



# **Standard Terms of Sale Marine Fuels**

**U.S. Oil & Refining Co.**

**Dated September 1, 2016**

**U.S. OIL & REFINING CO.**  
**Standard Terms of Sale**  
**Marine Fuels**  
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**Standard Terms of Sale  
Marine Fuels**

Except as otherwise specifically provided in an agreement between U.S. Oil & Refining Co. ("Seller") and a customer ("Buyer") to which these Standard Terms of Sale are attached or in which these Standard Terms of Sale are referenced (the "Agreement"), the following terms and conditions shall apply to all sales by Seller of bunker fuel oil, intermediate bunker fuels, marine diesel oil, and marine gas oil (collectively hereinafter "Marine Fuels"). The Agreement and these Standard Terms of Sale constitute the contract (the "Contract") between Seller and Buyer, contain all agreements, arrangements and stipulations between the parties in respect of the supply of Marine Fuels contemplated herein and supersede all prior agreements, arrangements and stipulations in respect of the same subject. To the extent any document delivered by Buyer contains terms inconsistent with the Contract, all of such terms are hereby rejected unless expressly accepted by Seller in the Agreement.

**1. Prices**

- A. The price for Marine Fuels shall be as set forth in the Agreement.
- B. Buyer shall pay any taxes, fees or other charges, imposed by any national (or political subdivision thereof) taxing authority on the delivery, sale, inspection, storage and use of Marine Fuels, except for taxes on Seller's income and taxes on raw material. To the extent Seller incurs any taxes for which Buyer is responsible, Seller's invoice will include such taxes as payable by the Buyer.
- C. If Buyer is entitled to purchase any Marine Fuels free of any taxes, duties or charges pursuant to local law, Buyer shall promptly, but in any event not later than five (5) business days following completion of delivery, provide to Seller a valid exemption certificate for such purchase. Buyer and Seller agree that invoices shall conform to local laws of the place in which the sale is completed.
- D. Any foreign or domestic tax, duty, toll, fee, license, impost, charge or other exaction of any charges whatsoever, including VAT, excise taxes and any similar taxes, or the amount equivalent thereto and any increase thereof, now or hereafter (i) imposed, levied or assessed (but exclusive of taxes based on the Seller's income) by any national (or political subdivision thereof) taxing authority directly or indirectly upon, (A) the Marine Fuels and/or, (B) the production, manufacture, transportation, storage, sale, use, transfer, delivery and/or other handling of the Marine Fuels and/or, (C) the production, manufacture, transportation, storage, purchase, sale, use, transfer, exportation, importation and/or other handling of any material contained in the Marine Fuels, or any wholly or partly refined or manufactured part thereof, and/or, (ii) otherwise measured by, incident to or as a result of the transaction herein provided for, shall, if collectible or payable by Seller, be paid by Buyer on demand by Seller. Any such payment not included in the Marine Fuels prices otherwise herein provided for, shall be in addition thereto.

**2. Parties Obligated**

- A. 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 contained in the Agreement as if the agent were itself the principal, whether such principal is disclosed or undisclosed, and whether or not such agent purports to contract as agent only. Notwithstanding anything to the contrary in the Agreement, principal and agent shall each be deemed to be a Buyer for purposes of the Agreement.
- B. Marine Fuels delivered hereunder are sold and delivered on the financial credit of the vessel being supplied (the "Vessel"), as well as on the promise of the Buyer to pay therefor. Buyer warrants it is authorized to purchase Marine Fuels for the Vessel and further warrants that Seller shall have the right to assert a lien against the Vessel covering the Marine Fuels delivered for the purchase price, any extra charges incurred in accordance herewith, any taxes billed on

the delivery of Marine Fuels or otherwise, and all associated recovery costs. Such remedy shall be in addition to, and not in limitation of, any other remedies available to it at law or herein.

- C. Buyer shall provide the full contact information for owners, charters and the master of the Vessel (the "Vessel Parties") prior to the delivery of Marine Fuels to the Vessel. Buyer authorizes Seller to contact the Vessel Parties at Seller's sole option and put all Vessel Parties on notice that the Marine Fuels are being supplied on the credit of the Vessel, provided, Seller's decision not to contact any of the Vessel Parties shall not constitute a waiver of any of Seller's rights against the Buyer, the Vessel or the Vessel Parties. Should the Vessel Parties notify Seller the credit of the Vessel is denied, Seller may refrain from delivering Marine Fuels until satisfactory pre-payment or credit arrangements are made.
- D. If the charter party under which the Vessel is operating at the time Marine Fuels are ordered contains any limitation on creation of a lien on the Vessel for marine Fuels delivered to it, Buyer shall notify Seller of such limitation at the time marine Fuels are ordered and Seller may refrain from delivering Marine Fuels until satisfactory pre-payment or credit arrangements are made.

