer shall be responsible for obtaining it. Seller shall make no deliveries until permission is obtained.

4.8 If any relevant authority or governing body forces the Seller to effect delivery out of normal working hours, Buyer shall agree to accept such delivery even if without notice and agrees to pay for the additional costs.

- 4.9 Delivery shall be made within areas nominated as bunkering areas by the relevant authority or governing bodies. Delivery shall be by barge/tanker or by any other accredited method of delivery. In the case of more than one method of delivery being available, the Seller shall elect one at their sole discretion.
- 4.10 When deliveries are made by barge/tanker, Buyer shall provide clear and safe berth for the barge/tanker(s) alongside vessel where receiving lines are located. Buyer shall indemnify Seller against any loss, damage or delay caused by Buyer's vessel to barge/tanker(s).
- 4.11 Buyer shall arrange for all connections and disconnection between supplying pipelines or hoses and vessels' intake lines and shall provide all necessary assistance and equipment to receive promptly all deliveries. Vessel shall receive bunker quantities as ordered by vessel's captain or Buyer's local agent. In case the vessel cannot receive part of the ordered quantities, Buyer shall be responsible for all costs arising therefrom.
- 4.12 All deliveries shall be deemed to be completed and fulfilled when the Product has reached the flange connecting the delivery facilities with the receiving facilities provided by Buyer. The risk for the Products shall pass onto the Buyer when the Products delivered has reached the said flange and thereafter Seller shall not be responsible for any loss or damage.
- 4.13 Buyer shall indemnify Seller and supplier for all damages and liabilities arising from any acts or omission of Buyer or its servants, ship's officers or crew or independent contractors in connection with the delivery of bunkers.
- 4.14 Bunkers are delivered under this contract not only on the credit of Buyer but also on the credit of the vessel receiving delivery of the bunkers. The Buyer warrants that it has informed and secured the agreement of the owners of the vessel that the Seller will have and may assert a lien against the receiving vessel for the amount of the purchase of said bunker.
- 4.15 If the Buyer is acting on behalf of a principal (disclosed or undisclosed), then the Buyer and its principal shall both be jointly and severally liable to the Seller for payments and compliance with these Conditions.
- 4.16 In case vessel has not arrived within three (3) calendar days after the indicated E.T.A., Seller & supplier shall have the right to cancel supply without notice and Buyer shall be liable for any damages, costs, expenses and charges arising therefrom.

## **5. CANCELLATION**

- 5.1 Any requests by the Buyer for changes or cancellation in the grades or quantity of the products will be subjected to the Seller's approval. Unless otherwise agreed, the Buyer agrees to undertake to pay for any and all direct and consequential losses suffered by the Seller as a result of such request for change or cancellation.
- 5.2 If the Buyer fails to take delivery of the fuel on the nominated date or within the date range agreed upon, the Seller has the option to cancel the contract without any liabilities. This is without prejudice to any remedies of the Seller for breach of contract.
- 5.3 In the event that the Seller cancels the Contract pursuant to Clause 5.2 above, or if the Buyer by written notice cancels the Contract prior to the date of delivery, due to any cause whatsoever; the Buyer shall pay the Seller a cancellation charge as follows:-
- 5.3.1 The sum equivalent to the difference between the Price and the market price as reported in Platts Far East Bunker Assessment for Singapore Fuel Report before

the day the Contract is cancelled, multiplied by the quantity of Products ordered;  
or.

5.3.2 A Lumpsum USD2000.00 which ever is higher.

## **6. QUANTITY**

- 6.1 The quantity of the Products delivered shall be determined from either the gauge or meter reading of either the shore tank or the barge tanks before and after delivery, at the option of the Seller.
- 6.2 The determination of the quantity of Products delivered as certified correct by the signature of the engineer on board the Vessel receiving the Products on the Barge Delivery Receipt shall be conclusive evidence of the quantity of the Products delivered, and shall be final and binding upon the Seller and the Buyer.
- 6.3 The Buyer may be present or represented by an accredited agent when the determination of quantity of the Products is performed in accordance with Clause 6.1, but if the Buyer is not present or represented, the Seller's determination shall be deemed to be conclusive as per Clause 6.2.
- 6.4 The quantity of the Products delivered, taking into account the necessary adjustments in volume due to temperature differences, shall be determined by using prevailing ASTM-IP Petroleum Measurement Tables or methods of other internationally recognized standards authorities, at the discretion of the Seller.
- 6.5 In the countries where local regulations determine so, quantities measured by the customs authorities will be binding for both parties.
- 6.6 Any dispute as to the quantity of the Products delivered must be made by way of written notice to the Seller within fourteen (14) days from the date of delivery, failing which the Sellers' statement as to the amount of the Products delivered shall be deemed correct and conclusive.

