

BERGEN BUNKERS AS

GENERAL TERMS AND CONDITIONS

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BERGEN BUNKERS AS GENERAL TERMS AND CONDITIONS

These General Terms and Conditions ("GTC") shall apply to all transactions where Bergen Bunkers AS act as seller of marine bunkers and other oil products and related services, unless expressly stated otherwise in the Confirmation Note.

These GTS's apply to all offers, quotations, orders, agreements, services and all subsequent contracts of whatever nature, except where otherwise is expressly agreed in writing by Seller.

General trading conditions of another party will not apply, unless expressly accepted in writing by Seller.

In the case that, for whatever reason, one or more of the (sub)clauses of these GTC are invalid, the other (sub)clauses hereof shall remain valid and be binding upon the parties.

I. Definitions

Throughout this GTC, except where the context otherwise requires, the following definitions shall be applied:

“Agreement”	means the concluded terms for the sale/purchase of the Products and services;
“Buyer”	means jointly and severally the Master, Owners, Managers/Operators, Managing Owners, Time Charterers, Bareboat Charterers and Charterers of the vessel supplied, or any party requesting offers or quotations for or ordering Products and/or Services and any party on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made;
“GTC”	means these General Terms and Conditions which shall govern the contractual regulations between the Seller and the Buyer
“Nomination”	means the written request/requirement by the Buyer to the Seller, for the supply of the Products and/or services;
“Order Confirmation”	means the written confirmation as issued by the Seller and forwarded to the Buyer to conclude the conclusion of the negotiated sale/purchase of the Products. In case of conflict between the Nomination and the Order Confirmation, unless the Seller otherwise agrees in writing, the wording and content of the Order Confirmation is deemed contain the prevailing terms of the Agreement;
“Owner”	means the registered Owner or Bareboat Charterer of the Vessel;
Products”	means the commercial grades of bunker oils, and/or lubricants, greases and other marine lubrication products as generally offered to the Seller’s customers for similar use at the time and place of delivery and/or services connected thereto;

“Seller”	means Bergen Bunkers AS, its subsidiaries, any office, branch office, affiliate or associate of Bergen Bunkers AS, being the legal entity, whose name is included in the Order Confirmation, sent to the Buyer.
“Supplier”	means any party instructed by or on behalf of the Seller to supply or deliver the Products ;
“Vessel”	means the Buyer’s Vessel, Ship, Barge or Off-Shore Unit that receives the Products or services; either as end-user or as transfer unit to a third party;

II. Construction

All terms and conditions relating to the quality, risk, sampling, mode and time of delivery of the Product supplied hereunder shall be in accordance with the Supplier's Terms and Conditions. All terms, conditions and warranties whether made by the Seller or its servants or agents or otherwise (other than those express warranties made by the Supplier's Terms and Conditions) relating to the quality, risk, sampling, mode and time of delivery of the Product supplied hereunder are excluded.

The Suppliers Terms and Conditions under which the Product supplied hereunder were sold and/or supplied to Seller are available for inspection at the head office of the Seller and the Seller undertake to supply a true copy of the Suppliers Terms and Conditions upon the written request of the Buyer delivered by post, fax or e-mail to Sellers head office.

III. Offers, Quotations and Prices

An Agreement shall only be concluded and binding on the Seller when the Seller sends the Order Confirmation to the Buyer. Each Order Confirmation shall incorporate these GTC by reference so that the GTC are considered a part of the Agreement

Agreements entered into via brokers, or any other authorised representative on behalf of the Seller, shall only bind the Seller upon the Sellers’ broker or other authorised representative sending the Order Confirmation to the Buyer or the Buyer’s broker as the case may be.

The Seller’s offer is based on the applicable taxes, duties, costs, charges and price level of components for Products existing at the time of the conclusion of the Agreement. Any later or additional tax, assessment, duty or other charge of whatever nature and however named, or any increase of components for Products or any additional costs borne by the Seller whatsoever caused by any change in the Seller’s contemplated source of supply or otherwise, coming into existence after the Agreement has been concluded, shall be added to the agreed purchase price, provided that the Seller shall give the Buyer prior notice of this effect within a reasonable time after the Seller becoming aware of the relevant circumstances.

