



**GENERAL TERMS AND CONDITIONS FOR THE  
SALE OF MARINE FUEL PRODUCTS BY  
AMOIL (PROPRIETARY) LIMITED and  
AMOIL INTERNATIONAL LIMITED**



**EFFECTIVE 1 JANUARY 2018**

**These General Terms and Conditions of Sale ("TCS") shall apply to all sales and agreements entered by AMOIL International Limited and Amoil (Pty) Ltd, from the effective date and until further notice. Amendments to the TCS shall only be binding if agreed in writing by the Seller.**

**1. DEFINITIONS**

1.1 For the purposes of these Conditions and in any other documents issued by the Seller, the following terms shall have the following meanings:-

<b>"Agent"</b>	any party acting on behalf of the Buyer and/or the Vessel.
<b>"Arrival Notice"</b>	a notice sent to the Seller by or on behalf of the Buyer providing the following information: 1) Vessel's Name, 2) Call sign, 3) IMO Number 4) Flag, 5) Owners, 6) Agents, 7) Length Overall, 8) Gross tonnage, 9) Net Tonnage, 10) Deadweight, 11) Ex-Names, 12) ETA, 13) any other information required, as advised to the Buyer.
<b>"Bunkers"</b>	fuel oils supplied for use by the Vessel's engines and machinery.
<b>"Bunker Delivery Note"</b>	a document recording the specifications and quantities of Products delivered to a Vessel, issued at delivery by the Seller or the Seller's Agent.
<b>"Buyer"</b>	the parties named on the Order Confirmation, who contract with the Seller to buy Products, doing so with joint and several liability.
<b>"Contract"</b>	any agreement between the Buyer and Seller for the purchase of Products, and incorporating these TCS and the Order Confirmation issued by the Seller.
<b>"Order Confirmation"</b>	the written confirmation issued by the Seller setting out the details of the supply of Products including a) the Buyer; b) the type, grade and volume of the Products; c) the Supply date; d) Place of Supply; e) The Price f) Payment terms; and other details relating to the supply of the Products by the Seller to the Buyer.
<b>"Other Products"</b>	all Products the Seller delivers or contracts to deliver which are not Bunkers.
<b>"Place of Supply"</b>	the location where the Products are to be supplied
<b>"Price"</b>	the price stated in the Order Confirmation together with any applicable taxes, VAT or other duties and any delivery costs.
<b>"Seller"</b>	Amoil (Proprietary) Limited and/or Amoil International Limited.
<b>"Seller's Account"</b>	the Seller's bank account as stipulated on the Seller's invoice.
<b>"Spill"</b>	an escape, spillage or discharge of Products.
<b>"Surveyor"</b>	an independent surveyor appointed in accordance with these TCS to undertake sampling and analysis of Bunkers.

**"Supplier"** the manufacturer and/or supplier of Products sold by the Seller to the Buyer.

**"Vessel"** the vessel, ship, rig, platform or other installation to which the Products are to be delivered by the Seller to the Buyer as identified on the Order Confirmation.

1.2 To the exclusion of any other terms that the Buyer may seek to impose these Conditions shall override and/or replace and/or supersede any of the Seller's earlier standard contractual conditions and shall be deemed to be incorporated into all Contracts and Order Confirmations, whether or not expressly referred to.

1.3 In the event of a conflict between them, the Order Confirmation shall prevail over the Conditions, but only to the extent of the conflict and in all other respects the Conditions will apply.

**2 ORDER CONFIRMATION**

2.1 A binding Contract is concluded when the Seller sends an Order Confirmation to the Buyer.

2.2 Where an Agent with notice of these TCS enters a Contract for a Buyer, whether disclosed or undisclosed, then the Agent shall be jointly and severally liable with the Buyer for the proper performance of all the obligations of the Buyer and shall further guarantee the Buyer's obligations under the Contract.

2.3 All orders of Products are deemed to emanate from the Master of the Vessel.

**3 ARRIVAL NOTICE**

3.1 The Buyer must provide within 24 hours of the Contract an Arrival Notice confirming arrival in accordance with the delivery period stated in the Order Confirmation. Thereafter further Arrival Notices shall be sent 3, 2 and 1 days before the Vessel's arrival at the Place of Supply. Where the Contract is formed less than 3 days from delivery Arrival Notices shall be provided daily from the date of the Contract.