### **3. Quality and Warranty**

- A. Marine Fuels shall be Seller's commercial grades of Marine Fuels generally offered to Seller's Marine Fuels customers at the time and place of delivery. The specifications for the Marine Fuels can be obtained at [www.usor.com](http://www.usor.com). EXCEPT FOR THIS SECTION 3(a), THE MARINE FUEL IS SOLD "AS IS", AND SELLER OTHERWISE MAKES NO WARRANTIES OF QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES OR CONDITIONS WHETHER STATUTORY OR OTHERWISE ARE EXPRESSLY EXCLUDED.
- B. Buyer shall have the sole responsibility for the selection of suitable Marine Fuels for use in the Vessel, and warrants that the Vessel(s) nominated by Buyer to receive Marine Fuels is/are in compliance with all local, national and international regulations and requirements, as applicable, including, but not limited to, all applicable federal, state and local environmental, spill response and financial responsibility requirements.
- C. Seller has provided or shall provide Buyer upon Buyer's request with Seller's Safety Data Sheets ("SDS") for the Marine Fuels to be delivered hereunder. Nothing herein shall excuse Buyer from complying with all laws, regulations and decrees which may require Buyer to provide its employees, agents, contractors, users and customers who may come into contact with the Products with a copy of the SDS and any other safety information provided to it by Seller, and/or which require Buyer to ensure that the recommendations relating to the handling of the Marine Fuels are followed. Compliance with any recommendation contained in the SDS or other safety information shall not excuse Buyer from complying with all laws, statutes, regulations or decrees of any state or territory having jurisdiction over Buyer. The SDS covering the Marine Fuels can be obtained at [www.usor.com](http://www.usor.com).

### **4. Nominations and Deliveries**

- A. Buyer shall nominate a Vessel in writing at least five (5) Business days (defined as days on which banks are normally open for business at the delivery port or other location where sales hereunder are made) in advance of the Estimated Time of Arrival (the "ETA") proposed by Buyer, specifying delivery port, ETA and grades, specifications and quantities of Marine Fuels required. If such nomination is accepted and confirmed in writing by Seller, the ETA proposed by Buyer (or otherwise agreed between Buyer and Seller) shall become the "Accepted Delivery Date". Unless advised in writing by Buyer and confirmed in writing by Seller, amendments to the Accepted Delivery Date will not be recognized. Seller may cancel any nomination without liability and without prejudice to any rights Seller may have against Buyer if the Vessel does not arrive at delivery port and present itself for delivery on the Accepted Delivery Date. Except

where contrary to local governmental or port regulations, all deliveries to Seller's customers will be made on a first come first served basis.

- B. Buyer shall give Seller at least forty-eight (48) hours advance written notice, excluding Sundays and non-Business days confirming type and quantities of Marine Fuels and other delivery details. If such delivery date is not within the period of time during which Seller's price set out in the Agreement is valid (the "Pricing Date Range"), then Seller may adjust the price for Marine Fuels unless otherwise agreed in writing by Seller. When forty-eight (48) hours advance notice is not given or when the delivery date is not within the Pricing Date Range and the proposed new delivery date is not accepted by Seller in writing, then Seller may deliver or not, in its sole discretion
- C. When delivery is required other than during normal business hours, and is permitted by applicable regulations, Buyer shall be fully responsible for and pay all overtime and extra expenses incurred by Seller.
- D. Any costs incurred due to a delay caused by Buyer during a delivery shall be for the account of the Buyer, including but not limited to any demurrage or detention charges at such rate as may be invoiced by Seller.
- E. Buyer or Buyers Agent shall notify Seller, in writing, prior to delivery, of the maximum allowable pumping rate and pressure for the Vessel and Buyer and Seller shall agree on communication and emergency shutdown procedures.
- F. Buyer shall notify Seller, in writing, prior to delivery of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of or particular to the Vessel that might adversely affect the delivery of Marine Fuels. Buyer shall be responsible for any increased costs incurred by Seller in connection therewith. If in the opinion of Seller, such special conditions, difficulties, peculiarities, deficiencies or defects call into question Seller's ability to make a safe delivery, Seller may cancel the nomination without liability.
- G. When delivery is made by barge, the Vessel shall provide a free and safe berth alongside to receive the Marine Fuels and to render all necessary assistance that may reasonably be required to safely moor and unmoor the barge or to connect or disconnect the delivery hose(s).
- H. If Buyer cancels, terminates or otherwise fails to take delivery, in whole or in part, of the quantities nominated, Buyer shall be responsible for any costs resulting from such failure, including without limitation, lost profits and any costs and expenses incurred by Seller to downgrade the Marine Fuels.
- I. Buyer shall adhere to all State and Federal Regulations pertaining to the transfer of Marine Fuels.

