



## General Terms and Conditions for the Sale and Delivery of Marine Bunkers effective February , 2009

### 1. Definitions

- 1.1 „Seller“ shall mean Deutsche Maxcom GmbH , including its servants, agents, brokers, designated representatives, subsidiaries or affiliates wherever applicable.
- 1.2 „Buyer“ shall mean the party contracting to buy products and/or services, including its servants, agents, brokers, designated representatives, subsidiaries or affiliates wherever applicable.
- 1.3 „Products“ shall mean Seller's commercial grades as currently offered by Seller for similar use at the time and place of delivery.
- 1.4 „Fuels“ shall mean any petroleum-based product currently offered by Seller for similar use at the time and place of delivery.
- 1.5 „Services“ shall mean agency services, or similar attendance to Buyer's needs.
- 1.6 „Contract“ shall mean an agreement between Seller and Buyer, subject to these conditions.
- 1.7 „Vessel“ shall mean the vessel to which the „Products“, „Fuels“ or „Services“ are to be delivered by Seller to Buyer.
- 1.8 „Conditions“ shall mean Seller's General Conditions of Sale and Delivery.

### 2. Validity and Scope of Terms

- 2.1 These Conditions constitute an integral part of any offer and/or Contract made for Products, Fuels or Services provided by Seller to Buyer.
- 2.2 The supply by Seller of Products, Fuels or Services and every quotation, pro-forma invoice, order confirmation, price list or other similar documents is made or issued solely subject to these Conditions and no representation or warranty, collateral or otherwise shall bind Seller and no statement made by any representative by or on behalf of Seller shall vary these conditions unless such representation, warranty or statement shall be made in writing and signed by an Officer of Seller and shall be stated to be made specifically in pursuance of this clause 2.2.
- 2.3 Any variance to these Conditions shall not prejudice or limit in any way the validity of the remaining Conditions of any Contract between Seller and Buyer. Failure by either party at any time to enforce any of these Conditions shall not be considered as a waiver by such party of such provisions or in any way affect the validity of these Conditions. If any provision of the Contract is invalid, void, or unenforceable, it will not affect the validity, legality, or enforceability of any other provision of the Contract.
- 2.4 These Conditions embody all the terms and conditions and supercede and cancel in all respects any previous Conditions, agreements and/or undertakings, whether given in writing or orally.
- 2.5 No statements made outside the Contract, or in any brochures, catalogues or sales literature, as well as in any correspondence or orally during negotiations, are intended to have any contractual effect.
- 2.6 Seller reserves the right to include, at its discretion, any additional or substitute terms and Conditions. Any additional or substitute terms shall be advised to Buyer prior to the time of concluding the Contract.

### 3. Terms of Offers and Contracts

- 3.1 Seller's offers and estimates of costs are to be understood as being conditional and subject to availability and alteration and shall include only such services as are expressly specified.
- 3.2 The Contract shall be deemed to have commenced effective from the time that Seller provides to the Buyer notice of confirmation. This same provision shall also apply with regard to any subsequent additions and alterations to the Contract.
- 3.3 Save where otherwise expressly provided for in the Contract specifications, all particulars notified to Buyer (e.g. analytical data) and all documents to which access has been given shall be deemed to contain only those approximate values customary in the trade, and do not constitute undertakings. Seller reserves the right to make alterations to such particulars or documents or the goods. The same provision shall apply to changes in the quality of goods, in so far as these do not involve material alterations. For this purpose it is not a material alteration if the altered quality will not affect or is generally so regarded in the trade as not affecting its ordinary and customary use.
- 3.4 Referenced commercial terms shall be deemed to have the meaning contained in the most recent edition of Incoterms.
- 3.5 In the case of imported goods the Contract shall be deemed to be concluded subject to the provision that Seller is granted any export or import licenses which may be necessary. Without prejudice to clause 4.1 below, Buyer shall indemnify Seller for any such expenses incurred in connection with the securing or delay in securing of the aforementioned licenses.
- 3.6 Seller is entitled to recover from Buyer all direct and indirect losses, costs and expenses incurred as a consequence of cancellation by Buyer, for whatever reason.

### 4. Prices

- 4.1 Unless otherwise specified, prices shall be deemed to be in US dollars, ex-wharf, and shall represent only the purchase price of the Products. Buyer shall pay any additional expenses or costs such as barging, overtime, demurrage, wharfage, dockage, port/harbor fees, dues, duties, taxes, levies and other costs, including those imposed by governments and local authorities. If the price is quoted as „Delivered“, the price includes transportation to Buyer's Vessel, but does not include demurrage or any other expenses or costs as indicated above.
- 4.2 Seller's confirmation to Buyer includes the earliest estimated time of Vessel's arrival (ETA) as advised by Buyer to Seller at the time of nomination. Unless the ETA date range agreed under the Contract is wider than four calendar days, Buyer's Vessel shall begin to take delivery of the Products within the 4-day range of three calendar days after the earliest estimated ETA. The Contract price shall be valid only for deliveries begun within such period.

