



Terms and Conditions for sale of Marine fuel - Effective before 1st May, 2012

Except as may otherwise be negotiated by the parties and agreed to in writing, the following terms and conditions shall apply to all sales of marine fuels by Chemoil Corporation, Chemoil Holding Company, Inc., Chemoil International Pte Ltd, Chemoil Latin America, Inc., Chemoil Ltd. hereinafter "Seller" or "Chemoil":

Price

The price to be paid for marine fuel shall be as quoted by Chemoil in reference to each transaction. Prices are in U.S. dollars exclusive of taxes and duties exwharf per barrel of 42 U.S. gallons or in metric tons (2204.6 pounds) corrected to 60 degrees F, 15 degrees C. All charges additional to price, such as, without limitation thereto, taxes (including California spill tax), levies, duties, port charges and delivery charges, are for the account of Buyer. "Buyer" shall mean the vessel owner, operator or charterer (if any).

Quality

Marine fuels to be supplied shall be the quality offered generally by Seller at the time and place of delivery for the particular grade or grades ordered by Buyer. Buyer shall have the sole responsibility for the selection of the proper grade or grades of marine fuels for use in the vessel nominated.

Nomination and Deliveries

Marine fuels to be supplied shall be the quality offered generally by Seller at the time and place of delivery for the particular grade or grades ordered by Buyer. Buyer shall have the sole responsibility for the selection of the proper grade or grades of marine fuels for use in the vessel nominated.

- The order for marine fuels shall be considered firm and binding upon Buyer's acceptance of price quoted by Chemoil. Confirmation in writing by Seller of price may be provided Buyer but the absence of such confirmation shall not avoid the agreement of sale.
 - Buyer's initial order for marine fuel shall provide Seller the following information:
 - Buyer's initial order for marine fuel shall provide Seller the following information:
 - The name or other designation of its vessel
 - The estimated arrival date at the specified port
 - The quantity and kinds of marine fuels to be delivered
 - The method of delivery (i.e., into Buyer's vessel at terminal or by fuel barge)



- Not less than two working days prior to the vessel's readiness to receive delivery, Buyer shall give Seller written notice of the exact date and time of delivery, the exact location of delivery and the exact quantities and kinds of marine fuel to be delivered.
- If Seller is, on behalf of Buyer, requested to make any arrangements with and secure any permission of port authorities prior to making delivery, an appropriate and early notice from Buyer is required.
- Buyer's initial order under (1) shall be deemed canceled if the notice provided for in (2) is not received by Chemoil when due.
- Chemoil has the option to increase fuel prices if the vessel's actual arrival time is more than 48 hours after the arrival time specified in the notice required under (2) above.
- Any notice by Buyer that a maritime lien on the vessel may not be created because of the existence in Buyer's charter party of a Prohibition of Lien Clause, or for any other reason, must be given to Seller in the initial order for marine fuel, in which case no credit can be granted to Buyer and the marine fuel shall be paid for in cash or equivalent prior to delivery. Any notice of such restriction given by Buyer, its agents, ship's personnel or other person later than in the initial order shall not effect a modification of the terms of sale except that any granting of credit by Seller is rescinded on receipt of the notice, with full payment due forthwith.
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- Where delivery is required during other than regular business hours, Buyer shall pay all overtime and extra expenses incurred by Seller or its agents or contractors.
- Where lighterage is employed, lighterage charges shall be for the account of Buyer. Lighterage will be charged on the quantity delivered to the Buyer's vessel in accordance with the rates and charges of the fuel barge contractor. Deliveries of light diesel, gas oil and other grade of marine fuel on two or more barges will be subject to separate charges.
- Seller shall not be liable for demurrage or for loss, damage or expense of any nature whatsoever incurred by Buyer due to any delay in delivery, or failure to make delivery, of marine fuels occasioned by the fuel barge contractor. Seller further shall not be liable for such demurrage, loss, damage or expense incurred by Buyer due to delays in furnishing a berth. In any situation not included above, Seller shall not be liable for delay in delivery, or failure to make delivery, of marine fuels unless Buyer proves that the delay or failure was solely caused by gross negligence on the part of the Seller. In any case, damages recoverable from Seller for delay in delivery or failure to make delivery shall be limited to direct damages for additional time in port and shall not include any consequential damages whatsoever, including, without limitation thereto, detention, demurrage, charter hire, crew wages, towage, pilotage, lost profits, barge delivery charges and increased costs or expenses in obtaining replacement fuel.
- Marine fuel is delivered hereunder not only on the credit of Buyer but also on credit of the vessel receiving delivery of marine fuel, and it is agreed and Buyer warrants that Seller will have and may assert a maritime lien against the receiving vessel for the amount of the purchase price of said marine fuel together with all delivery and other charges forming part of the agreement of sale.



