

BIMCO Standard Bunker Contract

CONFIRMATION NOTE



Sellers and Buyers hereby confirm the bunker nomination as follows:

1. Place of Nomination		2. Date of Nomination	
3. Sellers (Cl. 1)		4. Buyers (Cl. 1)	
5. Vessel		6. Port or Place of Delivery/ETA (Cl. 5)	
7. Product(s)/Specifications (Cl. 2)			
8. Grade(s)/Quantities (Cl. 2 and Cl. 3)			
9. Price(s)/Currency (Cl. 7)			
10. Delivery Means and Additional Charges (Cl. 7)			
11. Payment (Cl. 8)			
12. Min. Hourly Pumping Rate (Cl. 9(c)(ii))		13. Compensation Rates for Delay (Cl. 9(c))	
14. Dispute Resolution Alternative Agreed (Cl. 15)			
15. Additional Clauses, if any			

Approved by
The International Bunker
Industry Association



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All terms and conditions of the "BIMCO Standard Bunker Contract", which the Buyers have had the opportunity to familiarise themselves with, and any agreed amendments thereto, including the Dispute Resolution Clause, are herewith incorporated and shall apply to the delivery of Marine Fuels contracted for above.

“BIMCO Standard Bunker Contract”

General Terms and Conditions



Preamble

These General Terms and Conditions shall apply to all deliveries contracted for unless the Sellers expressly confirm otherwise in the Confirmation Note. Each delivery shall constitute a separate contract.

1. Definitions

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

“*Marine Fuels*” means products, derived from crude oil, delivered or to be delivered to the Vessel.

“*Sellers*” means the party contracting to sell and deliver Marine Fuels, and

“*Buyers*” means the party contracting to purchase, take delivery and pay for the Marine Fuels.

“*Bunker Tanker*” means bunker barge or tanker or tank truck supplying Marine Fuels to the Vessel.

2. Grades/Quality

(a) The Buyers shall have the sole responsibility for the nomination of the grades of Marine Fuels fit for use by the Vessel.

(b) The Sellers warrant that the Marine Fuels shall be of a homogeneous and stable nature, shall comply with the grades nominated by the Buyers and be of satisfactory quality. Unless otherwise agreed in the Confirmation Note, the Marine Fuels shall in all respects comply with ISO Standard 8217:1996 or any subsequent amendments thereof.

3. Quantities/Measurements

(a) Subject to the provisions of sub-clause 6(c) and Clause 9 hereunder the quantities of Marine Fuels delivered shall be determined from the official gauge or meter of the Bunker Tanker effecting delivery, or in case of delivery ex wharf, of the shore-meter.

(b) The Buyers and the Sellers shall both have the right to be present or represented when such measurements are taken and shall be given sufficient information and access to the official gauge or meter of the Bunker Tanker or shore-meter and relevant documentation to verify the volume delivered.

(c) The Marine Fuels to be delivered under this Contract shall be measured and calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.

4. Sampling

(a) The Sellers shall arrange for a representative sample of each grade of Marine Fuels to be drawn throughout the entire bunkering operation and that sample shall be thoroughly mixed and carefully divided into four (4) identical samples. The sampling shall be performed in the presence of both the Sellers and the Buyers or their respective representatives. The absence of the Buyers or their representatives shall not prejudice the validity of the samples taken.

(b) The sample shall be drawn at a point, to be mutually agreed between the Sellers and the Buyers or their respective representatives, closest to the receiving Vessel's bunker manifold.

(c) The sample shall be drawn using a mutually accepted sampling device which shall be constructed, secured and sealed in such a way so as to prevent the sampling device and the sample being tampered with throughout the transfer period.

(d) The four (4) identical samples referred to in sub-clause 4(a) shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery

facility, product name, delivery date and place and point of sampling and seal number, authenticated with the Vessel's stamp and signed by the Sellers' representative and the Master of the Vessel or his authorised representative.