## **7. QUALITY**

- 7.1 Save for the contents of this section, all terms conditions and warranties (whether express or implied) relating to quality, merchantability or suitability or fitness for purpose of the Products are hereby excluded.
- 7.2 The quality of the Products supplied to the Buyer shall be the Seller's regular commercial grade offered generally to its customers at the time and place of delivery, unless specifications are expressly prescribed by the Buyers in the Contract, in which case such specifications shall represent the only quality specifications which the Products are required to meet.
- 7.3 The Buyer shall be solely responsible for the selection and acceptance of Products for use in the Vessel including making any necessary determinations for compatibility with marine fuels already on board.
- 7.4 The Seller shall not be responsible for/and the Buyer assumes all risks and liabilities arising from or in connection with the use of the Products in combination with other substances.
- 7.5 For deliveries ex-barge/tanker the Seller shall draw from the barge/tanker manifold two representative samples of each grade of Products supplied to the Vessel's tanks by continuous drip sampling throughout the entire bunkering operation. These samples shall be sealed and signed by the Vessel's master. Parties may also appoint independent surveyors to take and retain samples. One sealed sample shall be handed to the officer on duty on board the Vessel receiving the Products. The Seller shall retain one sealed sample for a

period of thirty (30) days following delivery. Thereafter, unless the Buyer has given notice in writing of any claim, the Seller may dispose off the sample. The Seller shall not be liable for any claims concerning quality which have not been notified within the 30 day period.

- 7.6 For deliveries ex-wharf, the Seller shall take a representative sample of the Products delivered from the shore tank from which delivery is made in accordance with its usual sampling procedures. The sample collected shall be poured out into at least two portions which shall be sealed and signed by the Vessel's master. One sealed sample shall be retained by the Seller and one by the Buyer.
- 7.7 Any samples of the Products drawn by the Buyer or their appointed representatives without the Seller's knowledge or in the absence of the Seller shall not be a representative sample of the Products supplied and shall not be admissible as evidence of quality of the Products supplied to the Vessel under the Contract in any arbitration or other proceedings in relation to or arising out of or concerning the Contract.
- 7.8 The quality of the retained sample of the Products shall be final and conclusive as to the quality of the Products supplied as between the Seller and the Buyer. In the event of any disputes both Buyer and Seller shall send their retained samples to internationally recognized laboratories for testing. If the two results are not compatible, then the remaining sample in the Sellers' or surveyor's (if one is engaged) custody shall be tested at another internationally recognized laboratory of Seller's choice. The result of such testing shall be final, conclusive and binding on Sellers and Buyers.

## **8. CLAIMS**

- 8.1 All claims by the Buyer against the Seller arising from or in connection with short quantity delivery of Products shall be deemed waived by the Buyer and completely extinguished unless notice in writing of such claim, particularizing the full extent of short quantity delivery, is sent to the Seller within fourteen (14) days from the date of delivery.
- 8.2 All claims by the Buyer against the Seller arising from or in connection with the quality of the Products supplied under the Contract shall be deemed waived by the Buyer and completely extinguished unless notice in writing of such claim, particularizing the nature and extent, is delivered to the Seller within fourteen (14) days from the date of delivery.
- 8.3 The submission of any claim to the Seller for quality and/or quantity disputes shall not suspend or release the Buyer of the obligation and responsibility to make full payment for the Invoiced amount within the time due. No legal or equitable set-off or counterclaim may be asserted against the Sellers' right to receive payment of its invoices.

## **9. PAYMENTS**

- 9.1 Unless specifically agreed upon in writing, payment of the invoice for the Products supplied and all applicable taxes (including Goods and Services Tax) levies, duties, expenses, delivery charges and all other costs arising out of or in connection with the supply and/or delivery of the Products shall be made by Buyer as directed by Seller within 30 days of the date of delivery. The Seller shall be entitled to immediately invoice the Buyer based upon telegraphic advice of delivery details. Delivery documents may be provided to Buyer at his request but payment shall not be subjected to receipt of such documents by Buyer.
- 9.2 All payments made shall be free and clear, without any discount, deductions, withholding, legal or equitable set-off, or counterclaim whatsoever. For the avoidance of doubt, the Buyer shall make full payment of the invoice notwithstanding that there may be a dispute between the parties, including but not limited to any dispute arising out of or in connection with the quality or quantity of Products supplied.