- Delivery into Buyer's vessel at terminal need not be made whenever, in Seller's opinion, clear and safe berth for the vessel is not available, or when, for any other reason, delivery would, in Seller's opinion, be unsafe or inadvisable.
- Delivery into Buyer's vessel by barge need not be made whenever, in the opinion of Seller or the fuel barge contractor, safe passage or clear and safe berth for the barge, whether alongside Buyer's vessel or otherwise, is not available, or when, for any other reason, in the opinion of Seller or the fuel barge contractor, delivery would be unsafe or inadvisable.
- On Buyer's cancellation of a nomination, or portion thereof, , Chemoil shall be entitled to a fee of \$3.00 per metric ton or the lost fuel value, whichever is greater, by way of liquidated damages and as compensation for Seller's relinquishing its rights under the agreement. Lost fuel value shall be considered the difference between the contract price per metric ton and market value of fuel at time of cancellation as determined by Platts Bunkerwire mid-point on the day of cancellation for the closest relevant market.
- The parties hereto agree that determining the amount of damages to Seller arising from cancellation would be impracticable and extremely difficult and for that reason the above rate of compensation is considered fair and equitable.

Title

Delivery shall be deemed completed and title for the product shall pass to Buyer at the permanent intake connection of Buyer's vessel, whether product is delivered ex-wharf or by fuel barge. At either location, however, pumping shall be performed under the direction of Buyer or Buyer's vessel personnel.

Inspection and Measurements

- Buyer, at his own expense, shall have the right to appoint an approved petroleum inspector to inspect the marine fuels before delivery, but sampling shall be done prior to product leaving Seller's shore tanks.
- The quantity of fuels delivered shall be determined by measurements of shore tanks or gauges at the point of delivery ex-wharf, at Seller's sole option, and Buyer will be charged on the basis of these measurements, regardless of amounts delivered by barge to Buyer's vessel. Buyer has a right to have its representative present during measurement to verify same, but in the event no such representative attends, determination of quantity shall be made solely by Seller, and such determination shall be conclusive.

Claims

- Any claim by Buyer as to shortage in quantity must be noted on the marine fuel delivery receipt signed by Master or Chief Engineer at time of delivery. Any claim by Buyer with respect to deficiency in quality of marine fuels delivered by Seller, or claim by Buyer that Seller delivered improper or the wrong kind of marine fuels, must be made as soon as possible, and in no event more than 30 days from date of delivery to the Buyer's vessel. On making claim, Buyer shall furnish to Seller a sample of the marine fuel delivered by Chemoil as well as all necessary information, including all analysis made by Buyer and/or vessel interests of the product, as shall be required by Seller to satisfactorily evaluate the claim. Buyer shall immediately give Seller all reasonable opportunity to inspect the vessel, including, without limitation, its engines, fuel



tanks, equipment, logs, records and copies of communications, including communications between vessel and Buyer (and/or between vessel and owner or operator) as well as communications to and from fuel testing organizations consulted by Buyer or vessel interests. If these conditions are not met within said 30 day period, Buyer shall be time-barred from making claim. See further Article 9(e).