3.2 The Seller is entitled to cancel the Contract if the Buyer fails to provide Arrival Notices as aforesaid.

3.3 The Buyer shall ensure compliance with all requests from the Seller or its sub-contractors concerning the Vessel's arrival.

3.4 If the Vessel is not available to receive Products within 12 hours of the original delivery period or within 2 hours of the arrival time as stated in the last Arrival Notice then the Seller may, at its option, revise the Price or date of supply or have the right to cancel the Contract.

**4 PRICE AND PAYMENT**

4.1 Prices quoted are Valid only for the 7-day period, commencing 3 days before and ending 3 days after the Vessel's earliest estimated lifting date, as notified by the Buyer to the Seller when requesting the quotation. If after the date of the quotation, the estimated lifting date is changed to a date outside the 7-day period, the Buyer shall notify the Seller and the price and availability will be subject to

renegotiation and the new quotation, to which the provisions of these Conditions shall apply in all respects

- 4.2 The Seller shall endeavour to issue its invoice promptly upon delivery, but the Buyer's obligation to pay the Price shall exist independently of any invoice and the Buyer shall pay the Price in accordance with the terms of the Contract. All invoices and related documents shall be communicated electronically. The Seller shall be under no obligation to send them by post or courier or otherwise by hard-copy and the Buyer shall not be entitled to demand the same or decline payment in the absence of hard-copies.
- 4.3 The Buyer shall pay any taxes, duties or other charges borne by the Seller in relation to the supply of Products whether or not stated on the Order Confirmation.
- 4.4 Payment shall be made, net of all banking charges, in United States Dollars (or any equivalent currency as the Seller may require). The Buyer has the obligation of ensuring that payment has been made to the Seller's legitimate bank account, and shall be aware of the risk of email and cyber fraud and put in place procedures to avoid becoming a victim of fraud. If payment is made to the wrong account the Buyer shall bear the loss.
- 4.5 The Buyer is not entitled to make any deductions or withhold payment of any sums due to the Seller either in part or in full by reason of any set-off, counter-claim or for any other reason, whether relating to the Contract or past agreements or Contracts.
- 4.6 In respect of any sum unpaid after its due date, for whatever reason, and in addition to the Price and any other sums payable by the Buyer arising from late payment, the Buyer shall pay to the Seller compensation calculated at 20% (twenty per cent) of the unpaid sum. Such compensation is a reasonable pre-estimate of the Seller's loss, taking account of the additional management time incurred in dealing with late payments, the loss of opportunity to reinvest the missing funds and currency exchange fluctuations. This late payment compensation is payable in addition to the Price and accrued interest.
- 4.7 Unless credit may be otherwise agreed between the Buyer and Seller payment of the Price shall be due immediately upon delivery of the Products or in all other cases immediately upon an invoice being issued or a written demand by the Seller.
- 4.8 Where the Seller grants credit deferring payment beyond the period stated in clause 4.7, the credit period shall be stated in the Order Confirmation. Credit is granted in the Seller's discretion and the Seller may withdraw credit at any time and demand immediate payment if the Seller has reasonable grounds to alter its assessment of the credit risk. Withdrawal of credit shall be by written notice, and Seller need not provide reasons.
- 4.9 If credit is withdrawn before Products have been delivered then delivery may be withheld until payment of the Price or alternatively the Seller may cancel the order, without recourse by the Buyer.
- 4.10 The Seller endeavours to provide Bunker Delivery Receipts with its invoices but the Buyer shall not be entitled to insist upon receipt of a Bunker Delivery Receipt before making payment.
- 4.11 The Buyer shall pay interest to the Seller at the rate of 2% per month (compounded monthly) on all unpaid sums from the date that they fell due for payment until payment is made, whether before or after any court judgment or Tribunal award. Interest notes issued by the Seller shall be binding as to the amount of interest due but the Buyer's obligation to pay interest is not conditional upon interest notes being issued.
- 4.12 The Seller has complete discretion to allocate payments made by the Buyer and is not bound to accept the Buyer allocations. For example, the Seller is entitled to (i) settle invoices for Products as it sees fit and irrespective of their date; and (ii) extinguish claims for compensation, interest, legal fees or any other sums due from the Buyer in priority to invoices for Products.
- 4.13 The Buyer shall indemnify and pay to the Seller on first demand any and all costs incurred by the Seller in collecting

or seeking to collect any sums unpaid by the Buyer. Such costs may include but not be limited to attestation and translation costs, fees of third party debt collection agencies, lawyer's fees and communication/postal costs.