(e) Two (2) samples shall be retained by the Sellers for minimum sixty (60) days after delivery of the Marine Fuels to the Vessel or, on being requested in writing by the Buyers, for as long as the Buyers may reasonably require, and the other two (2) samples shall be retained by the Vessel.

(f) If the quantity is delivered by more than one Bunker Tanker, the sampling procedure shall be repeated as outlined in this Clause 4.

5. Delivery

(a) Delivery of the Marine Fuels shall be made day and night, Sundays and holidays included, at the port or place of delivery, subject always to the custom of that port or place.

(b) The Buyers, or their agents at the port or place of delivery, shall give the Sellers or their representatives at the port or place of delivery, 72 and 48 hours approximate and 24 hours definite notice of the Vessel's arrival and the location and time at which deliveries are required.

(c) The Sellers shall:

(i) be in possession of all permits required to comply with all relevant regulations pertaining to delivery of Marine Fuels at the port or place of delivery, and;

(ii) subject to local laws, render all necessary assistance which may be reasonably required to make connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold.

(d) The Buyers shall be responsible for making all connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold and to ensure that the hose(s) are properly connected to the Vessel's bunker manifold prior to the commencement of delivery.

(e) The Buyers shall ensure that the Vessel is in possession of all certificates required to comply with all relevant regulations pertaining to delivery of the Marine Fuels at the port or place of delivery and that the Master of the Vessel shall:

(i) advise the Sellers in writing, prior to delivery, of the maximum allowable pumping rate and pressure and agree on communication and emergency shut-down procedures;

(ii) notify the Sellers in writing prior to delivery, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Marine Fuels, and;

(iii) provide a free side to receive the Marine Fuels and render all necessary assistance which may reasonably be required to moor or unmoor the Bunker Tanker, as applicable.

6. Documentation

(a) Before commencement of delivery the Sellers shall present for written acknowledgement by the Master of the Vessel or his authorised representative, a bunker requisition form or similar document, duly signed by the Sellers or their representative, which shall contain the quantities to be delivered and all information required in accordance with ISO/TR 13739:1998 or any subsequent amendments thereof, including, in particular, the values for:

