

Deutsche Calpam GmbH Terms and Conditions of Sale

Preamble

These general terms and conditions of sale (the “GTC” or “this agreement”) shall apply to all offers, quotations, orders and agreements regarding the sale and/or delivery of Marine Fuels by Deutsche Calpam GmbH (the “Seller”) to a buyer (the “Buyer”) who expressly and unconditionally accepts these General Terms and Conditions. General or standard terms and conditions of the Buyer are not, and will not be, incorporated into this Contract, not even if the Buyer – now or at a later stage – refers to its general or standard terms and conditions with the Seller not objecting. These GTC, together with the Bunker Nomination shall comprise the agreement between the Seller and the Buyer (the “Parties” and individually a “Party”) relating to the subject-matter hereof.

1. Definitions

Throughout these GTC, except where the context otherwise requires, the following definitions shall apply:

“**Banking Day**” means a day on which banks are open in the places of business of the Seller and the Buyer.

“**BDN**” means Bunker Delivery Note or Bunker Delivery Receipt.

“**Bunker Nomination**” means a binding written agreement regarding the delivery of Marine Fuels between the Buyer and the Seller, issued by the Seller.

“**Bunker Tanker**” means the bunker barge or tanker or tank truck supplying Marine Fuels to the Vessel.

“**Delivery Window**” means the period between the ETA and the ETD within which the delivery of the Marine Fuels shall be made in accordance with the Bunker Nomination.

“**ETA**” means the estimated time of arrival of the Vessel at the place of delivery agreed by the Parties in the Bunker Nomination.

“**ETD**” means the estimated time of departure of the Vessel from the place of delivery agreed by the Parties in the Bunker Nomination.

“**Marine Fuels**” means the products as stated in the Bunker Nomination.

“**Supply Company**” means a third party who is the actual physical supplier in cases where the Seller is non-physical supplier.

“**Supply Company’s Terms**” means the standard terms and conditions imposed by the Supply Company.

“**Spill**” means any unplanned, accidental or unintended release of Marine Fuels.

“**Vessel**” means the vessel chosen by the Buyer to receive the Marine Fuels.

2. Offers, quotations and prices

- (a) Upon request of the Buyer, the Seller shall issue a non-binding quotation. Should the Buyer wish to order the quoted Marine Fuels, it shall issue by any means an order to the Seller. A binding agreement shall be concluded between the Buyer and the Seller as soon as the Seller issues in return a written Bunker Nomination to the Buyer. The Parties agree that these GTC are incorporated into each Bunker Nomination.
- (b) The prices set out in the Bunker Nomination are based on applicable taxes, duties, costs and charges applicable to the relevant Marine Fuels existing at the time this agreement is concluded. Any later or additional tax, duty, costs or other charge of whatever nature shall be exclusively borne by the Buyer.
- (c) The Seller is entitled to raise the prices set out in the Bunker Nomination in the event delivery, through no fault of the Seller, does not occur in accordance with the terms of the Bunker Nomination and/or in the event matters or conditions relating to delivery are not as the Seller reasonably anticipated when the Bunker Nomination was issued. The increase shall correspond to the variation of world bunker prices at the place of delivery (or closest alternative) according to Platts Bunkerwire between the time of expiry of the Delivery Window and the effective time of delivery. Furthermore, the Seller shall be entitled to claim from the Buyer any additional costs it incurred in connection with the occurrence of such matters or conditions.

3. Specifications/Grades/Quality

- (a) The Buyer shall have the sole responsibility for the choice in specifications and grades of Marine Fuels it deems fit for use by the Vessel. The Buyer expressly acknowledges that it has based its choice of specifications and grades of Marine Fuels purely on its own knowledge and judgement. In particular, if the Buyer ordered express specifications and grades of Marine fuels, the Seller’s liability is excluded in the event the ordered Marine Fuels are not fit for their purpose.

4. Quantities/Measurements

The Seller shall measure the quantity of Marine Fuels delivered and the Buyer may during delivery verify such measure at its expense. The Buyer shall be charged on the basis of the amount of Marine Fuels as

exclusively determined by the Seller. Subject to manifest error or fraud, the measurements taken by the Seller shall be considered final and binding upon the Parties.

