

**Agnamar S.A.****Revision 2012****Standard Terms and Conditions of Sale****A. GENERAL INTRODUCTION.**

1. This is a statement of the terms and conditions according to which Agnamar S.A. (hereinafter called Seller) sells marine bunkers.
2. These conditions apply to all offers, quotations, orders, sales, agreements, deliveries, and all subsequent contracts for the sale of bunkers by Seller, except where otherwise expressly agreed in writing by Seller
3. General trading conditions of another party will not apply, unless expressly accepted in writing by Seller.
4. In the case that, for whatever reason, one or more of the (sub) clauses of these Standard Terms and Conditions of Sale are deemed invalid, the other (sub) clauses hereof shall remain valid and be binding upon the parties.

**B. DEFINITIONS.**

Throughout this document the following definitions shall apply:

1. "Seller" means Agnamar S.A.
2. "Buyer" means the vessel supplied and jointly and severally her Master, Owners, Managers/Operators, Disponent Owners, Time Charterers, Bareboat Charterers and charterers or any party requesting offers or quotations for or ordering Bunkers and/or Services and any party on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made;
3. "Bunkers" means the commercial grades of bunker oils, referred to also as Marine Fuels, as generally offered by the Seller to its customers, at the time and place of delivery and the services connected thereto;
4. "Owner" means the registered Owner or Bareboat Charterer of the vessel
5. "Vessel" means the Vessel, Ship, Barge or Offshore Unit that receives the bunkers; either as end user or as transfer unit to a third party; and
6. "Bunker Barge" means barge or tanker, whether belonging to Seller or to third parties, making the delivery of bunkers to the vessel.

**C. OFFERS, QUOTATIONS AND PRICES.**

1. An Agreement to sell bunkers by Seller. shall be binding on the Seller only upon written confirmation from the Seller thereof.
2. Agreements entered into by brokers or any other representative on behalf of the Seller shall only bind the Seller upon written "Stem Confirmation" from the Seller.
3. The price of the Marine Fuels shall be in the amount expressed per unit and in the currency stated in the "Stem Confirmation" for each grade of Marine Fuels delivered.
4. Price may change if quantity actually delivered is less than quantity ordered and such quantity falls under the minimum barging fees in effect at time and place of delivery, unless the shortage in quantity is due to Sellers fault to deliver the complete quantity ordered.

5. Any and all additional charges, if applicable, shall be specified in the seller's "Bunker Quotation" and in the "Stem Confirmation" and shall include but not be limited to:
  - (i) Wharfage charges, barging and fenders charges or other similar charges;
  - (ii) Mooring charges or port dues incurred by the Sellers which are for Buyers' account, and;
  - (iii) Duties, taxes, charges or other costs in the country where delivery takes place, for which the Sellers may be initially accountable but all of which shall nonetheless be for the Buyers' account.

**D. QUALITY AND QUANTITY OF BUNKERS.**

1. The Buyer shall have the sole responsibility for the nomination of the quality and the quantity of the Bunkers, which shall correspond to the "Stem Confirmation" from the Seller.
2. Unless otherwise agreed in the "Stem Confirmation", the Marine Fuels shall comply with ISO Standard 8217:2005 or any subsequent amendments thereof.
3. Where standard specifications are being given or referred to, reasonable tolerances in quality are to be accepted without compensation or other consequences whatsoever.
4. The quality and quantity to be delivered shall be as agreed between the Seller and the Buyer and correspond to the seller's "Stem Confirmation".
5. In respect of the quantity agreed upon the Seller shall be at liberty to provide, and the Buyer shall accept a variation of 5% from the agreed quantity, with no other consequence than a similar variation to the corresponding invoice from the Seller.
6. The Buyer shall have the responsibility for any determination of compatibility of marine fuel purchased from Seller. with marine fuel already on board the vessel.

**E. MEASUREMENTS.**

1. The quantities of bunkers sold and delivered to the Buyer shall be determined from the official gauge or meter of the bunker barge or from the soundings of the bunker barge cargo tanks.
2. The Chief Engineer of the receiving vessel or his representative shall, together with the Seller's representative, measure and verify the quantity of bunkers in the Bunker Barge cargo tanks and verify the quantities of bunkers delivered from the barge.
3. The measurements and calculation of quantities delivered, made as indicated in paragraph E 2 shall be conclusive and binding.
4. Should the Chief Engineer of the receiving vessel or his representative fail or decline to measure and verify the temperatures, gravity and quantities on board the bunker barge, the Buyer will be deemed to have waived any and all claims in regard to the variance or short delivery.