- 9.3 For the purpose of effecting delivery, the Seller may require Telegraphic Transfer payment prior to delivery or an irrevocable standby letter of credit, banker's guarantee, corporate guarantee or personal guarantee for payment on the relevant date to be issued in the Seller's favor. The Seller reserves the right to terminate the contract without liability in the event that the Buyer fails to comply with the above requirement.
- 9.4 All overdue payments are subjected to an interest charge of two (02) percent per calendar month on the outstanding sum calculated on a daily basis from the due date until actual receipt by the Seller of sufficient cleared funds.
- 9.5 If the buyer fails to make payment on the due date of any invoice, then without prejudice to the Sellers' other rights, the Seller shall be entitled to :
- 9.5.1 suspend or cancel any or all orders or deliveries of Products to the Buyer; and/or
  - 9.5.2 appropriate any payment made by the Buyer to such Products or for Products supplied under any other contract with the Buyer, at the Seller's sole discretion think fit.; and/or
  - 9.5.3 enforce any security for payment provided by the Buyer without further notice to the Buyer in order to recover any sums due and payable.

## **10. ENVIRONMENTAL PROTECTION**

- 10.1 In the event of any leakage, spillage, overflow of bunkers causing or likely to cause pollution occurring at any stage, the Buyer shall, regardless as to whether Buyer or Seller is responsible, immediately take such action as is necessary to effect clean up and failing prompt action, Buyer (who hereby warrants that he has been authorized by the vessel's Owners) authorizes Seller to take whatever measures Seller deems fit to effect clean up at Buyer's expense. Buyer warrants that the vessel at all times will be in compliance with all national and international regulations. It shall be the responsibility of vessel's master to notify Seller of any special conditions, difficulties, peculiarities, deficiencies or defects with respect to the vessel or any part thereof, which might adversely affect the delivery of bunkers. Seller has the right to refuse to deliver bunkers to the vessel if in his sole discretion such delivery may result in adverse consequences of any kind whatsoever.
- 10.2 The Buyer agrees to disclose to the Seller immediately following such escape, spillage or discharge of the Products, all documents and information concerning such escape, spillage or discharge or any standing instructions or programmes for the prevention, which are requested by the Seller or required by law or regulation applicable at the time and place where the Seller delivers the Products to the Buyer.

## **11. INSURANCE INDEMNITY AND LIMITATION OF LIABILITY**

- 11.1 Without prejudice to any other condition of this contract, Seller shall not be responsible for any expenses, claim, losses, damages and liabilities arising in connections with Buyer's receipt, use, storage and transportation of bunkers delivered under this contract, unless the same be due to Seller's willful and proven misconduct. In all other cases Seller shall not be responsible and Buyer shall indemnify Seller against all losses, claims, demands and costs arising from actions by any third party.
- 11.2 The Buyer agrees to indemnify the Seller, its servants, agents or sub-contractors and hold them harmless from and against all claims, cost, damages, fines, penalties, and liabilities of whatsoever nature and howsoever arising (including without limitation injury to person or property) arising directly or indirectly out of or in any way connected with any breach of the Contract by the Buyer or from any act, omission, negligence or misconduct of its agents, employees, contractors, or persons acting under its authority.

- 11.3 Notwithstanding anything herein contained, the Seller shall not be liable to the Buyer, for any consequential or special losses or damages of whatsoever kind and howsoever caused in connection with the performance or failure to perform the Contract, including but not limited to loss of profits or business, loss by reason of shutdown, breakdown in machinery, non-operation, or any demurrage, loss of hire, cost of overheads thrown away, cost of substitute vessel, physical loss or damage of or to vessel or cargo due to delay or damages for detention payable by the Buyers.
- 11.4 Any loss or damage to the Products, or to any property of the Seller or its supplier or of any person, during loading caused by the Buyer's designated vessel, shall as between the parties hereto, be borne by the Buyer and the Buyer shall to such extent indemnify or reimburse the Seller for the same.
- 11.5 In all cases, the liability of the Seller to the Buyer in respect of any claims for loss, damage or expense of whatsoever nature and howsoever arising shall in no circumstances exceed the value of the Products supplied or the total aggregate sum equal to USD100,000-00, whichever is lower.
- 11.6 For the avoidance of any doubt the Seller shall not be liable for any claims for demurrage by the Buyer howsoever caused, and without prejudice to the generality of the foregoing, even if the demurrage was incurred as a result of the Seller's negligence.
- 11.7 The Buyer shall pay the Seller all reasonable costs and expenses (including legal costs on an indemnity basis) incurred by the Seller in connection with any claim or counterclaim in any proceeding which may be brought by the Seller against the Buyer in connection with or arising out of any breach by the Buyer of the Contract.