## 5. Title

- A. Delivery shall be deemed completed and title to and risk of loss of Marine Fuels shall pass to Buyer at the permanent intake connection between Seller's or Barges delivery hose and the Vessel.
- B. If delivery is made to barge, delivery shall be deemed completed and title to and risk of loss of the Marine Fuels shall pass to Buyer at the last flange of Seller's or Seller's supplier's loading hose at the loading terminal.
- C. Buyer shall be responsible for connection of the delivery hose to the intake of the Vessel or Buyer's receiving vessel and pumping shall be performed as agreed upon during the required pre-transfer conference.

## 6. Inspection and Determination of Quantity and Quality

- A. The quantity of Marine Fuels delivered shall be determined, at Seller's option, by measurements in accordance with either (i) the ASTM Petroleum Measurement Table for Seller's shore tanks or Seller's delivery vessel or (ii) Seller's meters. Buyer will be charged for Marine Fuels on the basis of these measurements. Buyer at its own expense has the right to have its representative or an independent inspector present during measurement, but determination of quantity shall be made solely by Seller. All such measurements noted above shall be final and binding save for manifest error.
- B. Sampling by Seller or Seller's Agent shall be accomplished throughout the Marine Fuels delivery process. Seller or Seller's Agent shall take four (4) representative samples of each grade of Marine Fuels to be delivered. Buyer shall have the right to have its representative witness the drawing of the samples. The aforementioned samples shall be securely sealed and labeled, numbered and identified by name of the Vessel, delivering facility, Marine Fuel type, delivery date and place of delivery. One (1) sample shall be given to Buyer's representative for MARPOL compliance purposes only; the second sample shall be given to Buyer's representative for quality determination purposes; and the other two (2) samples shall be retained by Seller or Seller's Agent for at least thirty (30) days following the date of delivery in a safe place for subsequent verification of the quality thereof, if required. If Buyer issues a claim regarding the quality of the Marine Fuel within thirty (30) days after the date of delivery in accordance with Section 7(b) below, one (1) of the two (2) remaining samples of Seller together with any other Seller's and Seller's Agent representative samples shall be submitted for analysis to a mutually agreed independent laboratory. The independent laboratory's analysis shall be conclusive as to the quality of the Marine Fuel delivered. The analysis shall be established by tests in accordance with ISO 8217 and/or any other specifications agreed to between Buyer and Seller in writing. Unless otherwise agreed, the expenses of the analysis by the independent laboratory shall be borne equally by Seller and Buyer. Any cost associated with the Buyer appointing a representative to witness the sample seal-breaking and/or analysis at the independent laboratory shall be the sole responsibility of Buyer.

## 7. Claims

- A. Any dispute as to the quantity of the Marine Fuels delivered must be noted at the time of delivery on the signed bunker delivery receipt and, or in a letter of protest. Any claim as to short delivery shall be presented by Buyer in writing within fifteen (15) calendar days after the date of delivery, failing which any such claim shall be deemed to be waived and forever barred.
- B. Any claim as to the quality of the Marine Fuels delivered must be submitted by Buyer to Seller in writing within thirty (30) days after the date of delivery, failing which, such claim shall be deemed waived and forever barred. Buyer shall base its quality claim solely on an analysis of the retained sample provided by Seller at the time of the delivery as provided for in Section 6(b) above. Buyer shall promptly furnish Seller the results of testing of the retained sample to enable Seller to properly evaluate the claim.
- C. Despite the provisions of Section 3(A), Buyer shall take all reasonable measures, including retention and use of Marine Fuels in accordance with Seller's instructions, to eliminate or minimize any costs associated with an off-specification or suspected off-specification supply. Seller's obligation shall not exceed direct expenses incurred for removal and replacement of Marine Fuels. If Buyer removes such Marine Fuels without the consent of Seller, then all such removal and related costs shall be for Buyer's account. Notwithstanding anything in this Contract to the contrary, (i) Seller's obligations or liabilities hereunder shall not include any consequential or indirect damages, including without limitation, deviation costs, demurrage, damage to any Vessels or Buyer's delivery vessels or to their engines or tanks, any actual or prospective loss of profits, or loss of use or loss of production whatsoever, and (ii) other than this Section 7(C) and in the event of personal injury or death, Seller's maximum liability under this

Contract shall not exceed the price charged to the Buyer for the Marine Fuels supplied under this Contract. It is a condition precedent to any obligation for payment by the Seller that all sums due to it from the Buyer shall have first been paid.

