

# OCEANBAT S.A.

JANUARY, 2013

## STANDARD TERMS AND CONDITIONS FOR THE SALE OF MARINE FUELS AND LUBRICANTS

### 1.0 INTRODUCTORY

These terms and conditions are the general, standard terms and conditions under which OCEANBAT S.A., an authorized trader/supplier of Ecuadorian marine bunker fuels, located at Edificio Las Camaras, Fco de Orellana y Miguel H. Alcivar, oficina 405, in Guayaquil, Ecuador (THE SELLER) is prepared to enter Agreement (THE AGREEMENT) with another party (THE CUSTOMER) to supply to the Customer marine bunker fuels, and/or lubricants and/or other products (THE PRODUCT). These terms and conditions may be referred to as OCEANBAT'S Standard Terms and Conditions issued on January, 2013. Each Agreement will be as specifically negotiated between the Seller and the Customer as evidenced by the Seller's "supply confirmation" e mail/ fax message (the Confirmation e mail/ fax) and in the event of any conflict between these terms and conditions and the terms of the Confirmation e mail/ fax the terms of the latter shall prevail.

### 2.00 DEFINITIONS

#### 2.01 Basic Cost

The Basic Cost of product calculated by multiplying the Unit Price by the quantity of Product delivered to the Vessel.

#### 2.02 Seller

Includes in addition to the Companies themselves, their servants, agents, assigns, sub-contractors and any and all other persons acting under the Seller's instructions in fulfillment compliance or observance of this Agreement unless the context otherwise requires.

#### 2.03 Confirmation e mail/fax

As defined in Clause 1.0.

#### 2.04 Customer

The party so described in the Confirmation e mail/fax together with any agent, principal, associate, manager, partner, servant, parent, subsidiary, vessel, owner or shareholder thereof.

#### 2.05 Delivery

As defined in Clause 6.00.

#### 2.06 Due Date

The date specified in the Confirmation e mail/fax or invoice for payment of the Price and any and all other fees, costs, charges and like items.

#### 2.07 Physical Supplier

The person who physically supplies the product to the Vessel together with that person's servants, agents, successors, sub-contractors and assigns. The Physical Supplier may be the Seller or any other person.

#### 2.08 Place of Supply

The port or other readily identifiable geographical location specified in the Confirmation e mail/ fax wherein or adjacent to which is the point of Delivery.

#### 2.09 Port of Delivery

The precise place at which Delivery is to be effected as provided in the Confirmation e mail/ fax or as thereafter confirmed, advised or revised by the Seller being a berth, mooring, anchorage or other point within, adjacent to or associated with the Place of Supply.

#### 2.10 Price

As defined in clause 9.00

#### 2.11 Product

The fuels, oils, lubricants, goods, items, equipment and materials of whatever type and description as specified in the Confirmation e mail/ fax subject of the Agreement.

#### 2.12 Unit Price

The rate of cost in United States Dollars per metric tonne (or such other unit of measurement specified in the Confirmation e mail/ fax) of product as specified in the Confirmation e mail/ fax.

#### 2.13 Vessel

The Vessel/ship/craft duly nominated to receive product as specified in the Confirmation e mail/ fax.

### 3.0 ENTIRETY AND VALIDITY

These terms and conditions together with the Confirmation e mail/ fax constitute the entire Agreement. No derogation, addition or amendment to the Agreement shall be of any force or effect unless and until expressly confirmed in writing by the Seller. If any provision of the agreement shall to any extent be invalid or unenforceable the remainder of the Agreement shall not be affected thereby.

### 4.0 FORCE MAJEURE

The Seller shall not be liable for any failure to fulfill any term or condition of the Agreement if fulfillment has been delayed, hindered or prevented by any circumstances whatsoever which are not within the immediate control of the Seller including but without limiting the generality of the foregoing, any strike, lockout or labour dispute or reasonable apprehension thereof, any governmental order, request or restriction, any limitation restriction or interruption to existing or contemplated sources of supply of Product or the means of supply thereof.

## **5.0 AGENTS**

If the agreement is concluded between the Seller and an agent acting for or on behalf a principal or principals (whether disclosed or undisclosed), as Customer, then such agent shall be jointly and severally liable with the Customer, as a principal and not as an agent, for the due and proper performance of the Agreement and the prompt and punctual payments of all amounts due hereunder.