**F. SAMPLING.**

1. The Seller shall arrange for three (3) identical representative commercial samples of each grade of Bunkers delivered, drawn from the barge sampling device throughout the entire bunkering operation. In case that drip sampling equipment is not available onboard the Bunker Barge, samples shall be taken as a composite of each tank divided with 1/3 from each the top/mid/bottom of the cargo tanks.
2. Seller will provide the vessel with a statutory Marpol Oil Sample (to be used only for this purpose) which will be drawn during the course of the delivery from an approved sampling device at the vessel's inlet bunker manifold (as long as equipment configuration permits). If this is not possible, Agnamar S.A. will provide Marpol Samples drawn from the barge sampling device.
3. Sample bottles, labels and seals for the Marpol Sample will be provided by Agnamar S.A. Commercial and Marpol samples shall be securely sealed and provided with labels showing the

Vessel's name and IMO number, identity and IMO number of delivery barge, bunker grade, date and place of delivery and seal identification, authenticated with the Vessel's stamp and signed by the Seller's and the Vessel Representative. Signing the BDR and the supplier's form "Compliance with Marpol Annex VI" both parties agrees to the fact that the samples referred to therein are deemed valid and taken in accordance with the requirements as specified in this clause.

4. Two (2) samples shall be retained by the Seller for thirty (30) days after delivery of the Bunkers, or if requested by the Buyer in writing, for as long as the Buyer reasonably requires. The other sample shall be retained by the receiving Vessel.

5. . In the event of a dispute in regard to the quality of the Bunkers delivered, the samples drawn pursuant to clause F.4 shall be deemed to be conclusive and final evidence of the quality of the product delivered.

6. In case of dispute, one of the samples retained by Sellers shall be forwarded to an independent laboratory located in Ecuador and agreed by both Seller and Buyer for final and binding analyses. The seal must be breached only in presence of both parties, unless one of them has declared in writing that they will not be present; and both parties shall have the right to appoint an independent person or institute to witness seal breaking. No samples subsequently taken shall be allowed as (additional) evidence. If any of the seals have been removed or tampered with by an unauthorized person, such sample (s) shall be deemed to have no value as evidence.

#### **G. DELIVERY.**

1. The time and place of delivery initially given by the Seller, shall be considered approximate, and shall be binding upon the Seller when all information necessary for the Seller to comply with its obligations hereunder, have been properly delivered to the Seller.

2. In any case the Buyer, unless otherwise agreed in writing, must give not less than 72 (seventy two) hours approximate notice of delivery, which is to be followed by 48 (forty-eight) hours and 24 (twenty-four) hours notice, where the last notice must specify the exact place of delivery. The notices of delivery must be given to Sellers and/or the Seller's representatives/agents.

3. Seller will do its best to bunker the vessels of the Buyer as promptly as possible, but shall bear no liability for any demurrage, detention or any other damage due to any delay beyond his control, including but not limited to delay caused by weather (whether usual or unusual), congestion at the loading terminal or discharge port, prior commitments of available barges or existing facilities, howsoever caused.

4. Seller shall in no event be liable for any damage, demurrage, detention or delays resulting from causes beyond its control or avoidable by due care on the part of the Buyer or his vessel.

5. Buyer shall indemnify Seller against any all damages and liabilities arising out of or resulting from any act (s) or omission (s) of Buyer, its servants, agents, vessel's officers or crew in connection with the delivery of marine fuel. Indemnification shall include all costs, reasonable attorney's fees and other damages, including, but not limited to, the cost of compelling Buyer's compliance with these terms and conditions.

6. The Buyer shall ensure that the Vessel provides a free, safe and always afloat and accessible side for the delivery of bunkers and that all necessary assistance as required by the Seller or the Seller's representative is rendered in connection with the delivery.

7. The receiving Vessel shall moor, unmoor, hoist bunkering hoses from the bunker barge, whenever required by the Seller or the Seller's representative, free of expenses, and in any way requested to assist barge equipment to a smooth supply. The Buyer shall make and be responsible for all connection and disconnections between the bunker barge delivery hose and the Vessel's bunker intake manifold/flange and ensure that the hoses are properly secured to the Vessel's manifold or flange prior to commencement of delivery.