## **12. FORCE MAJEURE**

- 12.1 In addition to any other excuses (arising out of the same or other causes) provided by law, no failure or omission by the Seller to carry out or observe any of these Conditions shall give rise to any claims against the Seller or be deemed to be a breach of these Conditions if the same shall arise out of causes not reasonably within the control of the Seller, whether or not foreseen. Without prejudice to the generality of the above, the following shall be regarded as and deemed to be causes not reasonably within the control of the Seller:-
- 12.1.1 strikes, lockouts or other industrial action or labor disputes (whether involving employees of the Seller or third parties);
  - 12.1.2 acts, restrictions, regulations, bye laws, prohibitions or measures of any kind on the part of any government or local authority body;
  - 12.1.3 war or threat of war, sabotage, insurrection, civil commotion or requisition;
  - 12.1.4 fire, flood, explosion, accident, tempest, storm or any act of God;
  - 12.1.5 difficulties in obtaining raw materials, labor, fuel, parts or machinery;
  - 12.1.6 power failure or breakdown in machinery, equipment or vessel.
- 12.2 This provision however does not excuse the Buyer from its obligation to make payment for all amounts due to the Seller under the Contract.
- 12.3 In the event that the Seller is prevented by reason of any cause whatsoever outside the Seller's control from performing or completing any service for which an order has been given or an agreement made, the Buyer will pay to the Seller the amount of all abortive expenditure actually made or incurred and a price in proportion to the Products delivered.
- 12.4 The Seller shall give prompt notice of the force majeure and, so far as possible, of its extent and duration.
- 12.5. If as a result of any Force Majeure event, or any other event impacting on the global supply and/or price of petroleum products, supplies of crude oil or petroleum products are curtailed or become available to the Seller only under conditions which, in the Sellers' sole judgment

are deemed unacceptable, the Seller shall be entitled to withhold, reduce or suspend deliveries of the Products to such an extent as the Sellers in its absolute discretion decide. The Sellers may allocate Products on any fair and reasonable basis according to its own discretion to any buyers but shall not be required to increase supplies from other sources or to purchase the Products to replace the supplies so curtailed or be liable to the Buyer or indemnify the Buyer against any loss or liability incurred by the Buyer arising from or as a result of any deficiency in the quantities of Products delivered.

### **13. TITLE AND RISK**

13.1 The risk for the Products shall pass onto the Buyer when the Products delivered has reached the flange connecting the delivery facilities with the receiving facilities provided by Buyer and thereafter Seller shall not be responsible for any loss or damage.

13.2 Notwithstanding delivery and the passing of risk in the Products, title and property in the Products shall not pass from the Seller to the Buyer until the Seller has received full payment for the Products and all applicable taxes (including Goods and Services Tax) levies, duties, expenses, delivery charges and all other costs arising out of or in connection with the supply and/or delivery of the Products. For the avoidance of doubt, the Seller shall be entitled to seek, recover and enforce payment on the invoice notwithstanding that property has not passed.

13.3 Until property in the Products has passed to the Buyer in accordance with Clause 13.2, the Buyer shall hold the Products as fiduciary and bailee of the Seller. The Buyer shall upon the written demand of the Seller return the Products at the Buyer's costs. If the Buyer fails to do so the Seller may enter upon the Vessel and repossess the Product, in which event the Buyer shall be liable for all costs and expenses incurred (including legal costs on an indemnity basis), and shall also be liable for any delays caused to the vessel.

13.4 The Buyer shall not pledge or in any way charge by way of security for any indebtedness, the Products or any part therefore which are the Property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so, all sums whatsoever owing by the Buyer to the Seller shall immediately become due and payable.

### **14. WAIVER**

14.1 The failure of the Seller to insist upon strict compliance of any of the terms or conditions hereunder shall not constitute a waiver of any of the rights of the Seller

### **15. GOVERNING LAW AND ARBITRATION**

15.1 Except where otherwise herein provided, these conditions are governed by and shall construed in accordance with the laws of Singapore. The Buyer submits to the non-exclusive jurisdiction of the Courts of Singapore to settle any dispute, which may arise in connection with the Contract hereunder.

15.2 Any disputes arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration at the Singapore Chamber of Maritime Arbitration (SCMA) in accordance with the Singapore Bunker Claims Procedure ("SBC" Terms) for the time being in force at the commencement of the arbitration which terms are deemed to be incorporated by reference into this clause.

