



## GENERAL TERMS AND CONDITIONS

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These General Terms and Conditions shall apply to all sales and/or deliveries and/or supplies of marine fuels by Erdem Petrol Ürünleri Sanayi Pazarlama Limited Şirketi to Buyers which are defined within this document.

### 1. Definitions

**“Seller”** means Erdem Petrol Ürünleri Sanayi Pazarlama Limited Şirketi, a company which is established in accordance with the Turkish Law, with its registered address as Evren Caddesi, Elif Sokak, Erdem Is Merkezi No: 1 Gunesli-Istanbul/Turkey.

**“Buyer”** means real or legal persons that have requested sale and/or delivery and/or supply of marine fuel from the Seller, including their employees, agents, and authorised representatives, together with the vessel that the marine fuel is delivered to and the Masters and/or Owners and/or Charterers and/or Operators of this vessel which are expressed as the buyer within the Bunker Supply Confirmation and which shall all be jointly and severally liable to the Seller as per each Agreement.

**“Order”** means a request submitted by the Buyer to the Seller in writing or verbally via fax, telex, e-mail, phone which includes the type and quantity of the requested marine fuel, name of the vessel, port and date of delivery.

**“Bunker Supply Confirmation”** means a written confirmation sent by the Seller to the Buyer which includes the terms in relation to the sale and/or supply of the marine fuel but not limited to the type, quantity, quality, price of the marine fuel which was sold/supplied/delivered to and agreed between the Buyer and the Seller, the name of the vessel that the marine fuel will be sold/supplied/ delivered to, the terms of payment, port of delivery.

**“Agreement”** means the Bunker Supply Confirmation and the General Terms and Conditions.

**“Marine Fuels or Goods”** means any grade of fuel oil, diesel oil, lubrication oil and any other product delivered to the vessel by the Seller regardless of its grade.

**“Vessel”** means the vessel which the Marine Fuel will be delivered to.

**“Bunker Tanker”** means the barge, tanker, tank, tank truck which is supplying the marine fuel to the vessel.

**“Parties”** means the Buyer and the Seller together.

**“Supplier”** means the party which is physically supplying the marine fuel to the vessel together with his agents, employees, sub-contractors, and successors. The Supplier may be the Seller as well as Seller’s agents, sub-contractors and successors.

### 2. Conclusion of the Agreement

The Seller shall confirm each agreement with a Bunker Supply Confirmation. The Agreement shall be deemed to be concluded upon the Seller submitting the Bunker Supply Confirmation to the Buyer via fax, telex, e-mail. This General Terms and Conditions and Bunker Supply Confirmation herein shall constitute the entire agreement between the Parties and shall supersede any other terms and conditions that may be referred by the Buyer within the order or any other document.

### 3. Nomination

The Buyer or other concerning parties to the vessel shall submit a written nomination to the Seller 48 hours in advance to confirm the date of delivery except for Saturday, Sunday and any other day which is not deemed as a working day. If the notified date of delivery is not the same with the “date of delivery” within the Bunker Supply Confirmation, the Buyer shall be deemed to be in breach of the Agreement and the Seller shall be entitled to terminate the Agreement without any liability. However the Seller shall be entitled to adjust the price in accordance with the market price applicable to this date by accepting the notified amended date of delivery.

### 4. Prices, Liabilities, and Extra Charges

(a) The price of the marine fuel delivered to the Vessel shall be paid in the amount and currency which are expressed within the Bunker Supply Confirmation.

(b) Prices are exclusive of the Value-Added Tax and/or other taxes. The Seller may request the payment of the value-added tax or other taxes if necessary.

(c) Apart from the price of the marine fuel, the barge cost and any other cost and liability in relation to the delivery of the marine fuel shall be paid by the Buyer to the Seller.

#### **5. Payment**

(a) The payment for the marine fuel and applicable costs, taxes, and other liabilities shall be made within 30 days from the date of the completion of delivery of marine fuel by the Buyer to the Seller, unless it is stated otherwise within the Bunker Supply Confirmation.