All prices and/or tariffs are exclusive VAT, unless specifically stated otherwise.

If the party requesting Products is not the registered Owner of the Vessel, the Seller shall have the right to insist as a precondition of sale that a payment guarantee is provided by the Owner. The Seller shall have the right to cancel any agreement with the Buyer at any time, if such payment guarantee is not received upon request thereof from the Seller to the Buyer.

The price of the Product supplied shall be in the amount per unit and currency expressed and stated in the Confirmation Note for each grade of Product delivered. Delivery terms are as stated in the Order Confirmation . In the event the price is quoted in volume units, conversion to standard volume shall be calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.

Any and all additional charges, if applicable, shall be specified in the Seller's quotation and in the Order Confirmation and shall include but not be limited to:

- Barging charges and other similar charges.
- Overtime, port dues or mooring charges incurred by the Seller which are for the Buyer's account.
- Taxes, duties, charges or other cost in the country where the delivery takes place, for which the Seller is accountable, but which are for the Buyer's account.

IV. Delivery

The time of delivery, as given by the Seller, has been given as an approximate time, unless it has been otherwise specifically agreed in writing between the parties.

The time of delivery will only be binding upon the Seller when all information necessary for the Seller to comply with its obligations hereunder, have been properly delivered to the Seller in reasonable time before the delivery. In the event the Nomination addresses a spread of dates for delivery, the Seller has the sole discretion to commence the delivery within any time, day/night/ shins of these dates, always subject to the circumstances set out below.

Vessel shall under all circumstances be bunkered as promptly as the prevailing circumstances permit, having regard to congestion affecting the delivery facilities of Seller, its Suppliers or Agents and to prior commitments of barges. Seller shall not be liable for any consequences or any time lost due to Buyer's Vessel having to wait for berth for bunkering or for completion of bunkering, and unless otherwise agreed in writing, Seller shall not be obligated to deliver prior to the nominated date or spread of dates.

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

The Seller shall be entitled to deliver the Products in special part deliveries, in which case each part delivery shall be construed as a separate delivery.

The Seller shall not be required to deliver any Products for export if any government permit required has not been obtained in due time before the delivery.

If the Seller at any time for any reason believes that there may be a shortage of supply at any place and that it as a result thereof may be unable to meet the demands of all its customers, the Seller may allocate its available and anticipated supply among its customers in such a manner as it may determine most reasonable in its sole discretion.

The Vessel in question shall be accessible at all times to Seller and Supplier and shall be bunkered as promptly as the circumstances permit. The Seller shall not be liable for any demurrage paid or incurred by the Buyer or for any loss, damage or delay of the Vessel of any nature whatsoever due to congestion at the loading terminal, prior commitments of available barges or tank trucks or any other reason.

The Buyer shall ensure that the Vessel provides a free, safe and always afloat and accessible side for the delivery of Products and that all necessary assistance as required by the Seller or the Seller's representative is rendered in connection with the delivery. If in a Supplier's opinion clear and safe berth is unavailable, delivery might be delayed or, in Seller's option, cancelled and all costs related to above will be on account of the Buyer.

In the event that the Buyer's Vessel is not able to receive the delivery promptly, the Buyer is thereby in breach and shall pay damages and/or any reasonable demurrage claim to the barging/supplying facilities and shall indemnify the Seller in each and every respect as a result thereof.

Delivery shall be deemed completed and all risk, including loss damage, deterioration, depreciation, evaporation or shrinkage to the Products delivered shall pass to the Buyer from the time the Products reach the flange/connecting pipe line(s)/delivery hoses provided by the Seller on the barge/ tank truck/shore tank.

If the Buyer for whatever reason is unable or refuses to receive the full quantity ordered, the Seller shall have the right to invoice the Buyer for the loss incurred by having to transport the undelivered Products back to the storage or by having to sell the Products in a degraded form at a lower price than that applicable to the grade originally nominated by the Buyer. The Seller may use this right without prejudice to the Seller's other rights for damages or otherwise pursuant to these terms.

If delivery is required outside normal business hours or on local weekends, Saturday, Sunday, national religious or public holidays the extra expenses incidental to such delivery shall be reimbursed by the Buyer as additional costs.

