

## **General terms and conditions of Sale for Marine Fuels - January 2009**

### **1. Definitions**

- 1.1 "Seller" means Korea Ocean Energy Co., Ltd.
- 1.2 "Buyer" shall mean the party and/or parties contracting to buy products and/or services as set out in the Seller's Confirmation of Order for Products and/or Services, including its servants, agents, brokers, designated representatives, subsidiaries or affiliates wherever applicable.
- 1.3 "Supplier" means the party physically supplying the products and/or services to the vessel, together with his servants, agents, successors, sub-contractors and assigns.
- 1.4 "Products" means the marine fuels, oils, lubricants, goods, items, equipment and materials of whatever type and description as specified in the seller's order confirmation.

### **2. Validity and Scope of Terms**

- 2.1 These Conditions constitute an integral part of any offer and/or Contract made for Products and/ or Services provided by Seller to Buyer, and override any terms and conditions incorporated or referred to by the Buyer whether in its order or elsewhere.
- 2.2 The supply by Seller of Products and/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 Subject to the provisions of Clauses 2.2 and 2.6, and insofar as these clauses apply, these Conditions embody all the terms and conditions 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 Without prejudice to the provisions of Clause 2.2 herein, Seller reserves the right to include, at

its discretion, any additional or substitute terms and Conditions. Any additional or substitute

### **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 (or its agent, broker or designated representative) notice of confirmation. Any subsequent amendments to the Contract are to take effect as though they had been made as at the date the Seller provided to the Buyer (or its agent, broker or designated representative) notice of confirmation.
- 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 regarding the characteristics of the Products at any delivery location, shall not be construed as specifications of the Products to be delivered hereunder, but only as indications of the characteristics of the Products available at that location from time to time, and shall not constitute undertakings. Seller reserves the right to make alterations to such particulars or documents or to the Products. That same provision shall apply to the quality of the Products.
- 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 of the Contract 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, surcharges, 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.

4.4 If price controls are imposed, Seller shall not be required to deliver if the maximum price is below that previously established with the Buyer.

4.5 Buyer shall be liable for all costs, expenses and/or charges incurred by the Seller on account of Buyer's failure, breach and/or non-compliance with its obligations under Clause 10 herein.

4.6 Notwithstanding anything else herein, should the Vessel not arrive within the determined time range, the Contract shall be considered null and void unless Seller elects to accept the new arrival date of the Vessel as the basis of a new contract for which a new price can be agreed upon with the Buyer.

## **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 Products delivered under the Contract shall be segregated from Product(s) already on board the receiving Vessel. Any consequences arising from commingling Products aboard the Vessel shall remain the joint and several responsibility of the receiving Vessel and the Buyer. In any event, the Seller shall not be responsible for any on-board safety or storage failure that may affect the delivery as requested and shall have the right to recover from Buyer any loss, damage or expenses incurred as a result of such failures.

5.3 The Seller can in no circumstances be held responsible for any consequences of the misuse or defective application of the Products if caused by lack of information or misinformation given by the Buyer on the use or application of the Products.

5.4 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, and to have them sealed. Where reasonably practical, the samples shall be taken in accordance with ISO-8217, but shall otherwise be taken from a point and in a manner chosen by Seller or its representative. 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. In instances where MARPOL Annex VI applies to the supply effected, the sample accompanying the Bunker Delivery Note pursuant to Regulation 18(6) of MARPOL Annex VI should, where reasonably practical, be drawn in accordance with Resolution MEPC.96(47).

5.5 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 final and 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.

5.6 Unless otherwise agreed to in writing by Seller, only samples provided by Seller to Buyer at the time of delivery shall be deemed representative of the Product delivered.

5.7 In any event, the Seller's obligation hereunder shall not exceed the direct expenses incurred for the removal and replacement of the Products, and shall not include any consequential or indirect damages, including, without limitation, demurrage claims, loss of opportunity or loss of profit. Should the Buyer remove the Products without the prior consent of the Seller, all such costs incurred in doing so shall be for Buyer's account.

## **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 Supplier's shore tank or by Supplier's flow 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 (table 6B, 24B, or 54B depending on port location). 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. Deliveries and Risk**

7.1 Vessels 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 Supplier's storage or delivery facilities or due to any prior commitment of available transportation.