(b) Payments shall be made in full, without any settlement, deduction, discount and free of all bank charges.

(c) Payments shall be made in USD, unless it is agreed otherwise by the Parties. The Seller shall be entitled to interest of %2 per month in case of any delay in payments.

(d) If the purchase of marine fuel by the Buyer is made through a broker, agent; the broker, and the agent; and in the event that the delivery of the marine fuel is assigned to the Seller by a head seller, the head seller together with the Buyer shall all be jointly and severally liable for the payment of price of the marine fuel together with all other costs and liabilities which are agreed within the Bunker Supply Confirmation.

(e) In the event of non-payment of price of marine fuel, costs, taxes, and other liabilities, the Seller's right to pursue legal remedies against the Buyer and all other responsible for collecting the unpaid amount is reserved which will include but not limited to the arrest of the vessel which will include the expenses and charges for litigation.

#### **6. Delivery**

(a) Marine Fuel shall be delivered at the place of delivery, with the type and specifications as expressed within the Bunker Supply Confirmation. The delivery shall be made during the working hours as per the regulations of the port of the delivery. The Seller shall not be liable for delays that will arise in case the goods could not be obtained from the filling facilities or customs procedures could not be completed due to weekend or official holidays.

(b) The Buyer shall notify the Seller about the estimated time of arrival of the Vessel as per the Article 3 of the General Terms and Conditions.

(c) The Vessel shall be ready with the necessary equipment and crew at the place and time for delivery as expressed within the Bunker Supply Confirmation. Otherwise the Buyer shall be liable for any costs, losses, damages, and delays that may arise.

(d) In case the vessel does not arrive to the port of delivery at the date of delivery expressed within the Bunker Supply Confirmation, the Buyer shall pay a demurrage to the Seller which shall be 20 USD per each ton of marine fuel that will be supplied to and which shall not be less than 5.000 USD in total together with any other loss of the Seller caused by the delay.

(e) The Buyer shall be responsible for properly connecting the hose(s) to the Vessel's bunker manifold prior to the commencement of delivery and making all connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold. The Buyer shall make available all the necessary equipment and a free side to receive the marine fuel and shall provide the required technical assistance to the tank truck or barge crew during the connection. Also, the Buyer shall take the necessary safety measures during the supply of the marine fuel. Otherwise, the Buyer shall be liable for any costs, losses, damages or delays that may occur.

(f) If the supply of the marine fuel will be made via a tank truck, the vessel shall be safely moored by the Buyer prior to the commencement of the delivery and the free side of the vessel shall be properly enlightened at night and the Buyer shall take all the necessary safety measures. Otherwise, the Buyer shall be liable for any costs, losses, damages or delays that may occur.

(g) The Buyer warrants that the vessel is in possession of all documents and certificates required to comply with all relevant regulations pertaining to delivery of the marine fuels at the port or place of delivery. The Buyer is responsible for obtaining all necessary permits pertaining to delivery of the marine fuel to the vessel himself or through its authorized representative. The Buyer shall be liable for any losses that may be caused by the nondelivery of the marine fuel due to the absence of a permit, document or certificate.

**(h)** The marine fuel that will be delivered to the vessel shall be initially controlled by the authorised vessel crew, information and instructions about the supply shall be provided to the supplier if more than one type of marine fuel will be delivered. Otherwise the Buyer shall be liable for any damage, injury, delay and loss of the Seller or a third party that will arise due to his omission, negligence or wrongful intention pertaining to the delivery of the marine fuel.

**(i)** The delivered marine fuel will be sealed at the filling facilities under the supervision of the customs authority. The durability of the seals shall be controlled by the authorized crew of the Buyer's prior to the delivery of goods to the vessel. The marine fuel in the tank shall be determined after the measurements of the tank truck following the unsealing before the vessel crew, the durability of the seals together with the license plates shall be recorded to the determination report which will be signed by the Parties. This report shall be deemed as a final and binding evidence for any dispute that may arise between the Parties and this article shall constitute an evidential contract as per Article 193 of the Code of Civil Procedure.