## 5 DELIVERIES

- 5.1 The Buyer shall hold harmless and indemnify the Seller in respect of any liability and damage arising from any acts or omissions of the Buyer or its servants in connection with the delivery of Products or the bunkering operations.
- 5.2 The Buyer shall obtain all necessary permits and comply with all regulations applicable at the Place of Supply for the receipt, handling and use of Products and shall indemnify the Seller for all consequences, losses and or damages including fines and penalties suffered by the Seller as a result of the Buyer or the Vessel or its crew failing to do so. In the event of a breach of this clause the Seller shall be entitled to cancel the Contract.
- 5.3 All requests for information from the Seller, the Seller's Agents or sub-contractors and from any port agent appointed by the Seller shall be promptly replied by the Buyer.
- 5.4 No guarantee is given by the Seller in relation to the delivery time or date or rate of pumping/delivery and the Seller shall not be liable for any losses or damages including demurrage, howsoever caused, suffered by the Buyer due to any delay in delivery. Without prejudice to the generality of the foregoing the Seller will not be liable for any loss incurred by the Buyer due to any failure or delay in supply due to (a) congestion at the delivery facilities or prior commitments of available barges, (b) local customs, pilots, port or other authorities or (c) shortage of Products or (d) failure of supply equipment, or (e) any circumstances out of the direct control of the Seller.
- 5.5 The Bunkers shall be used exclusively for the operation of the machinery of the Vessel identified in the Contract.
- 5.6 The Buyer shall be responsible for connections and disconnections of the delivery hose and for giving all necessary assistance and equipment to take delivery and for providing a free, safe and accessible side for the supply barge. The Master of the supply barge shall determine whether mooring alongside the Vessel is safe and if it is not the Seller may delay or cancel delivery and all costs incurred will be for the Buyer's account.
- 5.7 The Seller shall not be held liable for any damage caused by contact or collision between the Vessel and any supply barge and claims arising from any such event shall be handled directly between the Buyer and the supply barge owners. The Buyer shall indemnify the Seller against any claims made against the Seller arising out of any such incident.
- 5.8 Lightering/barging charges and related mooring, unmooring and port dues shall be for the account of the Buyer, together with any Overtime charges issued by the physical supplier or any other party concerned with delivery. Overtime shall be charged in accordance with the local practices at the Place of Supply. The Buyer will be liable for all demurrage or additional expenses incurred if the Buyer causes delay in the supply of Products.
- 5.9 The Buyer shall be responsible for any losses and costs to the Seller resulting from its failure to take complete delivery of the Product quantities specified in the Order Confirmation, including but not limited to any loss of profit and any loss on the resale of the Products, barge or truck demurrage and the costs of storing or selling the Products. The Buyer shall bear the risk in the Products during the return transport.
- 5.10 If the supply is delayed by the Buyer for whatever reason or the Vessel fails to leave the Place of Supply immediately, the Buyer shall indemnify the Seller for any consequent loss or damage suffered by the Seller including losses arising due to the delay in the supply of other vessels.
- 5.11 Where the regulations or practice of the Place of Supply require that a port agent be appointed for the delivery of bunkers the Seller may appoint such an agent on the Buyer's behalf and the Buyer and the Vessel shall be jointly and severally liable for any related costs.

5.12 Upon completion of delivery a Bunker Delivery Note shall be issued by or on behalf of the Seller and the Vessel's representative (Master, Chief Engineer or other senior officer) shall be invited to sign the same.