8. In case the Buyer's Vessel is not able to receive the delivery promptly, the Buyer shall pay reasonable demurrage claims to the barging/supplying facilities.

9. Delivery shall be deemed completed and all risk, including loss damage, deterioration, depreciation, evaporation, or shrinkage as to the Bunkers delivered shall pass to the Buyer from the time the Bunkers pass the bunker barge flange.
10. If the Buyer, for whatever reason, is unable to receive the full quantity ordered and rendered, the Seller shall have the right to invoice the Buyer for the loss actually incurred by having to transport the Bunkers back to the storage or by having to sell the bunker at a lower market price or in a degraded form at a lower price than that applicable to the grade originally nominated by the Buyer.

#### **H. RISK/TITLE.**

1. Risk in the Marine Fuels shall pass to the Buyers once the Marine Fuels have passed the Sellers' bunker barge flange.
2. Buyer's title in and to the Bunkers delivered and/or properly rights in and to such Bunkers shall remain vested in the Seller until payment has been received by the Seller of all amounts due in connection with the respective delivery.
3. Until full payment of any amount due to the Seller has been made, the Buyer shall not be entitled to use the Bunkers other than for the propulsion of the Vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the bunkers to any third party or other Vessel.
4. In case of breach hereof by the Buyer, the Seller is entitled, without violating the peace, and upon notice to the Buyer to take back the Bunkers without prior juridical intervention, without prejudice to all other rights or remedies available to the Seller.
5. In the event that the Bunkers have been mixed with other bunkers onboard the Vessel, the Seller shall have a valid claim and lien on such part of the mixed Bunkers as corresponds to the quantity or net value of Bunkers delivered.
6. In case the Bunkers, in part or full, are no longer present or can no longer be identified or distinct from other Bunkers, the Seller has the right to arrest and attach the Vessel at any port where the vessel may be found, and also any sister ship and/or any other assets of the Buyer or of the Owner of the Vessel, wherever situated in the world, without prior notice.

#### **I. PAYMENT.-**

1. Payment shall be made by the Buyer as directed by the Seller within the period agreed in writing.
2. Payment shall be made in full, without set-off, counterclaim, deduction and/or discount, free of bank charges, to the bank account indicated by the Seller on the respective invoice (s). If there are any withholding taxes alleged to be due, the Buyer shall "gross up" the amount due to Seller so that the Seller shall receive payment in full, as per its invoice and the terms of this or any other agreement which may be applicable.
3. Notwithstanding any agreement to the contrary, payment will be due immediately in case of insolvency, liquidation or suspension of payment or comparable situation of the Buyer, or arrest of assets and/or claims against the Buyer, or in case of any other situation, which in the sole discretion of the Seller, is deemed to adversely affect the financial position of the Buyer.
4. Payment shall be deemed to have been made on the date of which the Seller has received the full payment and such is available to the Seller. If payment falls due on a non-business day, the payment shall be made on or before the business day nearest to the due date. If the preceding and the succeeding business days are equally near to the due date, then payment shall be made on or before the preceding business day.
5. Any delay in payment shall entitle the Seller to interest on all unpaid amounts at the rate of 2 (two) percent per month or any part thereof until payment in full is made, without prejudice to

any other rights or remedies available to the Seller, and furthermore, the Seller is entitled to charge an administrative fee of US\$ 1.00 per metric ton of Bunkers supplied. The minimum administrative fee shall be US\$ 250.00.

6. All costs borne by the Seller in connection with the collection of overdue payments, whether made in or out of court and in general all costs in connection with breach of this agreement by the Buyer, including reasonable attorney's fees, shall be for the sole account of the Buyer.

#### **J. CLAIMS.**

1. Any claim in regard to the quantity delivered must be notified by the Buyer or the Master of the Vessel to the Seller or its representative immediately after completion of delivery in the form of a statement of a letter of protest. If the Buyer fails to present such immediate notice of protest to the Seller such claim shall be deemed to have been waived and shall thereafter be barred.
2. Claims concerning the quality of the bunkers delivered shall be submitted to the Seller in writing within 15 (fifteen) days after delivery, failing which the right of the Buyer object or claim compensation of whatsoever nature shall be deemed to have been waived and thereafter barred
3. In the event that the Buyer fails to provide a follow up written answer within 15 (fifteen) calendar days from the date that the Seller gives a formal conclusory report relating to a quality or quantity complaint, the claim shall be deemed to have been waived.
4. The Buyer shall be obliged to make payment in full and fulfill all other obligations in accordance with the terms hereof, whether or not it has any claims or complaints.