## **6.0 DELIVERY**

### **6.01 Allocation**

If the Seller at any time and for any reason, believes that there may be a shortage of Product at the Place of Supply it may allocate its available and anticipated supply of Product among its Customer in such a manner as it may in its absolute discretion determine.

### **6.02 Restrictions**

The Seller shall not be required to deliver Product into any of the Vessel's tanks or other places which are not regularly used for storage of bunkers or lubricants or other products as the case may be and shall not be required to deliver any Product for the export of which a Government permit is required and has not been obtained.

### **6.03 Means of Delivery**

Delivery shall be effected in one or more consignments at the Point of Delivery by such means as the Seller shall deem appropriate in the circumstances.

### **6.04 Barging**

In the event of Delivery by barge, the Customer shall at its own expense provide a clear and safe berth for the barge(s) alongside the Vessel's receiving lines and shall provide all necessary facilities and assistance required to effect Delivery. The Customer agrees to pay and indemnify the Seller against all claims and expenses in respect of any loss, damage or delay caused by the Vessel to any barge and/or its equipment.

### **6.05 Connection**

The Customer shall make connection between the pipelines or Delivery hoses and the Vessel's intake line and shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly each and every consignment of the Delivery. The Customer is responsible for ensuring that Product is delivered at a safe rate and pressure and that all equipment utilized therefor is in a safe and satisfactory condition.

### **6.06 Title**

Delivery shall be deemed complete when the oil has passed the flange connecting the Physical Supplier's Delivery facilities with the receiving facilities provided by the Customer. However, ownership of the Product shall pass to the Customer only after the Price has been received by the Seller as provided in Clause 9.01. Until such time as the Price is received by the Seller the person in possession of the Product delivered shall hold the Product for the Seller as a mere bailee.

### **6.07 Risk**

The Seller's responsibility for Product shall cease and the Customer shall assume all risks and liabilities relating thereto, including loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage of Product and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties at the time Product leaves the Physical Supplier's fixed depot or wharf facilities. The Customer agrees to indemnify without limit the Seller in respect of any liability, claim or demand for which the Customer is liable.

### **6.08 Measurement**

The quantity of Product delivered hereunder shall be determined at the Physical Supplier's option by one of such generally recognized methods of measurement as is appropriate in the circumstances.

### **6.09 Specification**

The Product to be delivered shall be as specified in the Confirmation e mail/ fax and other than as more precisely specified therein shall be of the Seller's commercial grades of Product as currently offered generally to its Customers at the time and Point of Delivery for marine bunkering or lubrication purposes.

### **6.10 Compatibility and Segregation**

Responsibility for establishing compatibility of Product delivered with any other product or products and for segregating or co-mingling the same rests solely with the Customer.

### **6.11 Substitution**

The Seller may discharge its obligation to deliver Product as specified in the Confirmation e mail/ fax by supplying in substitution therefore product of a different grade and/or brand name provided always that such substitute product is of an equivalent or superior specification to that specified in the Confirmation e mail/ fax.

### **6.12 Availability**

Subject to the availability of Product, the availability of facilities at the Place of Supply and Point of Delivery and the customary priority of mail Vessels and tankers, the Seller will use its best endeavours to ensure that Product is delivered promptly upon the Vessel's arrival but the Seller shall not be responsible for any loss, expense, damage or increased costs incurred in consequence of the Vessel not being supplied promptly or otherwise being delayed or restrained for any reason whatsoever.

### **6.13 Delay**

In the event that the Vessel's arrival at the Point of Delivery is delayed or likely to be delayed the Customer must so advise the Seller. The Customer should also ensure that the Vessel's agent at the Place of Supply is similarly informed and that the agent advises the Physical Supplier accordingly. At the Customer's request the Seller will use its best endeavours to supply a delayed Vessel on the terms originally agreed but reserves the right to pass on to the Customer all additional costs including increased Basic Cost arising from the Vessel's delayed arrival.

### **6.14 Notice and Other Delivery Requirements**

The Customer must give not less than 72 hours notice (excluding Saturdays, holidays and other non-working days at the Place of Supply) of the Vessel's readiness to receive Product to the Seller and to the Physical Supplier. Notice must be given during the Seller's normal business hours (Monday to Friday inclusive, 08.30-17h00 Ecuadorean time Notice given

outside these hours will be deemed to have been given at 08.30 on the first business day thereafter. Furthermore it is in all circumstances and on all occasions the responsibility and duty of the Customer to ascertain and where appropriate to comply with:

1. the precise requirements of the Physical Supplier and any other person, body or authority in respect of the giving of notice of the Vessel's time of arrival at the Point of Delivery
2. the exact location of the Point of Delivery
3. any particular requirements to enable Delivery to be effected as efficaciously as possible.