7.2 The Seller's obligation to make any delivery hereunder is subject to the availability to the Seller at the port at which delivery is requested of the particular grade of Products requested by the Buyer. If, as a result of any events, matters or things referred to in Clause 15 hereof, or any, other foreseeable or unforeseeable event, including contractual changes relating to the supply of crude oil and/or petroleum products from which the Products of the type to be sold hereunder are derived, supplies of the Products are curtailed, or are available to the Seller only under conditions which, in Seller's sole judgment are deemed unacceptable, the Seller may

allocate, on any fair and reasonable basis according to its own discretion, its available supplies of Products to meet its own requirements and those of its subsidiaries and affiliated companies and other customers. The Seller shall not be required to increase supplies from some other source or supply, or to purchase Products to replace the supplies so curtailed, or to make up deliveries omitted during the period of disruption, nor will the term of the Contract be extended due to any event occurring under this Clause of Clause 15 herein.

7.3 If Buyer causes delays to Supplier's delivery facilities in the receiving of Products, Buyer shall be 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 is required for deliveries hereunder, 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, 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 The Buyer shall make all connections and disconnections between pipelines or delivery hoses and Vessel's intake lines and shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly all deliveries hereunder. In no case shall the Seller be liable for any damage or delay resulting from causes beyond its control or avoidable by care on the part of the Buyer or the Vessel.

7.9 Delivery shall be deemed to have been completed and risk transferred as the Product passes the flange connecting the pipelines 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. The Buyer warrants that the Vessel's owner has given the Buyer express authority to purchase the Products. The Buyer further warrants that the Seller has the right to assert and enforce a lien in accordance with Clause 18.1 herein against the receiving Vessel or any sister or associated Vessel for the amount of the Products and Services provided, plus without limitation, contractual interest pursuant to Clause 9.4 herein and any other expenses related to enforcement of the lien. The Buyer expressly warrants that he has the authority of the Vessel's owner to pledge the Vessel's credit as aforesaid. The Vessel is ultimately responsible for the debt incurred through the Contract. The Supplier's right to apply and enforce a maritime lien will not be altered, waived or impaired by the application to the Bunker Delivery Note of any disclaimer stamp.

## **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 fourteen (14) calendar days from receipt of the Product. The foregoing preliminary notice shall be followed by a formal written notice of claim, within thirty (30) calendar days from receipt of the product, to Seller containing all details necessary to allow evaluation of the claim.
- 8.3 In any event, should Buyer fail to present a claim in writing to the Seller as to quantity or quality within thirty (30) calendar days of the date of receipt of the Product, any such claim by the Buyer shall be deemed to be waived and absolutely time-barred. The Buyer's submission of any claim hereunder does not relieve it of the responsibility to make payment in full for the Products supplied by the Seller. This provision shall survive a termination of the Contract.

## **9. Payment**

- 9.1 Irrevocable payment shall be made by Buyer in full, as directed by Seller, within the time specified in the Contract. Timely payment is of the essence. Seller shall be absolutely entitled to

the payment in full without discount, reduction, counterclaim or set off (whether legal or equitable) and free of bank charges, 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 of 2% per thirty (30) calendar day period compounded, or the maximum rate permitted under applicable law, running from the due date of payment.

9.5 All payments received by the Seller from the Buyer, notwithstanding any specific request to the contrary, shall be applied in the following order in diminution or extinction of: a) Contractual interest b) Financial charges incurred by Seller as a result of Buyer's late payment (if any) c) The principal sum in respect of Products/Services supplied by Seller to the Buyer

9.6 Should Products and/or Services be ordered by a broker or agent then such broker or agent as well as Buyer shall be bound to 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.

9.7 If Buyer is in default of the full payment, or if its financial condition, or that of a subsidiary, parent, associate or affiliate, in Seller's sole opinion becomes impaired, or if proceedings in bankruptcy or insolvency are instituted by and/or against Buyer, its subsidiary, parent, associate, related or affiliate company of the Buyer, or in the case of liquidation or dissolution of Buyer, or of a subsidiary, parent, associate, related or affiliate company of the 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 parent 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 72 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

48 hours (Saturday, Sunday and local holidays excluded) before loading marine fuels into barge or other accredited methods of transportation.