## 6 PROPERTY AND RISK

6.1 Title to the Products shall pass only when the Buyer has paid for the Products and paid all other sums due to the Seller under the Contract or other Contracts. The Buyer must ensure at all times that Products supplied by the Seller but not yet paid for are stored in such manner that they can be identified to the Contract and to keep Bunkers supplied pursuant to a single Contract segregated from other bunker fuels delivered to the Vessel.

6.2 Risk in the Products shall pass to the Buyer immediately upon the Bunkers passing the supply equipment's manifold or upon them passing the Vessel's rail or being delivered to the designated place of delivery.

## 7 GRADES, QUALITY AND QUANTITY

7.1 The Buyer has sole responsibility for nominating the grade of Products.

7.2 Unless otherwise stated in the Order Confirmation Bunkers shall conform to the prevailing ISO Standard or in the absence of such Bunkers being available at the Place of Supply the Bunkers shall be of the same quality generally offered for sale at the Place of Supply for the grade of Bunker Fuel specified by the Buyer.

7.3 The quantity of delivered Bunkers shall be determined according to soundings or other measurements taken by the Seller from the supply barge/tanker or shore tanks and these soundings or measurements shall be recorded in the Bunker Delivery Note and shall be conclusive evidence of quantity delivered. The Bunker Delivery Note shall be binding evidence of the quantity delivered.

7.4 The Seller shall arrange for samples to be taken in accordance with the sampling procedures customary at the Place of Supply during delivery of the Bunkers.

7.5 Samples shall be sealed, labelled and signed by the Buyer and Seller, or their representatives and two samples shall be retained by the Buyer one being the MARPOL compliant sample. The remaining samples shall be retained by the Seller or its representatives. If any seals have been removed or tampered with by an unauthorised person, such samples shall be disregarded. No samples drawn by the Buyer's personnel or samples subsequently taken shall be accepted as evidence of the Bunkers.

7.6 Sampling shall be performed in the presence of the Buyer and Seller, or their representatives, but the failure of either to attend the sampling process or to sign the samples shall not prejudice the validity of the samples.

7.7 Where there is a complaint concerning the quality of Bunkers, one of the aforesaid samples retained by the Seller shall be tested by an independent laboratory mutually appointed by the Buyer and Seller.

7.8 The Seller and the Buyer shall seek to agree on an independent laboratory to perform analysis, but if the Buyer fails to reply to the Seller's request to agree an appointment within 7 days from receipt of such notice or if the parties cannot agree then the Seller shall select the laboratory and such selection shall be final and binding.

7.9 Analysis shall be limited to the disputed properties and the results shall be conclusive and binding as to the quality of the delivered Bunkers. In accordance with ISO 4259 tolerances in respect of reproducibility or repeatability in quality are accepted.

## 8 SHORTAGE OF SUPPLIES

8.1 If, at the port or location where delivery is to be made, supplies of Products available to the Seller or the Supplier are curtailed, deliveries of Products may, at the Seller's discretion, be suspended or cancelled or allocated amongst customers

in such a manner as the Seller deems appropriate. The Seller shall not be required to increase supplies from some other source of supply or to purchase Product to replace the supplies so curtailed. In any such event, the Seller, its agent and/or the Supplier shall not be liable to the Buyer for any damages or loss sustained by the Buyer.

8.2 Notwithstanding anything to the contrary in these Conditions, deliveries at all ports are subject to Products stocks being available. If it is necessary to deliver a premium or other more expensive grade of Products in lieu of the Products ordered, the Buyer shall pay the then current price for the grade actually supplied.

## 9 CLAIMS

9.1 Any complaint related to the quantity of Bunkers must be advised to the Seller (and not the physical supplier), immediately that the grounds for complaint are known, first by telephone and as soon as possible thereafter in writing failing which any claim shall be deemed to be waived and barred. Comments inserted in the Bunker Delivery Note or in a separate protest handed to the physical supplier shall not qualify as notice to the Seller under this clause.

9.2 Any complaint related to the quality of the Bunkers shall be made in writing to the Seller (and not the physical supplier) immediately that the Buyer is aware of the grounds for complaint and in no circumstances later than 14 days from the date of delivery to the Vessel. Any claim not notified as aforesaid shall be deemed waived and barred.