#### **K. LIABILITY.**

1. The Seller shall not be liable for damages of whatever nature, including physical injury, nor for delay of delivery of Bunkers or services, no matter whether such damages or delay have been caused by fault or negligence on the part of the Seller. The Seller shall furthermore not be liable for damages or delay as described above when such damages or delay have been caused by the fault or negligence of its personnel, representatives or subcontractors.
2. Seller shall in no event be liable for any consequential damages which may arise as a result of this contract, unless such requirements of the Buyer are specifically notified to the Seller in writing and the Seller has consented and agreed to the same. In any event, and notwithstanding anything to the contrary herein, liability of the Seller shall under no circumstances exceed the invoice value of the Bunkers supplied under the relevant agreement to the relevant Vessel.
3. The Buyer shall be liable towards the Seller and herewith undertakes to indemnify the Seller for any and all damages and/or costs suffered or otherwise incurred on the Seller due to a breach of contract and/or fault or neglect of the Buyer, its agents, Servants, (subcontractors, representatives, employees and the officers, crews and/or other people whether or not onboard of the respective vessel (s). The Buyer furthermore undertakes to hold the Seller harmless in case of any third party institutes a claim of whatever kind against the Seller with direct or indirect relation to any agreement regulated by these terms and conditions. Third party shall mean any other (physical or legal) person/company than the Buyer.
4. No servant or agent of the Seller (including independent (sub) contractors from time employed by the Seller) shall be liable to the Buyer for loss, damage or delay, while acting in the course of or in connection with its employment and/or agency for the Seller. Without prejudice to the above every exemption, limitation, condition and liberty herein contained, and every right, exemption from liability, defense or immunity or whatever nature applicable to the Seller or to which it is entitled hereunder shall also be available and shall extend to protect every such servant, representative or agent of the Seller acting as aforesaid.

#### **L. FORCE MAJEURE.**

1. The Seller or the Seller's supplier shall not be liable for any loss, damage or demurrage due to any delay or failure in performance (a) because of compliance with any order or request of any government authority, or person purporting to act therefore, or (b) when supply of the Bunkers storage, transportation, distribution or delivery contemplated by the Seller's supplier is interrupted, unavailable or inadequate for any cause whatsoever is not within the immediate control of the Seller or the Seller's supplier, including (without limitation) if such is caused by labour disputes, strikes, governmental intervention, wars, civil commotion, fire flood, earthquake, accident, storm, swell, adverse weather or any act of God. The Seller or the Seller's supplier shall not be required to remove any such cause or replace any affected source or supply or facility if doing so shall involve additional expense or a deviation from the Seller's or the Seller's supplier's normal practices. The Seller or the Seller's supplier shall not be required to make any deliveries omitted in accordance within this clause at any later time.
2. If the Buyer exercises reasonable diligence, the Buyer shall not be liable for failure to receive any particular delivery if prevented therefrom by force majeure. The Buyer shall indemnify the Seller or the Seller's supplier for any damage caused by the Buyer, the Buyer's agent or employees in connection with deliveries hereunder.
3. In the event that the Seller, as a result of force majeure, can only deliver a superior grade of bunkers, the Seller is entitled to offer the said grade, and the Buyer must accept delivery thereof and pay the applicable price.

**M. BREACH / CANCELLATION .-**

1. The Seller shall have the option to immediately cancel the agreement in whole or in part, or to store or arrange for the storage of the Bunkers in whole or in part for the account and risk of the Buyer and to charge the Buyer the expenses thereby incurred, or to hold the Buyer fully liable for fulfilling the terms of this agreement, or take any other measures which the Seller deems appropriate, without prejudice to its rights of indemnifications, without incurring any liability on the part of the Seller in any (but not limited to) one of the following cases:
  - a) When the Buyer, for whatever reason, fails to accept the Bunkers in whole or in part at the place and time designated for delivery; without prior written notice given to Seller at least 72 hours before the time delivery was scheduled to take place.
  - b) 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 set out herein;
  - c) When, before the date of delivery, it is appearant in the opinion of the Seller that the financial position of the Buyer entails a risk for the Seller;
  - d) When, in case of force majeure, the Seller shall decide that the fulfillment of the agreement is no longer possible or economically feasible and the sam must be cancelled.
2. The Seller may terminate any agreement with the Buyer in whole or in a part, in its full discretion, upon the breach of any provisions hereof by the Buyer.

