



**Marina Fachri Supply**  
Indonesian Bunkering Supply  
●Fuel Oil ●Gas Oil

# GENERAL TERMS AND CONDITIONS FOR MARINE FUELS SALES

## 1. GENERAL INTRODUCTION

This is a statement of the terms and conditions according to which **PT. MARINA FACHRI SUPPLY (hereinafter referred to as the " Seller")** will sell all grades of diesel oil, gas oil and intermediate fuel oil (hereinafter collectively referred to as "fuel oil"). No variation of these terms and conditions shall be valid and binding unless expressly agreed in writing by the Seller. The party purchasing fuel oil from the Seller is hereinafter referred to as the Buyer whether he is the registered owner, disponent owner, charterer (by demise or otherwise), operator or manager of the vessel (hereinafter referred to as the "Buyer's vessel") receiving the supply or a trader who is acting as a principal and has contracted to supply fuel oil to the vessel receiving the supply. If the delivery is contracted for by an agent or by the Buyer on behalf of a principal, disclosed or undisclosed, or by the Buyer on behalf of itself and as agent on behalf of another principal or principals, disclosed or undisclosed, such agent or the Buyer, as the case may be, shall be jointly and severally liable with such principal or principals, or other principal or principals, as the case may be, for the due and proper performance of all these terms and conditions.

## 2. QUALITY

The fuel oil to be delivered hereunder shall be the Sellers or the Seller's suppliers' commercial grade fuel oil as currently offered generally to its customers for similar use at the time and place of delivery.

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### **3. DELIVERY**

(a) Without prejudice to these terms and conditions and in particular clause 10, the Seller's obligation to make any delivery hereunder is subject to the availability to the Seller of the particular grade(s) of fuel oil desired by the Buyer at the bunkering port at which delivery is requested.

(b) The Seller shall not be required to deliver fuel oil into any one of the Buyer's vessel's tanks which are not regularly used for bunkers, and the Seller shall not be required to deliver any fuel for export for which a government permit or similar authorization is required and has not been properly obtained.

(c) Deliveries shall be made at wharf or at shore terminals of the Seller or the Seller's suppliers or by bunker barge or by a combination of the above-mentioned supply methods (hereinafter collectively referred to as the "Bunkering Facilities") in the Seller's option.

(d) The Buyer's vessel shall be bunkered as promptly as circumstances permit. The Seller or the Seller's supplier shall not be liable for demurrage paid or incurred by the Buyer or for loss, damage or delay to the Buyer's vessel whether caused by congestion at the bunkering facilities, prior commitments of the available barge(s) or from any other cause whatsoever.

(e) In the event of delivery by barge(s), the Buyer shall provide free of expense a clear and safe berth for the barge(s) alongside the Buyer's vessel's receiving lines. The Buyer shall pay the Seller the amount due to the Seller or the Seller's suppliers according to its current barging rates at the port concerned. All other charges shall be for the Buyer's account.

(f) The Seller, the Seller's supplier and the bunkering facilities shall not be responsible for any damage, loss or delay of whatsoever nature to the Buyer's vessel. Furthermore the Buyer agrees to pay and fully indemnify the Seller or the Seller's supplier in respect of any loss, damage or delay caused by the Buyer's vessel to the bunkering facilities.

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(g) The Buyer's vessel at its own expense is to moor, unmoor, hoist the bunkering hose(s) from the barge(s) and lower the hose(s), day or night, Saturdays and holidays included, whenever required by the Seller or the Seller's suppliers and the crew of the Buyer's vessel is to assist the barge(s) in order to ensure a smooth supply. The Buyer shall make the connections between the pipeline(s) delivery hose(s) and the Buyer's vessel's lines and shall provide sufficient tankage and equipment to receive promptly day or night, Saturdays and holidays included all deliveries hereunder. In case the Buyer's vessel is not able to receive deliveries hereunder promptly and without interruption, the Buyer is to be responsible for and to pay reasonable demurrage claims to the Seller, the Seller's suppliers or the bunkering facilities.