- Seller shall not be responsible for any claim arising from the commingling of marine fuel delivered by Seller with other fuel or substances aboard Buyer's vessel or aboard the fuel barge.
- Claim of any nature does not relieve Buyer of responsibility to make full and timely payment of all amounts billed by Seller as provided in Articles 1 and 8.

Bonded Marine Fuels

Marine fuels in Bond, when available to Seller, may be delivered, provided Buyer qualifies to receive such fuel. Buyer shall reimburse Seller for any tariff, tax, duty, penalty or other charges subsequently assessed for any reason, including the failure of Buyer to furnish the necessary qualifying proof within 30 days of delivery.

Payment

- Payment by Buyer in U.S. dollars, without discount or deduction of any kind, shall be due upon receipt by Buyer or the vessel (or the vessel's owner or operator) of written, telegraphic or other notification of quantities delivered and amounts due. Subsequent adjustments, if any, will be made upon receipt by Seller of the marine fuel delivery receipt.
- If Seller considers Buyer's financial condition inadequate, or for any other reason, Seller may require cash payment in advance or security acceptable to Seller before delivery.
- Seller may, at its option, grant credit to Buyer on the following terms
 - Credit can only be granted if it is secured by a maritime lien on the vessel in accordance with Article 3(f).
 - Buyer shall make full payment within 30 days of date of delivery, defined as the date pumping of the product aboard Buyer's vessel is completed
 - If full payment is not received within 30 days, the amount overdue shall be subject to interest charged at the rate of 18 percent per annum, 1 1/2% per month, or the maximum rate permitted under law, whichever is less. Interest shall be paid from the date of delivery until the date payment is received by Seller;
 - If credit is granted to Buyer, Seller may withdraw such credit at any time, for any reason, and require full payment upon delivery or at any time after delivery. If credit is withdrawn and payment is not made upon demand, interest shall be payable from date of delivery at the rate set forth in Article 8(c)(3).
 - If payment is not made within 30 days, or if credit is withdrawn and payment not made upon demand, Buyer shall be liable for reasonable attorneys' fees and collection expenses whether or not suit is filed. If suit is filed, Buyer shall be liable for all court costs in addition to reasonable attorneys' fees and expenses. Said charges, together with interest, shall constitute a part of the Seller's maritime lien on the vessel under Article 3(f).
- Should marine fuels be ordered by an agent, then such agent, as well as the principal, shall be bound by, and liable for all obligations as fully and as completely as if he were himself the



principal, whether such principal be disclosed or undisclosed, and whether or not such agent purports to contract as agent only.