**N. SPILLAGE, ENVIRONMENTAL PROTECTION.**

1. In the event of a spillage, overflow or leakage of bunkers, causing or likely to cause pollution, while the Bunkers are being delivered, the Seller and the Buyer shall jointly and promptly take such action as is necessary to remove the spilled Bunkers and mitigate the effects of such spill.
2. Without prejudice to the generality of the foregoing the Seller is hereby authorized in its full discretion and at the sole cost and expense of the Buyer, to take such measures and incur such expenses (whether by employing its own resources or by contraction with others) as are necessary in the judgment of the Seller to remove the spilled Bunkers and mitigate the effects of such spill.

The Buyer shall cooperate and render such assistance as is required by the Seller and by local Authorities in the course of the action.

3. All expenses, claims, costs, losses, damages, liability and penalties arising from spills shall be borne by the party that caused the spill either accidentally or by a negligent act or omission. If both parties are responsible, all expenses, claims, losses, damages, liability and penalties, shall be divided between the parties in accordance with the respective degree of responsibility. If the parties can not agree on an apportionment of responsibility, and the costs are in excess of US\$20,000.00, then the matter may be submitted to arbitration as hereinafter provided.
4. The burden of proof to show the Seller's negligence shall be on the Buyer. The Buyer shall give the Seller all documents and other information concerning any spill or any program for the prevention thereof, that are required by the Seller, or are required by law or regulation applicable at the time and place of delivery.

**O. ARREST OF THE VESSEL.**

1. Notwithstanding anything to the contrary herein and without prejudice to any rights or remedies otherwise available to the Seller; the Buyer, by taking delivery of bunkers from Seller and therefore by its acceptance of these conditions, expressly authorizes the Seller to arrest the Vessel in question for payment of the same, or any other Vessel owned or operated by the Buyer, under any applicable jurisdiction as security for the obligations of the Buyer to make payment as herein provided.
2. Should the Buyer fail to make any payment to the Seller immediately when due, the Seller may, after arresting the vessel, arrange to dispose of same whether by public or private sale. in accordance with the rules applicable in the relevant jurisdiction.
3. Any costs or expenses of whatever kind incurred by the Seller in respect of such arrest shall be for the sole account of the Buyer and shall be added to the claim for which arrest is made.

**P. LAW AND JURISDICTION.**

1. This Contract shall be governed by and construed in accordance with the laws of the State of New York, U.S.A. The parties hereto agree and consent that any dispute arising hereunder shall be submitted to arbitration before the Society of Maritime Arbitrators sitting in the City of New York acting in accordance with the rules of said Society as well as Title 9 of the United States Code. In the event of arbitration,, the matter shall be referred to an arbitral panel of three persons sitting in New York City, one arbitrator to be appointed by each of the parties hereto, and the third to be appointed by the two so chosen. The decision of the arbitrators, or any two of them, shall be final and binding and may be submitted to any court of competent jurisdiction for confirmation and enforcement thereof., in which connection this agreement and/or the the arbitrators decision may be made a rule of the Court. The parties shall equally bear the expenses of the arbitration, but in rendering a final decision the arbitrators may award costs and expenses as they deem appropriate.
2. These general terms and conditions of sale contain the entire agreement of the parties with respect to the sale of bunkers by Seller and there are no other promises, representations or warranties affecting it and shall not be modified or amended in any way except in writing by the parties.
3. For disputes where the total amount claimed by either party does not exceed US\$ 20,000, the arbitration shall be conducted in accordance with the shortened arbitration procedure of the Society of Maritime Arbitrators, Inc.

**Q. VALIDITY.**

1. These terms and conditions of sale shall be valid and binding for all offers, quotations, prices, sales and deliveries of bunkers made by Agnamar S.A.
2. These terms and conditions of sale are available at the website [www.transfuelgroup.com](http://www.transfuelgroup.com), on which site the Sellers may also notify amendments, alterations, changes or verifications to same. Such amendments, alterations, changes or verifications are deemed to be a part or the entire terms once same have been made public on the website.

Ramón Espinel FC.  
General Manager Agnamar S.A

January 2012