- 4.3 If, after Seller's confirmation of the Contract, Buyer begins to take delivery, or requests delivery to begin outside the 4 calendar-day range referred to in clause 4.2 above, Seller shall be entitled to amend its quoted price under the Contract. This entitlement is without prejudice to any claim Seller may have against Buyer for failing to take delivery within the 4 calendar-day range referred to in clause 4.2 above.

### 5. Quality

- 5.1 Unless otherwise specified in the Contract, Products shall be of the quality generally offered by Seller to its customers at the time and place of the delivery. ANY IMPLIED CONDITIONS AND WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED AND DISCLAIMED. Buyer, having greater knowledge than Seller of his own requirements, shall have the sole responsibility for the prior selection of the particular grade(s) and acceptance thereof.
- 5.2 Product delivered shall be segregated from Product(s) already on board the receiving Vessel. Any consequences arising from commingling Products aboard the Vessel remain solely the responsibility of the receiving Vessel.
- 5.3 In order to determine the quality of the Product delivered, Seller shall be entitled to draw or cause to be drawn, samples of each delivery from Supplier's designated facilities, where possibly practical according to ISO-8217 in the presence of both seller and buyer or their respective representatives, otherwise taken from a point and in a manner chosen by Seller or its representative, and to have them sealed. At least one of the samples will be handed to the master of the Vessel which has received the delivery. Any remaining samples will be retained by Seller. In the event of a quality complaint, Seller shall seek to agree with Buyer upon the appointment of an independent inspector to undertake an analysis of one of the retained samples. Method ISO 4259, which covers the use of precision data in the interpretation of test results shall be used in all cases of dispute.
- 5.4 If, after 21 calendar days from the date that Buyer registers a quality complaint to Seller, no agreement has been reached between the two parties, Seller reserves the right to have one of its retained sealed samples independently analyzed and for the results to be binding upon both parties. The cost of any analysis shall be borne by Buyer, unless the complaint as to the quality is shown to be justified.
- 5.5 Unless otherwise agreed to in writing by Seller, only samples provided by Seller to Buyer at the time of delivery as described in 5.3 shall be deemed representative of the Product delivered.

### 6. Quantity

- 6.1 All quantities referred to in the Contract are understood to be approximate with a margin of 10 per cent more or less at Seller's option.
- 6.2 Except where government regulations or local authorities determine otherwise, the quantity of Product shall be determined from the official gauge/sounding of the delivering barge, road wagon, or rail tank car, delivery note for drum deliveries, or by gauging in Seller's shore tank or by Seller's oil meter, at Seller's election. Adjustment in volume owing to difference in temperature shall be made in accordance with API/ASTM + IP petroleum measurement standards for generalized Products. In the measurement of marine fuel, Seller shall make allowances for all water and non-petroleum sediment in excess of one percent (1%), or any other percentage mutually agreed to between Buyer and Seller. Buyer may be present or represented by a properly accredited agent when such measurements are taken. If Buyer is not present or represented, then Seller's determination of quantities shall be deemed to be correct and conclusive.

### 7. Delivery and Risk

- 7.1 Vessel shall be supplied as promptly as circumstances permit. Any supply date within the Contract is not guaranteed, and time shall not be of the essence in respect thereof. Seller shall not be liable for demurrage or for any losses due to congestion at Seller's storage or delivery facilities or due to any prior commitment of available transportation.
- 7.2 If Seller should at any time, for any reason, believe there may be such a shortage of Products at any port that it may be unable to meet the demands of all its Buyers, Seller may allocate its available and anticipated supply among its Buyers in such a manner as it may in its sole discretion determine.
- 7.3 If Buyer causes delays to Seller's delivery facilities in the receiving of Products, Buyer shall liable to reimburse Seller for any and all costs incurred.
- 7.4 Seller shall not be required to deliver Products into any vessel's tanks which are not normally used for such Product.
- 7.5 If any government or local port license or permit or further special requirements are required for deliveries hereunder, whether advised or not by seller or its representative each party must comply as applicable. In case of Buyer's failure to comply, Seller shall not be required to deliver, and will be entitled to recover all costs and consequences related thereto from Buyer.
- 7.6 Delivery shall be made either from a shore terminal or by barge or by any other accredited methods of delivery, where such deliveries are available from time to time. In the case of more than one method of delivery being available, unless expressly specified in writing, Seller shall at its sole discretion select one, providing that it does not breach any other conditions of the Contract.
- 7.7 Buyer shall provide free of cost a clear safe berth, position or anchorage alongside the vessel receiving lines. Seller shall be under no obligation to make deliveries when in its sole opinion a clear and safe berth, position or anchorage is not available. Buyer shall indemnify Seller against all claims and expenses for any loss, damage, demurrage or delay caused to Seller's delivery equipment, irrespective of whether the circumstance causing the loss, damage, demurrage or delay was within the control of Buyer or his local representative.
- 7.8 Buyer shall make all connections and disconnections between pipelines or delivery hoses and Vessel's intake lines, manifolds including but not limited to the opening/closing of relevant valves to prevent spillages and shall render all other necessary assistance and provide sufficient suitable tankage and equipment to receive promptly all deliveries hereunder.