(h) Delivery shall be deemed completed and title shall pass as the fuel oil reaches the flange connecting the pipelines or delivery hoses with the intake lines of the Buyer's vessel at which point Seller's responsibility will cease and the Buyer shall assume all risks, including loss, damage, deterioration, depreciation, evaporation or shrinkage as to the fuel oil so delivered (please refer to retention clause).

(I) If the Buyer fails to take delivery of the full quantity of fuel oil ordered and tendered, the Seller shall have the right to invoice the Buyer for the loss incurred by having to transport the fuel from the storage tanks to the vessel and back again and by having to sell the fuel oil in a degraded form at a price lower than that applicable to the grade originally nominated by the Buyer, without prejudice to the Seller's other rights under this agreement for damages or otherwise.

#### **4. NOMINATIONS AND CONFIRMATIONS OF DELIVERY DATE**

a) As soon as the contract is concluded the Buyer will confirm by telex or fax or email (hereinafter referred to as the "Nomination") to the Seller the estimated date of each delivery, the agreed

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terms, grades and quantities to be delivered. The Seller will acknowledge the nomination. In particular as soon as possible but no later than 7 days (inclusive of Sundays and holidays) after the Nomination the Buyer will confirm by telex or fax or email (hereinafter referred to as the "Confirmation") to the Seller the firm date on which delivery is required (hereinafter referred to as the "Delivery Date"). The Buyer shall give thereafter 4 working days and 2 working days notice of the delivery date. If no Confirmation is sent as required by this clause the Seller is entitled, without giving prior notice, to cancel the contract without incurring any liability whatsoever.

(b) Deliveries of fuel oil are made on the basis of the firm delivery date, as set out in the Confirmation referred to in 4(a) above, and the Seller has the right to cancel this contract without incurring any liability whatsoever if the Buyer's vessel does not arrive at the nominated delivery place and present herself for delivery, within 5 days of the delivery date confirmed in the Confirmation.

(c) The Seller has the right to deliver the agreed quantity of bunkers in one consignment or in part lots, in which case each part lot is considered as a separate transaction.

## **5. DETERMINATION OF QUANTITY**

(a) The quantity of fuel oil delivered hereunder shall be determined by the reading from the gauge of the Seller or Seller's suppliers' bunkering facilities or the Seller or Seller's suppliers' oil meter, at Seller's or Seller's suppliers' option.

(b) The Chief Engineer of the Buyer's vessel or his representative shall jointly with the Seller or Seller's supplier measure and verify the quantities of fuel oil sold and delivered from the bunkering facilities. Should such Chief Engineer of the Buyer's vessel or his representative fail or decline to so verify the quantities, measurement of the quantity made by the Seller or Seller's suppliers shall be final and conclusive as to the quantities sold and delivered hereunder and no claims for any difference between

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the Seller or Seller's suppliers figures and the Buyer's figures shall be made or allowed after delivery. In the measurement of the fuel oil, the Seller shall make, or cause to be made, an allowance for all water and/or non-petroleum sediment in excess of one per cent (1%). No any other claim of whatsoever nature shall be made by the Buyer in relation to water and/or non-petroleum sediment, except for the allowance provided for by this clause.

## **6. QUALITY DETERMINATION**

Complaint as to quality of the fuel oil supplied must be based on tests made as soon as possible and by an independent laboratory of samples (signed and sealed as provided for below) taken at the time of delivery from the bunkering facilities from which the delivery is made. Any such complaint must be made in writing to the Seller or the Seller's suppliers within seven (7) days (inclusive of Sundays and holidays) of delivery, giving full details of the nature of the claim and supported by independent laboratory sample analysis report(s), failing which any claim as to the quality of the fuel oil delivered will be absolutely waived and barred. All samples taken by the Buyer shall be sealed and identified by the signature of the Seller or the Seller's suppliers' representative. A minimum of one set of samples shall be supplied to the Buyer's vessel and two other sets of samples shall be retained by the personnel at the bunkering facilities from which the delivery is made.