- viscosity

- density

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- sulphur content	133	before the preceding business day.	202
- flash point	134	(d) Any delay in payment and/or refund shall entitle either	203
- delivery temperature	135	party to interest at the rate of two (2) per cent. per month	204
In addition, and if available, similar information shall be	136	or any part thereof.	205
provided for vanadium, ash content, water content and	137	(e) In the event of non-payment, the Sellers reserve the	206
pour point.	138	right to pursue such legal remedies as may be available	207
(b) Once the delivery is completed and quantities	139	to them to recover the amount owed.	208
measured, a receipt shall be signed and stamped by	140		
the Master of the Vessel or his authorised representative,	141	9. Claims	209
and returned to the Sellers, or their representative, as	142	(a)(i) Any dispute as to the quantity delivered must be	210
acknowledgement of the actual volume and the actual	143	noted at the time of delivery in the receipt or in the letter	211
delivery temperature only and a duplicate copy shall be	144	of protest referred to in sub-clause 6(c). Any claim as to	212
retained by the Master of the Vessel. This receipt shall	145	short delivery shall be presented by the Buyers in writing	213
contain the following minimum information which is	146	within fifteen (15) days from the date of delivery, failing	214
warranted by the Sellers:	147	which any such claim shall be deemed to be waived	215
- delivered quantity in volume units	148	and barred.	216
- density in kg/m ³ at 15° C as per ISO 3675	149	(ii) The Buyers shall be charged for all proven additional	217
- delivery temperature	150	expenses incurred by the Sellers in connection with the	218
- flash point	151	Buyers' failure to take delivery of the full quantity of the	219
- sulphur content in % m/m as per ISO 8754	152	Marine Fuels ordered by the Buyers.	220
- viscosity	153	(b)(i) Any claim as to the quality or description of the	221
(c) In the event the Master of the Vessel is not satisfied	154	Marine Fuels must be notified in writing, as per sub-	222
with the sampling, quality, quantity or any other matter	155	clause 6(c) or promptly after the circumstances giving	223
concerning the Marine Fuels or their delivery, he shall	156	rise to such claim have been discovered. If the Buyers	224
make appropriate remarks in the receipt either detailing	157	do not notify the Sellers of any such claim within thirty	225
the complaints or referring to a separate letter of protest	158	(30) days of the date of delivery, such claim shall be	226
to be issued and delivered immediately. Verification of	159	deemed to be waived and barred.	227
the information provided under sub-clause 6(b) may be	160	(ii) In the event a claim is raised pursuant to sub-clause	228
obtained by analysis of the Vessel's retained sample.	161	9(b)(i), the parties hereto shall have the quality of the	229
		Marine Fuels analysed by a mutually agreed, qualified	230
7. Price	162	and independent laboratory. The Sellers shall provide	231
(a) The price of the Marine Fuels shall be in the amount	163	the laboratory with one of the samples retained by them	232
expressed per unit and in the currency stated in the	164	as per sub-clause 4(e). If ISO grades have been specified	233
Confirmation Note for each grade of Marine Fuels	165	the analysis shall be established by tests in accordance	234
delivered into the Vessel's tanks free delivered/ex wharf	166	with ISO Standard 8217:1996 and ISO 4259 or any	235
as applicable and stated in the Confirmation Note.	167	subsequent amendments thereof. If non-ISO grades	236
In the event the price is quoted in volume units,	168	have been agreed, tests will be made in accordance	237
conversion to standard volume shall be at 60 degrees	169	with standards corresponding to the aforementioned	238
Fahrenheit or at fifteen (15) degrees Celsius.	170	ISO standards. Unless otherwise agreed the expenses	239
(b) Any and all additional charges, if applicable, shall	171	of the analysis shall be for the account of the party whose	240
be specified in the Sellers' quotation and in the	172	claim is found wrong by the analysis.	241
Confirmation Note and shall include but not be limited	173	(c) In the event of any delay resulting from:	242
to:	174	(i) the Buyers' failure to give proper notices and/or to	243
(i) Wharfage charges, barging charges or other similar	175	comply with the notices given pursuant to sub-clause	244
charges;	176	5(b) and/or the Buyers' Vessel failing to receive Marine	245
(ii) Mooring charges or port dues incurred by the Sellers	177	Fuels at the pumping rate referred to in sub-clause	246
which are for Buyers' account, and,	178	5(e)(i), or;	247
(iii) Duties, taxes, charges or other costs in the country	179	(ii) the Sellers' failure to commence delivery of the Marine	248
where delivery takes place, for which the Sellers are	180	Fuels promptly in accordance with the Buyers' required	249
accountable but which are for the Buyers' account.	181	delivery time as notified pursuant to sub-clause 5(b)	250
		and/or the Sellers' failure to deliver the Marine Fuels in	251
8. Payment	182	accordance with the minimum hourly pumping rate	252
(a) Payment for the Marine Fuels shall be made by the	183	referred to in the Confirmation Note,	253
Buyers within thirty (30) days or, if otherwise agreed,	184	then the party suffering such delay shall be entitled to	254
within the number of days stated in the Confirmation	185	compensation from the other party for that delay, at the	255
Note after the completion of delivery.	186	agreed rates per day, or pro rata, stated in the	256
In the event payment has been made in advance of	187	Confirmation Note.	257
delivery, same shall be adjusted on the basis of the	188	(d) Neither party hereto shall be liable for indirect or	258
actual quantities of Marine Fuels delivered and additional	189	consequential loss and/or damage arising from this	259
payment and/or refund shall be made within thirty (30)	190	Contract.	260
days after the completion of delivery.	191		
(b) Payment shall be made in full, without set-off,	192	10. Risk/Title	261
counterclaim, deduction and/or discount, free of bank	193	Risk in the Marine Fuels shall pass to the Buyers once	262
charges.	194	the Marine Fuels have passed the Sellers' flange	263
(c) Payment shall be deemed to have been made on	195	connecting the Vessel's bunker manifold with the delivery	264
the date the payment is credited to the counter of the	196	facilities provided by the Sellers. Title to the Marine Fuels	265
bank designated by the Sellers. If payment falls on a	197	shall pass to the Buyers upon payment for the value of	266
non-business day, then payment shall be made on or	198	the Marine Fuels delivered, pursuant to the terms of	267
before the business day nearest to the due date. If the	199	Clause 8 hereof. Until such time as payment is made,	268
preceding and succeeding business day are equally	200	on behalf of themselves and the Vessel, the Buyers	269
near to the due date, then payment shall be made on or	201	agree that they are in possession of the Marine Fuels	270