- D. Seller shall not be responsible for any claim arising in circumstances where there is or has been commingling of Marine Fuels delivered by Seller with other fuel aboard the Vessel or Buyer's delivery vessel.
- E. Any claim involving demurrage incurred by the Buyer's receiving vessel must be submitted by Buyer to Seller in writing within 30 days of the date of delivery. If Buyer fails to submit a demurrage claim within (30) days after the date of delivery, any such claim shall be deemed to be waived and absolutely barred.
- F. Seller shall respond promptly to any complaint or claim by Buyer and the parties shall further endeavor to resolve the matter one way or the other within forty-five (45) days of receipt of claim. Where Buyer and Seller cannot come to agreement on such claim within ninety (90) days, either party may invoke the dispute resolution procedures in accordance with the provisions of Section 13 below. However, nothing in this Section 7 shall relieve the Buyer of its obligation to make payment in full when due as provided herein.
- G. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY PROSPECTIVE PROFITS OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES.

## 8. Payment

- A. Payment shall be made by Buyer, in U.S. dollars, without discount, offset or deduction, including, but not limited to, any deduction on account of an alleged claim by Buyer related to the quantity or quality of Marine Fuels, prior to the time specified in Section 8(B) and in accordance with Seller's written, telegraphic or other notification of invoice specifying quantities of Marine Fuels delivered and amounts due. Seller may make subsequent adjustments to invoiced amounts based upon information obtained in the relevant bunker delivery receipt. Buyer's failure to make payment in full of the amount noted by Seller shall be a breach of the Contract. Payment shall be made as provided in the Agreement.
- B. Payment shall be considered past due if not received by Seller within 30 days of the date of Seller's invoice. Overdue payments shall be subject, at Seller's sole discretion, to a service charge at the rate of twelve percent (12%) per annum or Prime +4% whichever is greater per thirty (30) day period. In the event legal action is required due to delinquency on Buyers account, it is agreed that the Buyer will pay all attorney's fees and court costs as a result thereof. A service fee of \$35.00 will be charged for any returned check or ACH payment.

## 9. Safety and Environmental Protection

- A. Buyer warrants that it is familiar with the health effects related to the Marine Fuels supplied hereunder and with relevant protective safety and health procedures for the handling and use of such Marine Fuels. Buyer shall adhere to such safety and health procedures while using or handling Seller's Marine Fuels. Buyer shall also facilitate the dissemination of health and safety information to all employees, users, and others potentially exposed to the Marine Fuels sold hereunder. Buyer shall be responsible for compliance by its employees, agents, and other users with all health and safety requirements or recommendations related to the Marine Fuels supplied hereunder and shall exert its best efforts to assure that any of its employees or agents, users, and others avoid frequent or prolonged contact with or exposure to the Marine Fuels both during and subsequent to delivery. Seller or Seller's supplier accepts no responsibility for any consequence arising from failure by Buyer, its employees or agents, any users, or any other party to comply with relevant health and safety requirements or recommendations relating to such contact or exposure.

- B. In the event an escape or discharge of Marine Fuels (a “spill”) occurs from the Vessel and causes or threatens to cause pollution damage, the Buyer will promptly take whatever measures are necessary to prevent or mitigate such damage or remove the threat. The Buyer hereby authorizes the Seller, or its nominee, upon notice to the vessel, to undertake, at the Seller’s option, such measures as are reasonably necessary to prevent or mitigate the pollution damage or remove the threat. The Seller or its nominee shall keep the Buyer advised of the nature and results of any such measures taken, and if time permits, the nature of the measures intended to be taken. Any of the aforementioned measures shall be for the Buyer’s account, provided that if the Seller caused or contributed to such escape or discharge, the expense of the aforementioned measures shall be borne by the Seller in proportion to its negligence in causing or contributing to the escape or discharge. This provision shall be applicable only between parties hereto and shall not affect any liability of the Buyer or the Vessel to third parties, including but not limited to governments. For the purpose of this Clause, the meaning of the term “pollution damage” shall include all damages compensable under applicable U.S. federal, state or local law.
- C. The Buyer warrants that throughout the loading under this Contract, the Vessel shall have on board the following certificates: (i) certificates issued pursuant to the Civil Liability Convention 1969 (“CLC”), and pursuant to the 1992 protocols and all amendments to the CLC, as and when in force; and (ii) certificates issued pursuant to Section 1016(a) of the Oil Pollution Act 1990, and Section 108(a) of the Comprehensive Environmental Response, Compensation and Liability Act 1980, as amended in accordance with Part 138 of Coast Guard Regulations 33 CFR.
- D. In the event of a spill during fueling, Buyer shall provide Seller with such documents and information concerning the spill and any programs for the prevention of spills as may be required by Seller or by law or regulations applicable in the port where the spill occurred.
- E. The Vessel is subject to Seller’s acceptance and will not be supplied Marine Fuels unless free of all conditions, difficulties, peculiarities, deficiencies or defects that might impose hazards in connection with its mooring, unmooring or bunkering.
- F. Buyer shall comply with all applicable laws and regulations in carrying out its obligations under this Contract, including the ISPS Code and to the extent applicable, MARPOL 73/78 Annex VI.