5. Sampling

- (a) The Seller shall invite the Buyer or its representatives to witness the sampling of Marine Fuels. During bunkering, samples shall be drawn using the continuous drip method at the bunker manifold throughout the entire duration of delivery (by way of exception, in case of truck delivery, spot samples shall be drawn). One (1) sample of each grade of Marine Fuels shall be retained on board the Vessel for MARPOL compliance purposes. The absence of the Buyer or its representatives shall not prejudice the validity of the samples taken. In the event of any conflict between provisions of this sub-clause (a) and mandatory local bunkering rules and regulations, the latter shall prevail.
- (b) Two (2) samples shall be retained by the Seller for minimum of twenty-one (21) days after delivery of the Marine Fuels to the Vessel.
- (c) One (1) commercial sample may be retained by the Vessel.
- (d) The samples referred to in sub-clauses 5(a), 5(b) and 5(c) shall be securely labelled and sealed.
- (e) Notwithstanding the procedure set out above, the Buyer shall inspect the Marine Fuels as to their conformity with the Bunker Nomination within twenty-one (21) days upon receipt, failing which the Seller shall no longer be liable for a lack of conformity regarding such Marine Fuels.

6. Delivery

- (a) The Marine Fuels shall be delivered within the Delivery Window and at the location of the Vessel as set out in the Bunker Nomination. The Marine Fuels shall be delivered in compliance with the regulations in force at the port or other place of delivery. The Seller shall not be liable for a failure to deliver the Marine Fuels caused by the operating hours of the port or inaccessibility of the place of delivery.
- (b) Should the Vessel arrive outside the Delivery Window or more generally be unavailable to receive delivery at the time the Bunker Tanker arrives for delivery during the Delivery Window, the Seller shall use its best efforts to deliver the Marine Fuels on another date and the Buyer shall fully cooperate with the Seller in order to reschedule delivery.
- (c) The Buyer, or its agents at the port or place of delivery, shall give the Seller or its representatives at the port or place of delivery, seventy-two (72) and forty-eight (48) hours approximate and twenty-four (24) hours definite notice of the Vessel's arrival and the location and time at which deliveries are required.
- (d) Subject to the Buyer providing all the required documents and information, the Seller shall be in possession of all permits required to comply with all relevant regulations pertaining to delivery of Marine Fuels at the port or place of delivery.
- (e) The Buyer shall be responsible for making all connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold and to ensure that the hose(s) are properly connected to the Vessel's bunker manifold prior to the commencement of delivery.
- (f) The Buyer shall ensure that the Vessel is in possession of all certificates required to comply with all relevant regulations pertaining to delivery of the Marine Fuels at the port or place of delivery and that the Vessel's representative shall: (i) advise the Seller in writing, prior to delivery, of the maximum allowable pumping rate and pressure and agree on communication and emergency shut-down procedures; (ii) notify the Seller in writing prior to delivery, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Marine Fuels, and; (iii) provide a free side to receive the Marine Fuels and render all necessary assistance which may reasonably be required to moor or unmoor the Bunker Tanker, as applicable.
- (g) If the Seller believes it is likely the Vessel is not capable of receiving the total amount of Marine Fuels ordered by Buyer (including due to technical limitations attributable to the Buyer) or in the event health and safety conditions are no longer met, the Seller may, at its sole discretion, refuse, suspend, and/or terminate delivery of the Marine Fuels, it being specified that all costs incurred by the Seller in connection with such refusal, suspension or termination, including re-pumping, destruction of Marine Fuels and/or immobilisation shall be exclusively borne by the Buyer.
- (h) In the event of delay in the use of loading equipment and/or barging facilities due to the Buyer or the Vessel, for whatever reason, the Buyer shall indemnify the Seller for any costs including demurrage incurred resulting from such delay.
- (i) The Buyer acknowledges that the Seller may elect to carry out deliveries itself or to have them effected by an authorised company. In the latter case, clause 11 below shall apply.

7. Documentation

- (a) Once delivery of the Marine Fuels is completed and quantities measured, a BDN shall be signed and stamped by the Vessel's representative on behalf of the Buyer and by the Seller's representative.
- (b) In the event the Vessel's representative is not satisfied with the sampling, quantity or any other matter concerning the Marine Fuels or their delivery, the Vessel's representative shall immediately contact the Seller and, on completion of delivery: (i) make appropriate remarks in the BDN detailing the complaints and/or referring to a separate letter of protest; or (ii) if remarks in the BDN are not permitted, issue a separate letter of protest, receipt of either of which shall be acknowledged in writing by the Seller's representative.