## **7. PAYMENT**

(a) The Seller shall invoice the Buyer for all fuel oil delivered hereunder in U.S. Dollars and the Buyer shall pay to the Seller the amount thereof in U.S. Dollars. Such payments shall be made to the credit of the Seller's account with CITIBANK,

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Singapore or such other bank(s) as the Seller may designate by written notice to the Buyer via telex or fax or email.

(b) Payment shall be made without any discount or deduction whatsoever prior to the date of delivery. (If the Seller agrees in writing to grant the Buyer a period of credit, the Buyer shall pay the full amount without any discount or deduction whatsoever promptly on the agreed due date.)

(c) All overdue payments shall bear interest at the rate of two per cent (2.0 %) per month or pro rata.

(d) Notwithstanding that the Buyer shall remain liable to the Seller for all amounts payable to the Seller under this contract; deliveries of fuel oil are expressly made on the faith and credit of the vessel's hull to which delivery is made and the Buyer warrants that the Seller or the Seller's supplier shall have and may assert at any time and at any place in the world a maritime lien against the vessel (no matter who the present and future owners may be) her sister vessels and- against her reserves of fuel oil for all amounts due to the Seller under this contract. The lien shall become effective in accordance with the clause immediately any amount becomes due to the Seller under this contract.

## **8. NOTICES**

Notices shall be given in writing or by telex or by telefax or by email as the parties may designate in writing.

## **9. ASSIGNMENTS**

This contract shall not be assigned nor transferred by the Buyer without the prior written consent of the Seller, who may refuse to grant that consent without giving any reason.

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## **10. CONTINGENCIES**

(a) No failure, omission or delay by the Seller to carry out or observe any of the terms and conditions of this contract shall give rise to any claim against the Seller or be deemed a breach of contract if such failure, omission or delay arises, directly or indirectly, from any cause beyond the control of the Seller including, but without limitation to the generality of the foregoing, any regulation or embargo issued by any government (or person purporting to act as such) interfering with or affecting, directly or indirectly, the supply of fuel oil (or the crude oil from which is derived the Seller's supply of fuel oil), any suspension or reduction in production of fuel oil by the Seller's main, subsidiary or anticipated supplier(s) occurring at any time, any acts of God, strikes, lock outs, work stoppages or other industrial disturbances or difficulties, wars, civil wars, warlike activities, insurrections, rebellions, public disorders, acts of sabotage, civil commotions, riots, disturbances, fires, quarantine, restrictions, epidemics, lightening, earthquakes, storms, floods, weather conditions, explosions, accidents, breakdowns or any other cause of whatsoever kind.

(b) The Buyer and the Seller recognize the supply of fuel oil and the crude oil from which it is derived is subject to fluctuations and interruptions. Vessels will be bunkered as promptly as circumstances permit, but if the Seller or the Seller's supplier at any time for any reason whatsoever believes that there may be a shortage of supply at any port so that he may be unable to meet, the demands of any or all of his customers, the Seller or the Seller's supplier may allocate their available and anticipated supplies of fuel oil among their customers in such a manner or not at all as they may in their absolute discretion determine.

(c) The Buyer shall make no claim of whatsoever nature against the Seller by reason of the Seller exercising his option pursuant to this clause. Should there be any delay, curtailment or interference with the availability of any of the Seller's sources or

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anticipated sources of supply wherever situated, the Seller shall not be required to increase supplies or obtain supplies from other sources or to purchase fuel oil or to replace the supplies so curtailed or interrupted.

## **11. FINANCIAL RESPONSIBILITY**

(a) In the event of default by the Buyer of any company or companies connected, associated or affiliated with the Buyer in any way in the payment of any indebtedness whatsoever to the Seller whether arising under this contract or any other contract with the Seller of whatsoever nature or other default in or breach of their obligations to the Seller or in the event of any distress of execution levied upon the Buyer's property or assets or in the case of the Buyer making any agreement or composition with his creditors or his committing any act of bankruptcy or if a petition or receiving order or analogous proceeding is levied against the Buyer or if any resolution for their winding up is passed or presented or if a Receiver is appointed over the Buyer's undertaking, property or assets or should the Buyer's financial conditions become unsatisfactory in the Seller's sole and absolute judgment, then:

(i) the Seller shall have the right at any time, without prejudice to any other rights or remedies, to cancel this contract forthwith. In the event that the Seller exercises his right to cancel this contract, the Buyer shall remain liable in respect of all obligations under the contract up to the date of cancellation. The Seller is entitled to exercise his right to cancel this contract pursuant to this clause at any time, without prior notice to the Buyer, even if this involves interrupting and suspending delivery of fuel oil, and/or (ii) the Seller shall be entitled to the immediate payment of any and all sums payable under any contract or contracts with the Buyer and/or any company or companies

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connected, associated or affiliated with the Buyer and including all sums which are already due at the time of the occurrence of any of the events referred to in this Clause 11 and all sums which shall become due at any time thereafter.

(b) As an alternative to cancellation pursuant to clause 11(a), the Seller may delay or suspend temporarily the supply of the fuel oil until payment has been made or security in a form satisfactory to the Seller has been provided. If no payment or satisfactory security is provided the Seller may at any time and without prior notice to the Buyer exercise his right to cancel under clause 11(a).

(c) The Seller shall not be liable for any consequences, losses and/or damages howsoever arising from the exercise by the Seller of his rights under either or both of sub-clauses 11(a) and (b).

## **12. TAXES OR OTHER CHARGES**

Should any tax, freight, insurance premium, pilotage, port dues or other extra expenses at the time of delivery under this contract be raised or charged after this contract is made, such additional expenses shall be borne by the Buyer.

## **13. CLAIM**

Notice of any claim of whatsoever nature made by the Buyer against the Seller under, arising out of or in connection with these Terms and Conditions and the Contract of which they form part must be given in writing within 7 days (inclusive of Sundays and holidays) from the date of delivery, or if no delivery took place within 7 days of the delivery date as defined in clause 4. The written notice must give full details of the claim with supporting documents and survey/analysis report(s) where available. Unless the Buyer gives notice of any claims of whatsoever nature strictly in accordance with this clause within the time limited, all the Buyer's claims of whatsoever nature under, arising out of or in

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connection with these Terms and Conditions and the Contract will be extinguished and absolutely barred and waived as against the Seller.

## **14. WAIVER**

No delay or omission by the Seller to exercise any right or power under this Contract or at all shall impair such right or power or be construed as a waiver of or as acquiescence in any breach by the Buyer and in any event of the Seller at any time agreeing to waive any such right or power, such waiver shall only be valid if given in writing and agreed by the Seller.

## **5. LIABILITY AND INDEMNITY**

(a) Without prejudice to any provisions elsewhere in these Terms and Conditions, the Seller shall not be, liable for any expenses, claims, losses, damages and liabilities howsoever arising in connection with the Buyer's receipt, use, storage and transportation of fuel oil delivered under this agreement unless the expenses, claims, losses, damages and liabilities result from the Seller's personal gross negligence.

(b) The Buyer shall indemnify and hold harmless the Seller in respect of all claims of whatsoever nature made by any third party against the Seller in all cases where, if it had been possible to make the claim or if it had been made pursuant to these Terms and Conditions, the Seller would not be liable.

(c) The Maximum liability of the Seller under this agreement and the maximum liability of any other person who may be able to rely upon these Terms and Conditions, is limited to an amount equal to the purchase price of the fuel oil delivered or intended to be delivered under the Contract. No claim or claims against the Seller shall be made which exceed in total the amount of the limit set out in this clause.

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(d) The Buyer agrees that actual suppliers of the fuel oil under this agreement and all employees, agents and representatives of the Seller and of such actual suppliers will have the benefit of any and all terms, conditions, rights, exclusions and other benefits provided for the Seller under these terms and conditions.

### **16. CANCELLATION FEE**

In case the Buyer wishes to cancel or reduce the quantity of fuel oil ordered a fee of US\$ 5.00 per metric ton will be charged on the cancelled or reduced quantity to cover the Seller's costs and expenses thrown away, provided notice of the reduction or cancellation is given to the Seller (7) or more working days prior to the intended delivery date. This fee is due to be paid within 15 days of the delivery date or the intended delivery date of fuel oil. Should the Buyer wish to cancel or reduce the quantity of fuel oil ordered less than (3) working days before the intended delivery date, the Buyer will compensate the Seller in the amount of US\$ 5.00 per metric ton as stipulated above, but the Seller reserves the right to claim additional damages should the agreed payment of US\$ 5.00 per metric ton not properly compensate the Seller for his losses, expenses and claims of whatsoever nature arising out of and in connection with the late reduction in quantity or cancellation of the contract.