- 7.9 Delivery shall be deemed to have been completed and risk transferred as the Product passes the permanent flange connection of receiving vessel or delivery hoses with the intake lines of the Vessel at which point Seller's responsibility shall cease. Products supplied by other methods shall be considered to be delivered when passing the Vessel's rail. Buyer shall assume all risks including loss, damage, deterioration, depreciation, evaporation, shrinkage as to the Products so delivered.
- 7.10 Upon completion of the delivery to the Vessel, the master, or authorized representative of Buyer shall confirm the delivery by signing a receipt, provided by Seller or his contractor at that time. Seller shall not be deemed to have any constructive knowledge of the authority or lack of authority of any purported local representative of Buyer and shall be under no duty to verify authority of such purported representative. The acceptance of the aforesaid signed receipt in good faith by Seller shall bind Buyer.
- 7.11 If Buyer fails to take delivery of the product or any part thereof within a reasonable time from the agreed supply time, Seller shall be entitled at Buyer's risk and expense, either to transport the product back to storage or to sell in a downgraded form at a market price without prejudice to Seller's other rights under this Contract for damages. Seller shall at its sole discretion determine what constitutes a reasonable time to terminate the delivery.
- 7.12 Delivery shall be made during normal working hours. Unless otherwise agreed deliveries outside normal working hours shall be subject to additional costs which shall be borne by Buyer.
- 7.13 Seller may elect to discontinue operations at any delivery location for any reason without obligation to Buyer.
- 7.14 Products and Services delivered under a Contract shall be made not only on the account of Buyer but also on the account of the receiving vessel. Buyer warrants that Seller has the right to assert and enforce a lien against the receiving vessel for the amount of the Products and Services provided, plus without limitation, any other expenses related to enforcement of the lien.

## 8. Claims

- 8.1 Any claims made by Buyer regarding shortages in quantity must be made in writing to Seller at the time and place of delivery. Seller has the option to leave delivery equipment connected to the vessel at Buyer's expense until a quantity dispute has been resolved to Seller's satisfaction.
- 8.2 Any claims made by Buyer with regard to quality must be made in writing to Seller immediately upon detection of the alleged defect, and in any event no later than within seven (7) calendar days from receipt of the product. The foregoing preliminary notice shall be followed by a formal written notice of claim, within fourteen (14) calendar days from receipt of the product, to Seller containing all details necessary to allow evaluation of the claim.
- 8.3 Should Buyer fail to comply with any/all of the foregoing conditions and notices, Buyer shall be deemed to have conclusively waived all rights under this clause.

## 9. Payment

- 9.1 Payment shall be made by Buyer in full, as directed by Seller, within the time specified in the contract. Seller shall be entitled absolutely to the payment in full without discount, reduction or set off (whether legal or equitable) which shall be made to Seller's bank account. Should the due date for payment fall on a Saturday, Sunday or Public Holiday, then payment should be received by the previous working day.
- 9.2 When paying, Buyer shall not be entitled without Seller's consent in writing, to offset any amounts for claims against seller, whether or not these claims are connected, and whether or not they arise out of the contract.
- 9.3 Unless otherwise agreed, payment shall be made by irrevocable telegraphic transfer. Delivery documents shall be provided to Buyer, wherever possible, however payment shall not be conditional upon receipt of such documents, unless specifically agreed at the time of concluding the Contract.
- 9.4 Overdue payments shall be subject to an interest charge at Libor plus 1.5% for the time between due date as stated on invoice and the date full payment has been received on seller's bankaccount.
- 9.5 Should Products and/or Services be ordered by a broker or agent then such broker or agent as well as Buyer shall be bound and be liable for all obligations as fully and as completely as if it were itself a Buyer whether such principal be disclosed or undisclosed and whether or not such broker or agent purports to contract as brokers or agents only, but in all such cases the said broker or agent shall not have any rights against Seller.
- 9.6 If Buyer is in default of the full payment, or if its financial condition, in Seller's sole opinion becomes impaired or if proceedings in bankruptcy or insolvency are instituted by and or against Buyer or in the case of liquidation or dissolution of Buyer, or any other reason at Seller's sole discretion, any and all postponed or deferred payments including interest thereon, shall become immediately due and payable and Seller reserves the right to offset the same against any debts due to Buyer or its holding or its subsidiary companies, affiliates, associated or related companies. Exercise of any such rights shall be without prejudice to Seller's right to recover damages or losses sustained and resulting from any default by Buyer, and Seller shall have the right to suspend/and to cancel deliveries hereunder.