Limitations of Seller's Liability

- Seller contracts to supply marine fuel only upon the basis of the liabilities as set forth below, unless otherwise negotiated by the parties and agreed to in writing. In no event shall Seller's liability for any claim or claims arising under this contract related to a particular nomination exceed in the aggregate the sum of \$300,000.00.
- Seller is not liable for any loss, damage, expense or delay resulting from strikes or labor difficulties whatsoever and wheresoever occurring or for stoppage or delay of work due to causes beyond its control. See also Article 3(e).
- Seller is not liable for supplying defective or improper marine fuel, or marine fuel other than as ordered by Buyer, unless the same is directly and solely caused by the negligence of Seller's own employees, which negligence must be affirmatively proved. In such event, Seller's liability, if any, is strictly limit to the cost of replacement of the defective or improper or wrong kind of marine fuel at the date and port furnished. Buyer acknowledges and warrants that it is Buyer's responsibility to test the fuel provided and to insure that it is proper in all respects prior to the use of such fuel on Buyer's vessel. Accordingly, Seller shall not be responsible for any damage to Buyer's vessel, including, without limitation thereto, its machinery or tanks or their contents, caused by use of defective, improper or the wrong kind of marine fuel. Under no circumstances will Seller be liable for any consequential damages whatsoever including, without limitation delay, detention, demurrage, charter hire, crew wages, towage, pilotage, port or wharf charges, lost profits, barge delivery charges and increased costs or expenses for obtaining replacement fuel.
- Seller is not liable for damage to Buyer's vessel or other property, caused by acts other than the supplying of defective or improper fuel, or for any other loss sustained by the vessel, its owners, charterers, underwriters, or other parties in interest, in contract, tort or otherwise, unless the same is directly and solely caused by the negligence of Seller's own employees, which negligence must be affirmatively proved. In such event, Seller's liability, if any, is strictly limited to repair of such damage as was directly caused by the sole negligence of Seller's employees and Seller shall not be liable for any consequential damage whatsoever including, without limitation, delay, detention, demurrage, charter hire, crew wages, towage, pilotage, port or wharf charges, lost profits, barge delivery charges and increased costs or expenses for obtaining replacement fuel.
- Seller shall be discharged from all liability for defective workmanship, material or marine fuels, or for other loss or damage, unless the same is discovered and claim in writing made to Seller within 30 days after the marine fuels were delivered to the vessel or the vessel damaged by Seller's employees as above described and litigation is commenced within one year after the Seller delivered the marine fuels or Seller's employees otherwise damaged Buyer's vessel or other property.
- **INDEMNIFICATION AND HOLD HARMLESS:** Buyer shall indemnify and hold harmless Seller, the fuel barge contractor and their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of services or the providing of marine fuel under this contract, including claims, damages, losses, penalties or expenses arising under any air, water quality or hazardous waste statute, regulation or ordinance, hereinafter referred to "pollution claims", providing that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or



destruction of tangible property (other than Buyer's vessel and its appurtenances) including the loss of use resulting therefrom, or to pollution claims, and (b) is caused in whole or in part by any negligent act or omission of Buyer, the vessel or vessel interests, their agents or employees or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not such claim, damage, loss, or expense is also caused in part by the Seller, the fuel barge contractor, their agents or employees.

- The foregoing is in lieu of all warranties and liabilities of Seller, express or implied

Environmental Protection

- In the event of a spill during fueling, Buyer and the vessel shall, at their own expense, immediately take what action is necessary to give prompt notice to the official bodies and to effect cleanup. Failing prompt action, Buyer and the vessel authorize Seller and/or the fuel barge contractor to conduct and/or contract for such cleanup at Buyer's and vessel's expense.
- Buyer warrants that the marine fuel purchased hereunder is for the operation of the receiving vessel and that vessel only. Buyer shall hold Seller harmless as to any claims, expenses, losses, taxes or penalties arising from Buyer's breach of this warranty, including attorney fees.
- Buyer warrants that the vessel fueled is in compliance with all national, state and local statutes, regulations and ordinances, including those requiring proof of financial ability in regard spills of oil and hazardous materials. Buyer shall hold Seller harmless as to any delays, claims, losses, expenses or penalties arising from breach by Buyer of this warranty, including attorney fees.
- It is the responsibility of the Master to Notify the Seller of any conditions, difficulties, peculiarities, deficiencies or defects with respect to engines, boilers, fuel tanks, piping, navigation equipment, mooring lines, tackle, gear, and any other types of equipment, which might jeopardize or impose hazards or problems in connection with handling, mooring, unmooring or bunkering of the vessel. Buyer's vessel will not be moored at wharf or alongside any other marine loading facilities, or a fuel barge brought alongside the Buyer's vessel, unless said vessel is free of the aforesaid conditions, difficulties, peculiarities, deficiencies or defects.

Disclaimer Warranties

Any implied warranties whatsoever, whether statutory or otherwise, including the warranties of merchantability and fitness for a particular purpose or of condition and any oral or implied agreements inconsistent with this Agreement are expressly excluded and disclaimed.