## **11. The Vessel and The 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 and all environmental regulations and legislation, both national and international, applicable to the Products supplied. Seller accepts no responsibility for any consequences arising from failure to comply with such health and safety requirements or environmental regulations and legislation.. 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 or environmental regulations and legislation

11.2 Without prejudice to Clause 7.9 herein, in the event of any leakage, spillage, overflow of Product 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 remove the Product and mitigate the effects of such leakage, spillage or overflow. Failing such prompt action, the 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 the Buyer's expense and on the Buyer's behalf and the Buyer shall cooperate fully with the Seller and lend all assistance required in the cleanup operation. The Buyer shall indemnify and hold Seller and/or Supplier harmless against any claims or liability, expenses, damages, costs, fines and penalties arising out of or in connection with any leakage, spillage or overflow unless such leakage, spillage or overflow shall be proven to be wholly caused by Seller's gross negligence. The Buyer shall also give, or cause to be given, to the Seller all such documents and other information concerning any leakage, spillage or overflow, or any program for the prevention thereof, or which are requested by the Seller, or required by law or regulation applicable at the time and place where delivery of the Products to the Vessel takes place.

11.3 Buyer warrants that the vessel at all material times will be in compliance with all national and international regulations. Buyer also warrants that the Vessel, her main engine, her auxiliary engines and all other parts, equipment, and machinery, are being operated in accordance with the manufacturer's specifications, instructions and guidelines. The Buyer further warrants that the Product to be supplied to the Vessel is suitable for the Vessel, her parts, her equipment and machinery as set out in the manufacturer's specifications, instructions and guidelines. 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 Seller may assign/transfer any/all all of its right and obligations under the Contract. Buyer shall not assign/transfer any/all of its right under the Contract, without written consent of the Seller.

## **13. Indemnity**

13.1 Without prejudice to Clauses 3.6, 11.1 and 11.2 herein, the Buyer shall defend, indemnify and hold Seller harmless with respect to any and all liability, loss, claims, expenses, or damage whatsoever that the Seller may suffer or incur by reason of, or in any way connected with, the fault or default of Buyer, its employees, servants, officers, or crew of the Vessel, agents and representatives in the purchase of, receipt, use, storage, handling or transportation of the Products.

## **14. Liability and Consequential Damages**

14.1 The Seller and/or Supplier shall not be liable for any special, indirect, consequential, punitive or exemplary damage of any kind including but not limited to loss of prospective profits, anticipated cost savings, contracts or financial or economic loss, claims in tort including negligence of the Seller and/or Supplier, its agents, servants or sub-contractors, arising out of, or in connection with, the performance or non-performance under the Contract. In any event, the liability of the Seller and/or Supplier shall be limited to the price of the Products supplied 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 but not limited to, acts of God, weather, harbor conditions, fire, explosions, mechanical breakdown, strikes, plant shutdowns, civil disturbances and government regulations. 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.

17.2 Buyer's rights to possession of the Products shall cease if: a) Buyer has not paid for the Products in full by the expiry of any credit period allowed by the Contract; or b) Buyer is declared bankrupt or makes any proposal to his creditors for a reorganization or other voluntary arrangement; or c) A receiver, liquidator or administrator is appointed in respect of Buyer's business.

17.3 Upon cessation of Buyer's right to possession of the Products in accordance with clause 17.2, the Buyer shall at his own expense make the Products available to the Seller and allow Seller to repossess them.

17.4 Buyer hereby grants Seller, his agents and employees an irrevocable license to enter any premises where the Products are stored in order to repossess them at any time.

## **18. Governing Law**

18.1 This agreement is made under the law of Republic of Korea. Dispute arising here from shall be exclusively subject to the jurisdiction of the courts of Korea. However, nothing in this clause shall preclude Seller, in event of a breach of this Agreement by the Buyer, from taking any such action or actions as it shall in its absolute discretion consider necessary to enforce, safeguard or secure its rights under this Agreement in any court or tribunal of any state or country, including, but not limited to the action to enforce its rights of lien against ships, the existence and procedure of enforcement of such right of lien being determined by the local law of the place where enforcement is sought, or to otherwise obtain security by seizure, attachment or arrest of assets for any amount(s) owed to Seller.