## 10. Notice

- 10.1 Buyer shall give Seller directly, or through Buyer's agent at least 48 hours notice (Saturday, Sunday and local holidays excluded) of vessel's readiness to receive delivery and exact quantity required to enable Seller to make necessary arrangements for the delivery.
- 10.2 Buyer shall give Seller final notice of requirement directly or through Buyer's agent at least 24 hours (Saturday, Sunday and local holidays excluded) before loading marine fuels into barge or other accredited methods of transportation.

## 11. Health, Safety and Environment

- 11.1 It shall be the sole responsibility of Buyer to comply, and advise its personnel, agents and/or customers to comply, both during and after delivery, with all health and safety requirements applicable to the Products supplied. Seller accepts no responsibility for any consequences arising from failure to comply with such health and safety requirements. Buyer acknowledges familiarity with the hazards inherent in the nature of any petroleum Products, and shall protect, indemnify and hold Seller harmless against any claims or liability incurred as a result of Buyer, or any user of the Products, or its customers, failing to comply with the relevant health and safety requirements.
- 11.2 In the event of any leakage, spillage, overflow of bunkers causing or likely to cause pollution occurring at any stage, Buyer shall, regardless as to whether Buyer or Seller is responsible, immediately take such action as is necessary to effect cleanup and failing prompt action, Buyer (who hereby warrants that they have 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 shall indemnify and hold Seller and/or Supplier harmless against any claims or liability arising out of any leakage, spillage or overflow unless such leakage, spillage or overflow shall be proven to be wholly caused by Seller's gross negligence.
- 11.3 Buyer warrants that the vessel at all material times will be in compliance with all national and international regulations. It shall be the responsibility of the master of the Vessel 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 Product. Seller has the right to refuse to deliver the product to the Vessel if it is deemed probable in Seller's sole discretion that such delivery will result in adverse consequences of any kind whatsoever.

## 12. Assignments

- 12.1 Buyer shall not assign/transfer any/all of its right under the Contract, without written consent of the Seller.

## 13. Indemnity

- 13.1 Buyer shall defend, indemnify and hold Seller harmless with respect to any and all liability, loss, claims, expenses, or damage Seller may suffer or incur by reason of, or in any way connected with, the fault or default of Buyer or its agents in the purchase of, receipt, use, storage, handling or transportation of the Products in connection with each bunker transaction.

## 14. Liability and Consequential Damages

- 14.1 Seller and/or its supplier shall not be liable for special, indirect, consequential, punitive or exemplary damage of any kind arising out of, or in connection with, the performance or non-performance under the Contract.

## 15. Force Majeure

- 15.1 Neither Buyer nor Seller shall be responsible for damages caused by delays, failure to perform in whole or in part any obligation hereunder (other than the payment of money), or non-compliance with any of the terms hereof when such delay, failure or non-compliance is due to or results from causes beyond the reasonable control of the affected party, including without limitation acts of God, fires, flood, adverse weather, perils of the sea, war (declared or undeclared), embargoes, accidents, strikes, labor disputes, failure of, or shortage of vessels, or barge services normally available to Seller, breakdown of or damage to, or shortage in facilities used for production, refining or transportation of Products, acts in compliance with requests of any government authority or person purporting to act on behalf thereof, or any other similar causes. Notwithstanding the provisions of this clause, the Buyer shall not be relieved of any obligation to make payments for all sums due hereunder.

## 16. Breach

- 16.1 Seller may terminate the Contract in whole or in part, at its own discretion upon the breach of any provision hereof by Buyer.
- 16.2 Seller reserves the right to recover from Buyer all damages and costs (including but not limited to loss of profit) resulting from any breach of the Contract.

## 17. Title

- 17.1 The products shall remain the Seller's property until Buyer has paid for them in full. Until that time, Buyer shall hold them as bailee, store them in such a way that they can be identified as Seller's property, and keep them separate from Buyer's own property and the property of any other person. Although the Products remain the Seller's property until paid for, they shall be at Buyer's risk from the time of delivery and Buyer shall insure them against loss or damage accordingly and in the event of such loss or damage it shall hold the proceeds of such insurance on behalf of Seller as trustee of Seller.

## 18. Governing Law

- 18.1 This agreement is subject to the law and jurisdiction of the courts of Hamburg - Germany - or other law and jurisdiction as specified by Seller in the Contract. However, nothing in this clause shall, in event of breach of the agreement by Buyer, preclude Seller from taking any such action as it shall in its sole discretion consider necessary to enforce, safeguard or secure its rights under the Contract in any court or tribunal in any state or country.