Arbitration

- Any controversy or claim between Buyer and Seller, or between Buyer and the fuel barge contractor, relating solely to the quality or quantity of marine fuels delivered or to be delivered hereunder or to the sum payable for such fuel shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and in accordance with law. The arbitration award or decision shall be binding unless there has been a prejudicial error of law, in which case the award or decision will be subject to judicial review.
- The demand for arbitration shall be initiated by the filing of a written demand with the other party within 90 days after occurrence of the circumstances giving rise to the dispute. Hearing shall be in San Francisco California, at the time and place selected by the arbitrators.



- Arbitration shall not prevent either party's recourse to suit to obtain or enforce discovery nor shall it relieve Buyer of its obligation to make full payment for the marine fuels billed to Buyer, which payment shall be without prejudice to the rights of either party in the arbitration. Failing payment as provided in Article g above for the marine fuels delivered, Seller may institute suit for collection whether or not Buyer calls for arbitration, which suit likewise shall be without prejudice to the rights of either party in arbitration. Such suit for collection shall not be subject to stay pending arbitration.
- Any dispute between Buyer and Seller, or between Buyer and the fuel barge contractor, which is not resolved through arbitration, shall be resolved in an action brought in the United States District Court for the Northern District of California.

Governing Law

This Agreement shall be governed and construed in all particulars by the principles of general maritime law as applied in the Courts of the United States of America.

General Storage

- If in Seller's opinion there is a shortage or there are shortages of supply of products, whether or not of the quality or grade designated by Buyer, at any of its present or future regular sources of supply or at any of those of its Supplier or Suppliers, with the result that Seller is unable to meet its requirements for sale to customers of all kinds, Seller may allocate, on any reasonable basis according to its own discretion, its available products among its customers both under this contract and, at Seller's option, regular customers not then under contract.
- Notwithstanding the provisions of subsection a), Buyer shall not be relieved of any obligations under Articles 1, 3 and 8 above to pay for the product delivered hereunder.

Notice

The address of Chemoil for the purpose of receiving notice is 4 Embarcadero Center, 34th Floor, San Francisco, CA 94111-5951. Telephone (415) 268-2700, fax (415) 268-2701, telex 278210. Buyer's address shall be that used in communications with Seller or care of the owner or operator of the vessel if Buyer is neither of these interests. Notices hereunder shall be given in writing or by telex or telegram or telecopier (fax).

Assignability

This Agreement is not assignable by Buyer except with the written consent of Seller. Seller may cause deliveries under this Agreement to be made to Buyer by others and may assign the duties, obligations, rights, benefits, and privileges of this Agreement in whole or in part, to others without notice to or consent from Buyer.

General Provisions

- In the event Seller's capacity to perform becomes impracticable for any reason, including, but not limited to, a request or suggestion by any official body relating to supplies, priorities,



rationing or allocations of any product, Seller may reduce or stop deliveries in such a manner as it may in its sole discretion determine and shall be relieved of its obligation to perform hereunder.

- All rights and remedies of Seller hereunder are cumulative, and election of one remedy shall not exclude another.
- This writing supersedes all previous Standard Terms and Conditions of Sale of Marine Fuel by Chemoil Corporation and sets forth the final and exclusive expression of the parties' agreement unless it is modified in writing, which modification must be signed by Chemoil. It supersedes all oral or implied agreements. Any disclaimer, notice or other writing by Buyer or vessel interests or their agents on the marine fuel delivery receipt, or any other document, seeking unilaterally to alter or amend any part of this Agreement shall be ineffective.
- If any part of this Agreement is declared invalid for any reason, this ruling shall not affect the validity of the rest of the Agreement or any other part thereof.
- Barge rates provided Buyer for Buyer's account are based upon normal barge availability. In the event that these facilities are fully committed, other barges, if available, will be engaged at such rates as are applicable.
- Buyer may request modification of the terms of this Agreement no later than when placing its initial order for marine fuels, but at Seller's discretion the prices offered by Seller may be raised in consideration of such modifications, including any increase in Seller's liabilities thereby.

Effective April 1, 1992 at midnight, Pacific Standard Time CHEMOIL—SELLER