In the event the Bunker delivery is made by vessel or barge as a ship-to-ship transfer, any damage caused by contact and/or collision and/or swell and/or other weather or sea related condition or incident, such damage is to be dealt with by the Owners directly of the involved units, and Seller/Supplier cannot be held responsible for any such damages. If, however, any of the involved units choose to pursue Seller and/or Supplier, Buyer will fully indemnify and hold Seller harmless in relation thereto.

V. Payment

Payment for the Product shall be made by the Buyer within 30 days and with value date not later than due date. Or, if otherwise agreed, within the number of days stated in the Order Confirmation. In the event payment has been made in advance of the delivery, same shall be adjusted on the basis of the actual quantities of Product supplied and additional payment and/or refund shall be made within 30 days after the completion of the delivery. Payment shall be made in full without set-off, counterclaim, deduction and/ or discount, free of bank charges.

Payment shall be deemed to have been made on the date the payment is credited to the account in the bank designated by the Seller. If due date falls on a non banking day, then payment shall be made on or before the banking day nearest to the due date. If the preceding and succeeding banking day is equally near to the due date, then payment shall be made on or before the preceding banking day. Any delay in and/or refund shall entitle either party to interest at the rate of 1 per cent per month pro rata. In the event of non-payment, the Seller reserves the right to pursue such legal remedies as may be available to them to recover the amount owed.

VI. Transfer of Title

The Seller warrants that it has good title to the Product supplied hereunder. Title to the Product supplied shall pass to the Buyer upon payment for the invoiced amount of the Product delivered, pursuant to the terms of Payment clause hereof. Until such payment is made, on behalf of themselves and the vessel, the Buyer agree that they are in possession of the Product solely as Bailee for the Seller, as the Seller holds retention of title to the Product as purchase money security interest until full payment is received . If, prior to payment, the Seller's Product is commingled with other Product on board the Vessel, title to the Product shall remain with the Seller corresponding to the quantity of the Product supplied. The above is without prejudice to such other rights as the Seller may have under the laws of the governing jurisdiction against the Buyer or the Vessel in the event of non-payment.

VII. Collection and Enforcement

Deliveries of Product hereunder are made not only on the credit of the Buyer, but also on the faith and credit of the Vessel which uses the Product and it is agreed that Seller have and may assert a lien against such Vessel corresponding to the value of the supplied Product. Additionally, the Seller will have and may assert a lien for the said value against such vessel, should the laws applicable at the place of the Seller's address which is set forth in the end of these GTC and/or at the place of delivery of the Product and/or the place of seizure of such vessel, grant or recognise a lien for Product delivered to the vessel. Any and all costs associated with seizure of the vessel shall be for the Buyer's account. Any additional security measures taken by Seller shall not operate as a waiver of this provision.

If at any time price provided under the Agreement does not conform to the applicable laws, regulations or orders of a Government or other competent authority, appropriate price adjustments will be made.

For the avoidance of doubt, the Buyer shall not be entitled to cancel the effect of the lien by wording on the product delivery receipt or otherwise.

VIII. Claims

Any claim as to the quantity or quality of the Products delivered must be presented by the Buyer in writing to the Seller within the number of days that is five (5) calendar days less than the relevant time period limit for presenting such claim under the Supplier's Terms and Conditions, failing which any such claim shall be deemed to be waived and forever barred.

The Buyer shall be obliged to make payment in full (ref Article V above) and fulfil all other obligations in accordance with the terms hereof, whether or not they have any claims or complaints. If Buyer submits a claim against Seller with respect to the quality or quantity of the products supplied, the Seller or the Seller's nominated representative shall be entitled to board the Vessel and investigate the Vessel's records, log books, engine logs, etc., and to make copies of any such document the Seller or the Seller's nominated representative may consider necessary for its investigations connected to the case.

In each and every case, any and all claims of the Buyer shall be time barred unless arbitration/legal proceedings have been commenced/issued at the competent tribunal/court set forth in Article XI hereof and served within 6 (six) months from the date of delivery of the Products, or the date that delivery should have commenced pursuant to the written Order Confirmation from the Seller.