9.3 For the purposes of clauses 10.1 and 10.2 a written claim must include a detailed explanation of the claim, including where applicable the quantities short and/or the discrepancies in quality, and include copies of all supporting documents including the Vessel's logs evidencing the matters complained of.

9.4 In respect of all claims the Buyer shall cooperate with the Seller and the Seller's representatives to enable their investigation of the claim, and where requested allow boarding and inspection of the Vessel, interviews of the crew and the review and copying of relevant Vessel documents.

9.5 The Buyer will take all reasonable steps and actions to mitigate any damages, losses, costs and expenses arising from off-specification Bunkers, including where possible the consumption of Bunkers with use of purification tools or by taking other measures.

9.6 The Seller shall be entitled to set off losses caused by the Buyer's breach of this clause 9 against any liability the Seller has to the Buyer.

9.7 The Buyer will take all reasonable steps to preserve the Seller's recourse against the physical supplier of the Products or any culpable third party.

9.8 The Buyer must commence proceedings before the relevant Tribunal within 6 months from the date of delivery of the Products, otherwise any claim, whether or not notified in accordance with these Conditions, shall be deemed forever waived and time barred.

## 10 LIABILITY

10.1 The Seller's liability arising out of a Contract howsoever caused and including the negligence of the Seller, its servants, sub-contractors or agents and whether based in tort or contract and including claims for quality and pollution shall be limited to the lesser of (i) US\$500,000, or (ii) the Price of the Products in respect of which the claim arises. Where a Contract provides for the supply of more than one product or grade of Bunkers only the Price of product giving rise to a claim shall be taken into account in calculating the limit of liability.

10.2 The Seller shall not be liable for consequential losses, including but not limited to, delay, detention, demurrage, charter hire, crew wages, pilotage, towage, port charges, lost profits or increased cost or expenses for obtaining replacement fuel. Neither shall the Seller be liable for punitive damages.