8. Payment

- (a) Unless otherwise stated in the Bunker Nomination, payment for the Marine Fuels shall be made by the Buyer to the Seller within thirty (30) days after completion of delivery.
- (b) Payment shall be made in full, without set-off, counterclaim, deduction and/or discount, free of bank charges.
- (c) Payment shall be deemed to have been made on the date the payment is credited to the bank account designated by the Seller.
- (d) If payment falls due on a non-Banking Day, then payment shall be made on or before the last Banking Day before the due date.
- (e) Any delay in payment shall entitle the Seller to interest at the rate of ten (10) per cent per annum or any part thereof unless otherwise stated in the Bunker Nomination.
- (f) In the event payment is not received in full, the Seller reserves the right to pursue such legal remedies as may be available to it to recover the amount owed.
- (g) It is the Buyer's responsibility when making any payment to the Seller to ensure that the payment is being made correctly to the Seller's proper bank account. If, for whatever reason, a payment made by or on behalf of the Buyer is not received by the Seller, the risk and responsibility relating to the payment remains with the Buyer; the Seller will give no credit for any such purported payment or payments unless and until actually received by the Seller.

9. Claims/Liability

(a) Quantity

- (i) Any dispute as to the quantity delivered must be notified by the Buyer to the Seller at the time of delivery in accordance with sub-clause 7(b). If no claim for such quantity dispute is presented to the Seller by the Buyer in writing within seven (7) days from the date of delivery, any such claim shall be deemed to be waived and barred.
- (ii) The Seller shall have the right to charge the Buyer for all proven additional expenses incurred by the Seller in connection with the Buyer's failure to take delivery of the full quantity of the Marine Fuels ordered by the Buyer.

(b) Quality/Specification

- (i) The Buyer must notify the Seller of any claim as to the quality or specifications of the Marine Fuels in writing, specifying the nature of the alleged lack of quality without undue delay after he has discovered it. If the Buyer does not notify the Seller of any such claim within twenty-one (21) days from the date of delivery, any such claim shall be deemed to be waived and barred.
- (ii) In the event a claim is raised pursuant to sub-clause 9(b)(i) before the expiration of the above-mentioned twenty-one (21) day period, the Parties hereto shall have the quality of the Marine Fuels analysed by a mutually agreed, qualified and independent laboratory located in the country of delivery, unless otherwise agreed between the Seller and the Buyer. The Seller shall provide the laboratory with one of the samples retained by them as per sub-clause 5(b), it being specified that any commercial sample retained by the Vessel shall have no evidentiary value and may not be used in the context of a claim under any circumstances whatsoever. The seal can be breached only in presence of both Parties or their respective representatives unless one or both have declared in writing that they will not be present or have failed to respond within ten (10) days of the other Party's invitation to attend. In the event the Marine Fuels were sold with reference to an ISO quality standard, the analysis shall be established in accordance with the procedures set out in the then current ISO 4259 standard or any subsequent replacing ISO standard. In the event the Marine Fuels were sold without any reference to an ISO quality standard, the analysis shall be established in accordance with procedures to be mutually agreed by the Parties. Unless otherwise agreed, the expenses of the analysis shall be exclusively borne by the Party whose claim is contradicted by the analysis conducted by the above-mentioned laboratory, it being specified that any upfront expenses of the analysis shall be exclusively borne by the Buyer. The samples drawn pursuant to and in compliance with clause 5 of this agreement shall constitute conclusive and final evidence of the quality of the Marine Fuels

and no other sample shall be allowed as evidence. If any of the seals have been removed or tampered with by an unauthorised person, such sample shall be deemed to have no value as evidence.

- (iii) If there is no agreement regarding quality, the existence of a lack of quality shall be determined by the statutory definitions for defective products or lacking quality, namely section 434 para. 1, sentence 2 and 3 BGB, however, the Seller does not undertake any liability for public statements of third parties, for example from the manufacturer of Marine Fuels or other suppliers.
- (iv) In case of a lack of quality of the Marine Fuels, the Seller may choose a remedy at its sole discretion.

(c) Time Bar

In each and every case any and all claims and causes of action shall be time barred unless proceedings have been commenced in accordance with clause 20 (*Governing law/Dispute Resolution*) hereof within twelve (12) months of the earlier of (i) the date of delivery of the Marine Fuels or (ii) the end of the Delivery Window as per the Bunker Nomination.