The Customer is advised to instruct its agent at the Place of Supply to liaise with the Physical Supplier so as to ensure compliance with these provisions.

#### **6.15 Environmental Protection**

Without prejudice to Clause 6.07 the Seller may at any time without notice take any steps which it considers necessary to protect the environment from damage arising from spillage or transport of Product. Any action so taken shall be on behalf of and at the expense of the Customer.

#### **7.0 CANCELLATION AND BREACH**

In the event of the Customer at any time cancelling a request for Product or the Vessel failing to take Delivery of part or all of the requested Product the Seller shall have the right to pursue a claim against both the Customer and the Vessel for all loss and damage thereby suffered including loss of profit. The Seller may treat any other breach by the Customer of any express term of the Agreement as a breach of a condition and it may at its discretion thereupon accept the breach, treat the Agreement as repudiated and seek such remedies as it considers appropriate. So however that the provisions of Clauses 13.0, 14.0 and 15.0 shall survive the determination of the Agreement in any event.

#### **8.0 LIENS**

Where Product is supplied to a Vessel, in addition to any other security, the Agreement is entered into and Product is supplied upon the faith and credit of the Vessel. It is agreed and acknowledged that a lien over the Vessel is thereby created for the Price of Product supplied and that the Seller in agreeing to deliver Product to the Vessel does so relying upon the faith and credit of the Vessel. The Customer if not the owner of the Vessel hereby expressly warrants that he has the authority of the owner to pledge the Vessel's credit as aforesaid and that he has given notice of the provisions of this Clause to the owner. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien or liens attaching to a Vessel unless notice in writing of the same is given to the Seller before it sends its Confirmation e mail/ fax to the Customer.)

#### **9.00 The Price**

##### **9.01 Unit Price**

Where in the Confirmation e mail/ fax The Unit Price is stated to be not subject to variation the Unit Price will, subject to clause 6.13, not be varied. In all other cases having agreed the Unit Price of the Product the Seller will endeavour to refrain from making any increase. However, the cost of marine bunkering products is volatile and the Seller therefore reserves the right to increase the Unit Price at any time before Delivery. Notice of the increase will be given during the Seller's normal business hours (Monday to Friday inclusive, 08.30-17.00 Ecuadorian time). Notice given outside these hours will be deemed to have been given at 08.30 on the first business day thereafter. In such event the Customer may forthwith give written notice to the Seller of cancellation of the Agreement. If no such notice is received within one hour of the Seller advising the Customer of the increase of the Unit Cost the Customer shall be deemed to have agreed to the revised Unit Price and the Agreement so revised shall remain in full force and effect.

##### **9.02 Proof of Delivery**

The Customer or his representative should attend Delivery and obtain at that time all outstanding information relating to Delivery including the exact quantities and precise specification of Product delivered. Unless otherwise requested by the Customer prior to dispatch by the Seller of the Confirmation e mail/ fax the Seller shall be under no obligation at any time to produce to the Customer any evidence of Delivery to the Vessel. It is expressly agreed that the furnishing by the Seller of proof of Delivery is not a pre-requisite to payment of the Price.

#### **10.00 PAYMENT**

In most cases special payment terms will have been agreed and will be set out in the Confirmation e mail/ fax. Each of the following terms apply unless the Confirmation e mail/ fax otherwise provides:

1. Payment of the Price will be made in United States dollars to the bank and account specified in the Confirmation e mail/ fax, or in the invoice, in full without deduction for any reason whatsoever so as to ensure that the Seller receives value for the payment in cleared funds on or before the Due Date. All bank and other charges, if any, incurred in effecting remittance will be for the account of the Customer. Advice of remittance including identifying references should always be given
2. The Due Date is as provided in the Final Invoice. Late payment will attract a financial charge of 1.5% per calendar month on the outstanding sum calculated on a daily basis from the Due Date until receipt by the Seller of sufficient cleared funds.
3. Timely payment is of the essence of the Agreement.
4. The Seller may in good faith vary, amend, withdraw, substitute or add to the terms relating to payment at any time in the course of a transaction in such manner as it shall in its absolute discretion consider necessary to protect its interests.
5. If at any time the reputation, standing, creditworthiness, liquidity or solvency of the Customer or any subsidiary, parent, associate or affiliate thereof should give the Seller reasonable cause for concern, the Seller may without prejudice to all other rights and remedies which it may have given notice to the Customer that credit facilities from the Seller to the Customer are withdrawn or suspended as the case may be and all sums outstanding shall thereupon fall due for immediate payment.
6. The full legal and other costs and expenses incurred by the Seller including those of the Seller's own legal department