### **17. JURISDICTION**

This contract shall be governed by and interpreted in accordance with US law and both parties submit to the jurisdiction of the High Court of Justice in New York. It is further agreed that the Seller may in any jurisdiction (i) exercise his lien over the Buyer's vessel, sister vessel(s) and/or their reserves of fuel oil and/or (ii) arrest the Buyer's vessel or sister vessel(s) and/or their reserves of fuel oil to secure the Seller's claims for any amounts, costs, expenses, losses or damages payable to him under this contract

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and/or (iii) enforce any judgment and/or (iv) take any other proceedings.

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## **A P P E N D I X ADDITIONAL CLAUSES RETENTION OF TITLE CLAUSE**

(a) The contract between the Seller and the Buyer on these terms and conditions shall constitute an agreement to sell the fuel oil and not a sale of them and no title to the fuel oil shall pass to the Buyer by reason of delivery or acceptance of the fuel oil. (b) The Seller shall remain the sole and absolute Owner of the fuel oil delivered to the Buyer's vessel until such time as the agreed price of the fuel oil has been paid to the Seller by the Buyer. Until such time the Buyer shall be the bailee of the fuel oil for the Seller.

(c) The fuel oil which is the subject of any agreement by the Seller to sell to the Buyer shall be at the risk of the Buyer as soon as they are delivered by the Seller to the Buyer's vessel and reach the flange connecting the bunkering facilities to the vessel's lines.

(d) The Buyer shall be at liberty to mix the Seller's fuel oil with other fuel oils on board the Buyer's vessel subject to the condition that if the fuel oil which is the property of the Seller is admixed or united in any way with the fuel oil of the Buyer, the product thereof shall become and/or shall be deemed to be for all purposes to be the property of the Seller. If fuel oil which is the property of the Seller is admixed or united in any way with the property of any person or persons other than the Buyer or are processed with or incorporated therein, the product thereof shall become and shall be deemed for all purposes to be owned in common with that other person or those other persons.

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(e) The Buyer's right to possession and use of the fuel oil shall cease at which ever is the earliest of the following dates or occurrences:

(i) On the expiration of the agreed period of credit, if any.

(ii) If the Buyer commits any of the acts, or any of the events occur which are set out in clause 11(a) giving rise to the Seller's right to cancel the contract forthwith and the Seller exercises his right and cancels the contract.

## **ENVIRONMENTAL PROTECTION**

If an escape, spillage or discharge of fuel oil ("aspill") occurs while a delivery of fuel oil is being made to the Buyer's vessel pursuant to this contract, the Buyer will promptly take all such action as is reasonably necessary to remove the fuel oil and mitigate the effects of such a spill. However, notwithstanding the cause of such a spill, the Seller is hereby authorized at his option upon notice to the Buyer and/or the operator of the Buyer's vessel to take such measures either in cooperation with the Buyer or exclusively as the sole party and incur such expenses (whether by employing his own resources or by contracting with others) as are reasonably necessary in the sole judgment of the Seller to remove the oil and mitigate the effect of such spill. If the Seller has exercised his option to remove the oil and mitigate the effect of such spill, the Buyer agrees to cooperate and render such assistance as is required by the Seller in the course of such action. Any expenses, damages, costs, fines and penalties arising from the spill shall be paid for by the Buyer unless the Buyer alleges the spill arose through the Seller's negligence in which case the Seller will be liable provided the Buyer proves such beyond reasonable doubt. The Buyer agrees to give or cause to be given to the Seller upon demand all such documents and other information concerning any spill which are requested by the Seller or are required by laws or regulations applicable at the time and place where; the Seller delivers fuel oil to the Buyer.

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