(d) Liability

- (i) The Seller is liable to pay damages in cases of intent and gross negligence.
- (ii) In case of negligence, the Seller's liability is excluded, irrespective of the legal basis, and regardless if the damages are direct or indirect, unless in case of:
 - damages to life, body or health;
 - damages based on a breach of an essential duty of the contract. Essential contractual duties are those which enable the fulfilment of the orderly performance of the contract. However, in this case the Seller's liability is limited to the foreseeable, direct damage which is typical for bunker delivery contracts.
 - claims under the Product Liability act and/or in relation to section 444 BGB.
- (iii) Clause 9d (ii) also applies in cases of negligent conduct of any of the Seller's legal representatives or any agent.
- (iv) In any event, liability of the Seller under this agreement shall, under no circumstances, exceed the price of the Marine Bunkers invoiced to the Buyer.
- (v) Subject to the Seller's liability according to clause 9(c) in the relation to the Buyer, the Buyer undertakes to hold the Seller harmless in the event any third Party launches a claim of whatever kind against the Seller and which is directly or indirectly related to this agreement and/or the Marine Fuels purchased thereunder.

10. Transfer of Risk and Title

- (a) Risk in the Marine Fuels shall pass to the Buyer once the Marine Fuels have passed the Seller's flange connected to the Vessel's bunker manifold.
- (b) Title to the Marine Fuels shall pass to the Buyer upon full payment for the Marine Fuels delivered, pursuant to the terms of clause 8 (*Payment*) hereof. Until such time as payment is made in full, the Buyer agrees that it is in possession of the Marine Fuels solely as bailee for the Seller.
- (c) The Seller retains title to Marine Fuels until full payment of all secured claims including any balances from a current account relationship.
- (d) Processing or modifying Marine Fuels subject to retention of title shall always be accomplished on behalf of the Seller as producer within the meaning of section 950 BGB. An obligation on the side of the Seller, however, shall not be created thereby.
- (e) If, prior to payment, the Seller's Marine Fuels are commingled with other marine fuels on board the Vessel, which do not belong to the Seller, it is agreed that the Seller acquires co-ownership of the commingled marine fuels in the proportion of the value of the Marine Fuels subject to retention of title and the value of the other marine fuels at the time of the mixture.
- (f) For security purposes, the Buyer hereby assigns and transfers all its claims (including all balances from the current account) which result from the on-sale or use of the Marine Fuels or from any other legal basis (insurance or tort law) with regard to the Marine Fuels subject to retention of title to the Seller. The Seller authorises the Buyer to collect the transferred claims in its own name on behalf of the Seller. This direct debit authorisation, however, may be revoked if the Buyer does not properly fulfil its payment obligations.
- (g) In the event of pledges, seizure or other disposals or interventions concerning Marine Fuels subject to retention of title by third parties, the Buyer is obliged to inform the third party of the property of the Seller and to notify the Seller thereof without delay. All costs and damages caused by third parties interfering with rights of the Seller deriving from retention of title shall be borne by the Buyer.
- (h) Upon demand of the Buyer, the Seller is obliged to release granted securities (including but not limited to assignments under this clause) to the extent their value exceeds the open claims to be secured by more than 20 %.

- (i) The above is without prejudice to such other rights the Seller may have under the laws of the governing jurisdiction against the Buyer or the Vessel in the event the Seller fails to receive full payment.

11. Non-physical supply

- (a) These GTC are subject to variation where the physical supply of the Marine Fuels is being undertaken by a third party, namely by the Supply Company. In such circumstances, the references to the Seller in clauses 4 and 5 and sub-clauses 6(d), 6(g), 7(a), 10(a) and 15(b) shall be construed as referring to the Supply Company. The Buyer shall be deemed to have read and accepted the Supply Company's Terms in full.
- (b) Without prejudice to the generality of the foregoing, in the event the Supply Company Terms provide:
- (i) a shorter time limit for the performance of any act, or the making of any claim, then such shorter time limit shall be incorporated in these GTC; and
 - (ii) any additional exclusion of liability provisions, such provisions shall be incorporated mutatis mutandis to these GTC.
- (c) It is hereby acknowledged and expressly agreed that the Buyer shall not have any rights against the Seller greater or more extensive than the rights of the Seller against the Supply Company.

12. Compliance with Laws and Regulations

The Parties will not do or permit to be done anything which might cause any breach or infringement of applicable laws and regulations.

13. Force Majeure

- (a) Neither Party shall be liable for any loss, damage or delay due to any of the following force majeure events and/or conditions at the port or place of delivery to the extent the Party invoking force majeure is prevented or hindered from performing any or all of their obligations under this agreement, provided they have made all reasonable efforts to avoid, minimize or prevent the effect of such events and/or conditions:
- (i) acts of God;
 - (ii) any government requisition, control, intervention, requirement or interference;
 - (iii) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;
 - (iv) riots, civil commotion, blockades or embargoes;
 - (v) epidemics;
 - (vi) earthquakes, landslides, floods or other extraordinary weather conditions;
 - (vii) strikes, lockouts or other industrial action, unless limited to the employees of the Party seeking to invoke this clause;
 - (viii) fire, accident, explosion except where caused by negligence of the Party seeking to invoke this clause;
 - (ix) any other similar cause beyond the reasonable control of either Party.
- (b) The Party seeking to invoke this clause shall notify the other Party in writing within two (2) days of the occurrence of any such event/condition.