and of other lawyers in connection with any breach by the Customer of any term of the Agreement including but not limited to actions for debt shall be for the Customer's account and shall for all purposes form part of the Price due from the Customer to the Seller for Product supplied.

7. The Seller is responsible to airmail, the originals of delivery receipts and invoice, however in case of lack of originals supporting a payment before due date, the Customer will have to pay the corresponding amounts against e mail/ fax copy.

8. In case of documentation supporting a payment, such as original invoice, delivery receipts and/or any other document was lost or delayed in mail, the Seller –upon customer's request- can produce a new invoice and submit carbon/scanned copies of the delivery receipts; however, this will not provoke a delay in payment of the due invoice, which will cause the application of corresponding financial charges as per Clause 10.02.

## **11.00 CLAIMS, DISPUTES AND PRECAUTIONS**

### **11.01 Time Limits**

Because the Seller is frequently placed under strict time limits by its suppliers for the presentation of claims it is necessary that it too must impose rigid time limits on receiving notice of claims from its Customers. In consequence of the Seller's strict time-limits, Customers should ensure that they maintain their own equally strict internal checking and reporting procedures. It must be clearly understood that the Seller will not relax its time-limits in any circumstances.

### **11.02 Notification**

Written notice of any claim or potential claim must be given to the Seller within the time limit specified. It is the Customer's responsibility to ensure that notice is received by the Seller whose confirmation of receipt should always be sought. Regardless of whether a claim or dispute has arisen or is anticipated the Customer must always give prompt notice to the Seller of any discrepancy, error or omission present in any form or document tendered, submitted or produced by the Physical Supplier and of any unusual occurrence relating to the Delivery.

### **11.03 Sufficiency of Information**

To enable the Seller to investigate and pursue a claim the notice must give sufficient information for the Seller to be able to identify the relevant transaction, the nature of the complaint and the loss or damage alleged. Any notice which does not give such sufficient information will not be valid. For the same reasons the Customer must provide a full and complete response to any and all questions, enquires and requests made of it by the Seller concerning the claim and matters relating thereto.

### **11.04 Categories** Claims fall into 2 categories:

1. Quantity claims and disputes

2. Quality claims and disputes

**1.01 Quantity Claims and Disputes** These are most easily avoided by ensuring high standards of checking before, during and after Delivery by an officer of the Vessel's crew or other senior representative of the Customer.

**1.02** For bulk deliveries barges, wagons and vehicles must be checked by tank-dipping to measure the contents and ensure full out-turn. Flow meters must be checked for seals, correct settings and calibration and general condition. All of these checks must be carried out before and after Delivery of each consignment and each barge, wagon or vehicle tank load. The Delivery must be supervised at all times and care must be taken in ensuring that all documentation is complete and accurate before signing and stamping. Any discrepancies must be recorded on the Physical Supplier's Delivery receipt. Unless these procedures are followed it is nearly always impossible for a claim to be substantiated. The Seller regrets therefore that it will be obliged to reject claims for short Delivery where these receiving procedures are not followed.

**1.03** The Seller will not accept a claim for short Delivery based upon figures obtained by measuring product in the Vessel's tanks.

**1.04** The time limit for receipt by the Seller of notice of a quantity dispute is 5 (five) days from the date of Delivery or such shorter period as is specified in the Confirmation e mail/ fax.

**2.01 Quality Claims and Disputes.** It is the customer's responsibility to ensure that the products tendered for Delivery are those which are required by the Vessel and are delivered into the correct tanks.

**2.02** At least three representative samples of every consignment and load of the Delivery must be taken as Delivery proceeds. The samples must be signed and sealed by a representative of the Physical Supplier or by an independent surveyor and by an officer of the Vessel or other representative of the customer. One set of samples must be retained by the Customer, the other two by the Physical Supplier.

**2.03** As with quantity claims it is important to check that all documentation is in order and to note discrepancies on the physical supplier's Delivery receipt before signing and stamping.