IX Liability

The Seller and/or Supplier shall not be liable for damages of whatever nature, including physical injury, nor for delay of delivery of Products or services, no matter whether such damages or delay have been caused by fault or negligence on the side of the Seller. The Seller shall furthermore not be liable for damages or delay as described above when such damages or delay have been caused by the fault or negligence of its personnel, representatives, Supplier or (sub) contractors.

Liabilities of the Seller for consequential and/or liquidated damages including but not limited to loss of time, loss of cargo or charter cancelling date, loss of income or profit/earnings, are excluded. In any event and notwithstanding anything to the contrary herein, liability of the Seller shall under no circumstances exceed the invoice value of the Products supplied under the relevant agreement to the relevant Vessel.

The Buyer shall be liable towards the Seller and herewith undertakes to indemnify the Seller for any and all damages and/or costs suffered or otherwise incurred on the Seller due to a breach of contract and/or fault or neglect of the Buyers, its Supplier, agents, servants, (sub) contractors, representatives, employees and the officers, crews and/or other people whether or not on-board of the respective vessel(s). The Buyer furthermore undertakes to hold the Seller harmless in case of any third party institutes a claim of whatever kind against the Seller whether direct or indirect relation to any agreement regulated by these terms and conditions. Third party shall mean any other (physical or legal) person/company than the Buyer.

No servant, Supplier or agent of the Seller/Supplier (including independent (sub) contractors from time to time employed by the Seller/Supplier) shall be liable to the Buyer for loss, damage or delay, while acting in the course of or in connection with its employment and/or agency for the Seller. Without prejudice to the above every exemption, limitation, condition and liberty herein contained, and every right, exemption from liability, defence or immunity of whatever nature applicable to the Seller or to which it is entitled hereunder shall also be available and shall extend to protect every such servant, representative or agent of the Seller acting as aforesaid.

Neither the Seller nor the Seller's Supplier shall be liable for any loss, claim, damage or demurrage due to any delay or failure in their performance (a) by reason of compliance with any order or request of any government

authority, or person purporting to act therefore, or (b) when supply of the Products or any facility of production, manufacture, storage, transportation, distribution or delivery contemplated by the Seller or Supplier is interrupted, delayed by congestion or other event or unavailability of product and/or barge equipment or inadequate for any cause whatsoever that is not within the immediate control of the Seller or the Supplier, including (without limitation) if such is caused by labour disputes, strikes, governmental intervention, wars, civil commotion, fire flood, earthquake, accident, storm, swell, ice, adverse weather or any act of God. The Seller nor the Supplier shall be required to remove any such cause or replace any affected source or supply or facility if doing so shall involve additional expense or a deviation from the Seller's or the Supplier's normal practices. The Seller, nor the Supplier shall be required to make any deliveries which fail in whole or in part as a result of the causes set out in this Article at any later time.

If the Buyer exercises reasonable diligence, the Buyer shall not be liable for failure to receive any particular delivery if prevented therefrom by force majeure. The Buyer shall indemnify the Seller or the Seller's supplier for any damage caused by the Buyer, the Buyer's agent or employees in connection with deliveries hereunder.

Declaration of Force Majeure shall be given without unduly delay once such event(s) have come to the knowledge of the respective party declaring same.

X. Priority of Contract Documents

In the event of any inconsistency or conflict between the provisions of any of the documents forming the Contract, the following priority order shall be applied:

1. Order Confirmation.
2. General Terms and Conditions.
3. Suppliers Terms and Conditions.
4. Any other document.

XI. Law and Jurisdiction

The Contract and any agreement relating to it between the Buyer and Seller shall be governed by Norwegian Law if not otherwise expressly stated and any dispute shall be for the jurisdiction of the Norwegian Courts. Without prejudice to the forgoing, the Seller shall be entitled to commence and maintain proceedings in any other jurisdiction to obtain security for and/or payment of any amount outstanding in respect of Product or otherwise.

XII. Service of Process and Contact Details

The parties hereto irrevocably agree that any communication between the parties, including but not limited to proceedings issued out of the courts may without prejudice to the rules of services of the said courts be served by delivering such proceedings in an envelope addressed to the party to be served or by transmitting by email a true copy of such proceedings.

In the case of the Seller the contact details are indicated below. In the case of the Buyer, the contact details for services as the case may be are as at the Order Confirmation.

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