14. Breach/Cancellation

- (a) The Seller shall have the option to immediately cancel this agreement in full or in part, or to store the Marine Fuels in whole or in part on behalf of and at the Buyer's sole risk and costs or to take any other measures that the Seller deems appropriate, without prejudice to its rights hereunder, in any one of the following cases:
- (i) when the Buyer, for whatever reason, fails to accept the Marine Fuels in whole or in part due at the place and time designated for delivery;
 - (ii) when the Buyer fails in whole or in part to comply with its obligations to pay any amount due to the Seller and/or provide security as required under this (and/or a previous) agreement or in connection with a previous delivery;
 - (iii) when, before the date of delivery, it is apparent in the opinion of the Seller that the financial position of the Buyer entails a risk for the Seller.
 - (iv) if, at any time prior to or during delivery, Seller reasonably determines that the environment for delivery is unsafe or could create the potential for a Spill.
- (b) The Seller may terminate this agreement in whole or in part, and in its full discretion, upon the breach of any provisions hereof by the Buyer and/or its representatives.

15. Health/Safety/Environment

- (a) The Buyer shall ensure that its employees and agents comply with all health and safety requirements, obligations and recommendations relating to the handling of the Marine Fuels delivered hereunder and shall impose upon all its customers to whom the Marine Fuels are supplied the same obligation.
- (b) In the event of a Spill while the Marine Fuels are being delivered, the Buyer shall promptly take such action as is necessary to remove the spilled Marine Fuels and mitigate the effects of such Spill. Without prejudice to the generality of the foregoing, the Seller is hereby authorised in its full discretion and at the expense of the Buyer to take such measures and incur such expenses as are necessary in the Seller's judgment to remove the spilled Marine Fuels and mitigate the effects of such Spill also on the environment. The Buyer shall fully cooperate and render such assistance as is required by the Seller in this respect. All expenses, claims, losses, damages, liability and penalties arising from spills shall be borne by the Party that caused the Spill by act or omission. If both Parties contributed to the Spill, all damage related costs shall be divided between the Parties in accordance with their respective degree of fault.

16. Confidentiality

- (a) Neither Party shall disclose to third Parties any confidential information relating to pre-contractual discussions and/or the terms and conditions of this agreement, except with the prior written consent of the other Party, or to the extent required by law, or by a request of a government or its agency thereof or in order to enforce any obligation arising under or pursuant to this agreement.
- (b) The Parties shall take reasonable precautions to ensure that no unauthorised disclosure of confidential information takes place.
- (c) If a Party is uncertain as to whether information is confidential, it shall consult the other Party.
- (d) Should either Party be required by law to disclose confidential information, the disclosing Party will notify the other Party and shall disclose only the minimum confidential information required to satisfy legal requirements.
- (e) Information is not confidential for the purposes of this clause if it was in the possession of the Party prior to receipt from the other Party; becomes publicly available other than as a result of a breach of this agreement by one of the Parties; or was lawfully received from a third Party.
- (f) This clause shall survive termination of this agreement.

17. Assignment

Neither Party shall assign any of their rights under this agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

18. Partial Validity

If any provision of this agreement is or becomes or is held to be illegal, invalid or unenforceable in any respect, the provision shall be deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if such amendment is not possible, the provision shall be deemed to be deleted from this agreement to the extent of such illegality, invalidity or unenforceability, and the remaining provisions shall continue in full force and effect and shall not in any way be affected or impaired thereby.

19. Notices

Any Party giving notice under this agreement shall ensure that it is effectively given and such notice shall be treated as received during the recipients' office hours. If such notice is sent outside the recipients' office hours it shall be treated as received during the recipients' next Banking Day.

20. Governing law/Dispute resolution

- (a) This agreement and all agreement subject to these GTC shall be governed exclusively by the substantive laws of the Federal Republic of Germany (to the exclusion of the Convention for the International Sale of Goods and the conflict of law provisions).
- (b) The courts of Hamburg shall have exclusive jurisdiction over all disputes arising out of this agreement.

Effective as of 1st January, 2018