**(i)** The goods shall be deemed to be delivered to the Buyer within the tank upon the determination of the amount of the goods as per Article 6/(1) of this General Terms and Conditions following the unsealing of the tanks and making the necessary measurements.

**(j)** For supply of marine fuels via tank truck, the determination report under the Article 6/(1) of the General Terms and Conditions shall be deemed as a final and binding evidence with respect to full and secure delivery of the marine fuel in terms of type, quantity and quality expressed within the report and this article shall constitute an evidential contract as per Article 193 of the Code of Civil Procedure.

**(k)** For supply of marine fuels via barge, the goods identified by the determination report shall be deemed to have been delivered fully and securely following the signing of the delivery note by the Buyer afterwards the supply. The marine fuel delivery note shall be deemed as a final and binding evidence with respect to full and secure delivery of the marine fuel in terms of type, quantity and quality expressed within the delivery note, and this article shall constitute an evidential contract as per Article 193 of the Code of Civil Procedure.

## **7. Risk and Title**

**(a)** Risk in the marine fuels shall pass to the Buyer once the Seller's flange is connected to the Vessel's bunker manifold with the delivery facilities provided by the Seller.

**(b)** Title to the marine fuels shall pass to the Buyer upon making a full payment when due by the Buyer, pursuant to the Article 5 of the General Terms and Conditions. The Seller shall remain to be the owner of the goods until this payment is made. If the delivered marine fuel is commingled with other marine fuels on board the vessel, the Buyer shall accept to assign and transfer to the Seller an amount of this mixture corresponding to the quantity of the delivered and unpaid marine fuel. In the event of non-payment the Seller may retake the possession in relation to the delivered goods and the costs and fees incurred for this shall be at the expense of the Buyer. This right is without prejudice to such other rights as the Seller may have under the laws of the governing jurisdiction against the Buyer in the event of a dispute on non-payment.

## **8. Measurement**

The customs authorities shall weigh bunker tankers prior to the delivery and afterwards the bunker tankers shall start loading. Following the completion of the loading all equipments of the bunker tankers shall be sealed by the customs such as the gauges, hoses. The bunker tankers arriving at the port for delivery shall be monitored by a tracker provided by the customs and the bunker tanker shall be weighed again prior to the delivery. The customs authorities shall escort the bunker tankers and check each step until the delivery is completed. The customs authority shall not start the delivery under any circumstance in case a deficiency is determined.

## **9. Sampling**

During the delivery 4 identical samples of 750 ml shall be taken from the goods by the Seller or the Supplier via continuous dripping method. Two of these samples shall be the vessel sample. One of these two samples shall be a MARPOL sample which shall be registered on the sample as MARPOL. The third sample shall be given to the tank truck and the fourth sample shall be given to the filling facility. The samples shall be each placed within a four-different sample container and the caps shall be sealed. After the sealing the samples shall be individualised by the signature of the authorised persons. The samples shall be kept for 90 days. The 3<sup>rd</sup> sample within the tank truck shall be reviewed by an independent and reliable surveyor organization in case of a dispute between the parties with respect to

the quality of the goods and the parties are unable to reach a settlement. A report which shall be prepared upon this review shall be final and binding between the Parties for the disputes in relation to the quality of the goods. The expenses that will be paid to the surveyor organization for this review shall be covered by the Buyer.

## **10. Claims**

### **(a) Claims About the Quantity**

**(a.1.)** The Buyer shall submit any dispute as to the quantity of the delivered marine fuel within 15 (fifteen) days from the date of delivery pursuant to the Article 6/(i) of the General Terms and Conditions. Otherwise the Buyer shall not be able to assert any claim in relation to the quantity of the marine fuel.