#### **10. Indemnity and Insurance**

- A. Buyer shall indemnify and hold Seller and Seller’s officers, directors, employees and agents harmless from and against any and all claims, demands, suits or liabilities for damage to property or for injury or death of any person, or for non-compliance with any requirement of any governmental entity arising out of an act or omission of Buyer or its agents or servants in receiving, using, storing or transporting Marine Fuels delivered hereunder, including exposure thereto, unless the same be due to the sole negligence of Seller.
- B. The Buyer warrants that throughout the Vessel’s loading under this Contract, the Vessel shall have full and valid Protection and Indemnity Insurance (“P&I Insurance”) and valid Excess Pollution Liability Insurance (“Excess Insurance”), as described below, with the P&I Insurance placed with a P&I Club that is a member of the International Group of P&I Clubs. The P&I Insurance (including P&I U.S. surcharges) and Excess Insurance shall be at no additional cost to the terminal party. The P&I Insurance must include coverage against liability for cargo loss/damage for the full value of the Marine Fuels. The P&I Insurance must also include coverage against liability for pollution for an amount not less than \$1,000,000,000 (One Billion) U.S. Dollars per incident. The Excess Insurance must cover like liability for pollution for an amount not less than 200,000,000 (Million) U.S. dollars per incident.



## 11. Force Majeure

Either Party will be excused from its obligations hereunder to the extent that its performance is delayed, substantially hindered or prevented by circumstances beyond its control (hereafter "Force Majeure") including, but not limited to, acts of God, weather, harbor conditions, fire, explosions, mechanical breakdown, strikes, plant shutdowns, civil disturbances and government regulations. Such Force Majeure shall not excuse Buyer's obligation to make payment for Marine Fuels received. Seller shall not be liable for any demurrage or other costs resulting from any delay or failure to perform on the part of Seller caused by Force Majeure. The Party declaring Force Majeure shall give prompt written notice and full particulars of such event to the other Party. The declaring Party shall attempt to remedy the Force Majeure with all reasonable dispatch, but if such Force Majeure continues beyond the end of the Pricing Date Range, this Contract may be terminated by written notice from either Party. Seller shall not be obligated to make up any deliveries not fulfilled as a result of Force Majeure.

## 12. Miscellaneous

- A. Buyer may not assign its rights or obligations hereunder without the prior written consent of Seller, such consent not to be unreasonably withheld or delayed. Seller may freely assign its rights and obligations hereunder to any third party, in which case such assignee shall become the Seller and assume all of Seller's rights and obligations under this Contract with no further obligation or liability on the part of Seller.
- B. If any provision or portion of this Contract shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such provision or portion of this Contract shall be deemed omitted and the remaining provisions and portions shall remain in full force and effect.
- C. Modifications or amendments to the Contract shall be valid only when expressly agreed upon in writing. The waiver or failure to require the performance of any covenant or obligation contained herein shall not be deemed to constitute a waiver of a similar later breach.
- D. Notices under this Contract shall be made and deemed duly given only when delivered in writing to the other party to the address set forth in the Agreement.
- E. This Contract shall be governed and construed in all particulars by the laws of the State of Washington, without regard to those laws that would reference the laws of another jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and INCOTERMS shall not in any way apply to, or govern this transaction.
- F. No waiver by either party of any breach by the other party of any of the covenants or conditions of this Contract shall be construed as a waiver of any succeeding breach of the same or of any other covenant or condition hereof.

## 13. Dispute Resolution

Except for in rem claims arising under the admiralty laws of the United States of America, which may be brought in any court having jurisdiction over the Vessel, the parties hereby submit to the exclusive jurisdiction of the Washington courts situated in Tacoma, Pierce County, Washington, and agree that all disputes arising out of or relating to this Contract shall be resolved therein.

— End of Marine Terms —