**2.04** In the event of the Customer having grounds to believe that the product supplied does not accord with the relevant description in the Confirmation e mail/ fax or is defective the Customer shall immediately:

1. Take all reasonable steps to mitigate the consequences of having been supplied with possibly defective or incorrect product.

2. Give notice with full details of the possibly defective or incorrect product to the Seller together with the Vessel's position, destination and ETA; the quantities and locations of all bunkers on board the Vessel, the rate and quantity of consumption since Delivery and the location immediately prior to consumption of bunker consumed; for each of the three preceding deliveries to the Vessel, the quantity, quality and specification of product supplied, the place and date of supply and the name of the supplier.

3. Inform the Seller of the whereabouts of the Customer's set of sample.

**2.05** It is a pre-condition of the Seller being prepared to consider any quality claim at the time notice is given, the Customer has retained its complete set of sealed samples and is prepared to have them analyzed by a reputable independent testing laboratory, approved by the Seller, in accordance with established procedures in the presence of a representative of the Seller. In the event that the Customer is unable or unwilling to produce its samples for analysis within 28 days of a request from the Seller so to do the Seller may proceed to have the Physical Supplier's samples analyzed and the results of such analysis shall be binding upon the parties hereto.

**2.06** If it is alleged that any equipment or machinery has been damaged by defective product full details must be given to

the Seller at the earliest opportunity and the item must be preserved and made available for inspection on demand at any reasonable time or times to the Seller or its representative.

**2.07** The time limit for receipt by the Seller of notice of quality claim is 30 (thirty) days from the date of Delivery or such shorter period as is specified in the Confirmation e mail/ fax.

**3.01 Summary of Time Limits:**

Quantity claims and disputes 5 days

Quality claims and disputes 30 days

All subject to the provision of shorter time limits in the Confirmation e mail/ fax.

**12.0 WAIVER**

The failure by any party to the Agreement to enforce any right against any other party shall not be construed as a waiver of that right or in any way affect the validity of the Agreement. In particular, the granting by the Seller of any additional time to make payment or the waiving or reducing of any financial or other charge shall not prevent the Seller at any time thereafter from relying upon its strict contractual rights.

**13.0 INDEMNITY.**

The Customer hereby agrees to indemnify the Seller in respect of all damage or injury occurring to any person or to any property and against all actions, suits, claims, demands, costs, charges or expenses arising in connection therewith to the extent that the same shall have been occasioned by the negligence or default of the Customer, his servants or agents or any third party in the course of performance of or arising out the Agreement.

**14.0 LIABILITY.**

To the extent permitted by law the Seller shall not be liable to the Customer for any loss or damage including loss of profit or any other consequential loss whatsoever arising from any cause whatsoever whether in contract, tort or otherwise including the negligence of the Seller, its servants, agents or sub-contractors.

**15.0 COMPENSATION.**

Notwithstanding the foregoing, in the event that the Seller is found to be liable to the Customer, the total amount payable by way of compensation other than in respect of personal injury or death shall not exceed the Price charged to the Customer for Product supplied under the Agreement. It is a pre-condition to the payment of any compensation by the Seller that all sums standing due to the Seller from the Customer are first paid and settled.

**16.0 INSURANCE.**

The Customer is responsible for effecting and maintaining in force adequate insurances which will fully protect the Customer, the Seller and all third parties from all risk, hazards and perils associated with or arising from the Agreement and Delivery.

**17.0 LICENCES PERMITS AND APPROVALS.**

The Customer is responsible for obtaining all necessary permits, licenses and approvals required to enable both parties to execute all of their obligations under the Agreement.

**18.0 GOOD PRACTICE.**

The Customer shall in addition to observing and complying with the terms of the Agreement, should comply as well with internationally accepted good bunkering procedures.

**19.0 LAW AND JURISDICTION**

Except as otherwise expressly agreed to in writing, this Contract shall be governed by the Laws of the United States of America, which shall be applied in relation to any claim or dispute which may arise in connection with this Contract. All parties hereto submit to the jurisdiction of the competent Courts of New York, U.S.A. in relation to any claim or dispute which may arise in connection with this Contract. So however that nothing in this clause shall, in the event of a breach of the Agreement by the Customer, preclude the Seller from taking any such action or actions as it shall in its absolute discretion consider necessary to enforce, safeguard or secure its rights under the Agreement in any court or tribunal any state or country.

--oooOooo--