**(a.2.)** If the Buyer disputes the quantity of the delivered marine fuel during the measurements made after the delivery, the Parties shall obtain a survey report from an independent and reliable surveyor organization that is agreed on by the Parties with respect to the quantity of the delivered marine fuel. The final and binding determination report which will be issued as per Article 6/(i) shall form a basis for preparing this survey report and the conclusion of the survey report shall be binding for the Parties.

**(a.3.)** The Buyer shall cover all the expenses that may arise due to the Buyer's claim about the quantity of the marine fuel including obtaining a survey report.

### **(b) Claims About the Quality**

The Buyer shall submit any claim as to the quality of the delivered marine fuel to the Seller in writing within 15 (fifteen) days from the date of delivery pursuant to the Article 6/(i) of the General Terms and Conditions. The Buyer shall also submit the marine fuel samples in his possession to the Seller together with the documents which will be prepared by an independent surveyor organization upon the Buyer's request and his current claims in detail and in writing. Otherwise the Buyer shall be deemed to have waived his rights for a claim in relation to the quality of the marine fuel.

## **11. Termination**

The Buyer is entitled to terminate the agreement before the tank truck initiates loading. Only the costs that will arise in case of a termination prior to the loading of tank truck shall be covered by the Seller. 5.000 USD shall be paid to the Seller by the Buyer if the Buyer terminates the agreement after the loading of tank truck. Also, any other losses of the Seller that may exceed 5.000 USD shall be covered by the Buyer.

## **12. Liability**

**(a)** The Buyer shall be liable for any damage or costs that may occur due to sale and supply of marine fuel by the Seller apart from the fees, expenses and other liabilities determined by this Agreement.

**(b)** The Seller shall not be liable for any direct or indirect loss of or delay to the Buyer regardless of its nature including the loss of profit.

**(c)** The Seller shall not be liable for any loss or costs which are caused by demurrage, charterparty, pilotage, port expenses, seafarer's wages, and port congestion.

**(d)** For disputes in relation to the quality of the marine fuel, the Buyer shall irrevocably accept and undertake that the Seller's liability to the Buyer and other third parties shall be limited to the price of the delivered marine fuel and shall not include the indirect losses, demurrage and loss of profit.

## **13. Force Majeure**

The Seller shall not be liable for any loss or expense that may arise due to non-delivery of the goods to the vessel or late delivery if these occur due to governmental intervention, war, civil commotion, riot, quarantine, fire, flood, strike, lock-out, or any other event whatsoever which cannot be avoided.

## **14. Environmental Protection**

The necessary measures for environmental protection are required to be taken and all the necessary controls are required to be made prior to the delivery of the marine fuels by the vessel. During the delivery of the marine fuel, the crew of the bunker tanker shall supply the goods in accordance with the instructions from the vessel. In any case, the Buyer shall be liable for environmental pollution that will occur due to grounds arising from the vessel. Even if the Seller is addressed by the administrative authorities the legal, administrative and criminal liabilities shall belong to the Buyer and any damage to the Seller that will arise from environmental pollution shall be covered by the Buyer.

## **15. Notification**

The notifications submitted to the address of the Buyer which is expressed within the Bunker Supply Confirmation together with the address of the owner, operator, charterer, master, chief engineer of the vessel or the address of the ship agency, transit agency or protective agency or the address of the broker

who commissioned for the sale or any other person whom is authorized shall be valid and shall be deemed to have been made to the Buyer. Any change of notification address shall be notified to the Seller. Otherwise the notifications submitted to these addresses shall be valid.

**16. Discrepancy Between English and Turkish Versions**

The Turkish version shall prevail in the case of any discrepancy between the English and Turkish language versions of the General Terms and Conditions.

**17. Governing Law and Jurisdiction**

Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction of the Courts and Execution Offices of Istanbul (Çağlayan). This Agreement shall be governed by and construed in accordance with the Turkish Law.