- 10.3 If the Buyer's claim includes compensation for replacing damaged parts there shall be an allowance in the value of the replacement part of 20% for each year or part year for which the replaced part had been in use. The Buyer has the burden of establishing the age of the replaced part.
- 10.4 The Buyer shall indemnify the Seller against any claims brought by third parties in relation to the supply of Products to the extent that such claims exceed the Seller's liability towards the Buyer according to these TCS.
- 11 SUBSTITUTION, ASSIGNMENT AND NON WAIVER**
- 11.1 The seller shall be entitled to substitute itself with a third party for the performance of all or part of its obligations.
- 11.2 The Buyer shall not be entitled to cede or assign any of its rights and obligations hereunder.
- 11.3 No waiver or amendment by either party of any provisions of the contract shall be binding unless made expressly and reduced to writing. Further, any such waiver or amendment shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach. Any agreement to waive or amend any provision of these Conditions shall only be capable of being mutually concluded in writing with an authorized executive of the Seller.
- 12 COMPLIANCE AND ENVIRONMENTAL PROTECTION**
- 12.1 If the Seller has grounds to believe that the Buyer or the Vessel or any other person or entity in any way related to them or to the Contract or its performance are listed on the US OFAC Specially Designated Nationals List or subject by any US, UN or EU sanctions or any other sanctions binding or effective on the Seller or its group companies the Seller shall be entitled to cancel the Contract and to charge the Buyer the expenses thereby incurred, or take any other measures which the Seller deems appropriate.
- 12.2 The Buyer acknowledges that anticorruption laws and regulations, including but not limited to the U.S. Foreign Corrupt Practices Act ("FCPA"), shall apply to the parties. The Buyer and Seller shall comply with all applicable anticorruption laws and regulations and will not, offer, promise, pay, or authorize the payment of any money or anything of value, or take any action in furtherance of such a payment, whether by direct or indirect means, to any public official or private individual to influence the decision of such person in the performance of his duties to a government or to his company. Any breach of this clause will void the related Contract and in the sole discretion of the Seller any other Contract between the parties, making any claims for payment, delivery or any other obligation of the Seller under this Agreement void. The Buyer is liable for any and all costs or losses incurred by the Seller due to such breach and/or a Contract becoming void as a consequence.
- 12.3 In the event of a Spill during delivery the Buyer and the Vessel shall promptly take all such action as is reasonably necessary to mitigate its effects and shall cooperate and render such assistance as is required by the Seller. Notwithstanding the foregoing, in mitigation of the effects of a Spill the Seller shall be entitled to take all measures deemed necessary to remove pollutants. The Buyer shall indemnify and hold the Seller harmless against any damages, expenses, claims or liabilities of whatever nature, unless such Spill is proven to be caused solely by the Seller's negligence.
- 12.4 At the Seller's request the Buyer shall provide to the Seller or procure the provision of documents and information within the Buyer's or the Vessel's or its owner's possession or control concerning any Spill.
- 13 CANCELLATION**
- 13.1 In the event that the Buyer cancels a supply after the Seller's Order Confirmation then the Buyer shall be liable for any costs, expenses or charges incurred by the Seller and the Buyer shall be liable to compensate the Seller for its lost profit, such sums to be paid immediately upon demand.
- 13.2 In the event the Seller cancels a Contract by reason of the Buyer's breach or by reason of conduct on the part of the Buyer entitling the Seller to cancel or the Seller establishing that sanctions are in force necessitating its withdrawal from a Contract then the Buyer shall have no recourse to the Seller and the Buyer shall be responsible for all losses, costs and expenses suffered by the Seller by reason of the cancellation, which shall include but not be limited to the Seller's loss of profit on the Contract, costs or charges reasonably incurred to the Seller's sub-contractors or suppliers, and administrative costs.
- 14 FORCE MARJEURE**
- 14.1 Neither party shall be responsible for any loss or damage resulting from any delay or failure in delivery or receipt of Products due to fire, explosion or mechanical breakdown, storms, earthquakes, floods, tidal waves, war, military operations, national emergency, civil commotion, strikes or other differences with workmen unions, or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or the Buyer's or Seller's compliance therewith, or by governmental proration, regulation or priority, or from any delay or failure due to any causes beyond the Buyer's or Seller's control similar or dissimilar to any such cases. When such cause or causes exist, the affected party shall have the right, upon notice without delay as soon as practicable to the other of the nature and probable duration of such cause or causes, to restrict or cease deliveries or acceptance hereunder in a fair and equitable manner for the duration of such cause.
- 15 LIEN**
- 15.1 It is agreed and acknowledged that a lien over the Vessel is created for the price of the Products supplied together with any interest accrued. The Buyer, if not the Owner of the Vessel, hereby expressly warrants that they have full authority of the Agents / Traders / Owners / Managers / Operators / Charterers to pledge the Vessel in favour of the Seller and that they have given notice of the provisions of this Contract to them. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien(s) attaching to a Vessel.
- 15.2 The laws of the United States, including but not limited to the Commercial Instruments and Maritime Lien Act, shall always apply with respect to the existence of a maritime lien, regardless of the country in which the Seller takes legal action. The Seller shall be entitled to assert its rights of lien or attachment or other rights, whether in law, in equity, or otherwise, in any jurisdiction where the Vessel may be found.
- 15.3 The Buyer or the Vessel or its owners must notify the Seller of its intention to exclude the liability of the Vessel at least 12 hours in advance of the supply by sending written notice to legal@amoil.co.za failing which any notice or any stamp in the Bunker Delivery Note seeking to vitiate the Seller's maritime lien on the Vessel shall be of no effect.
- 16 GOVERNING LAW, ARBITRATION AND JURISDICTION**
- 16.1 These Conditions and all Contracts are governed by the general maritime law of the United States of America and disputes shall be determined by Arbitration in London by a sole arbitrator according to the LMAA Rules 2017. The laws of the United States, including but not limited to the Commercial Instruments and Maritime Lien Act, shall always apply with respect to the existence of a maritime lien, regardless of the country in which the Seller takes legal action. In case of breach of contract by the Buyer, the Seller shall be entitled to take such legal action in any court of law in any state or country which the Seller may choose and which the Seller finds relevant in order to safeguard or exercise the Seller's rights in pursuance of this present Agreement. The Seller shall be entitled to assert its rights of lien or attachment or other rights, whether in law, in equity, or otherwise, in any jurisdiction where the Vessel may be found.
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