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solely as Bailee for the Sellers. If, prior to payment, the	271	plans, the Sellers shall ensure that valid oil spill	338
Sellers' Marine Fuels are commingled with other marine	272	contingency plans approved by the relevant authorities	339
fuels on board the Vessel, title to the Marine Fuels shall	273	are in effect to the extent that is so required.	340
remain with the Sellers corresponding to the quantity of	274	(c) The Sellers hereby guarantee payment of and/or	341
the Marine Fuels delivered. The above is without	275	agree to indemnify and hold the Buyers harmless for	342
prejudice to such other rights as the Sellers may have	276	any claims, losses, damages, expenses, penalties or	343
under the laws of the governing jurisdiction against the	277	other liabilities incurred by the Buyers under the United	344
Buyers or the Vessel in the event of non-payment.	278	States Oil Pollution Act of 1990, or other state, national	345
11. Termination	279	or international oil pollution legislation, as a result of	346
Without prejudice to accrued rights hereunder, either	280	any spillage occurring whilst the Marine Fuels are being	347
party hereto shall be entitled to terminate this Contract	281	transported directly or indirectly to or from the Vessel's	348
in the event of:	282	bunker manifold except to the extent that such spillage	349
(a) any application being made or any proceedings being	283	is caused by any fault on the part of the Buyers. The	350
commenced, or any order or judgement being given by	284	Buyers shall similarly indemnify the Sellers where any	351
any court, for	285	such spillage occurs once risk in the Marine Fuels has	352
(i) the liquidation, winding up, bankruptcy, insolvency,	286	passed to the Buyers except to the extent that such	353
dissolution, administration or re-organisation or similar,	287	spillage is caused by any fault on the part of the Sellers.	354
or	288	(d) The Sellers shall use their best endeavours to ensure	355
(ii) the appointment of a receiver, liquidator, trustee,	289	that the bunker supplying company is fully insured for	356
administrator, administrative receiver or similar	290	oil spill liabilities as required by statutory rules or	357
functionary	291	regulations. If such coverage or insurance is not	358
of the other party of all or a substantial part of its assets	292	obtained by the bunker supplying company it shall be	359
(otherwise than for the purpose of a reconstruction or	293	the sole responsibility of the Sellers to establish such	360
amalgamation);	294	coverage for their account. Proof and conditions of such	361
(b) the other party suspending payment, ceasing to carry	295	coverage, whether established by the bunker supplying	362
on business or compounding or making any special	296	company or by the Sellers shall be made available to	363
arrangement with its creditors, or;	297	the Buyers at their request, as soon as practically	364
(c) any act being done or event occurring which, under	298	possible.	365
the applicable law thereof, has a substantially similar	299	(e) The Buyers hereby advise the Sellers that they enforce	366
effect to any of the said acts or events described above.	300	a company drug and alcohol policy on board their	367
12. Indemnity	301	vessels, whereby the Sellers' personnel must not be	368
(a) Without prejudice to any other claims arising	302	intoxicated at any time on board. It is understood and	369
hereunder or in connection herewith and notwith-	303	agreed that the selling, possession, distribution, use or	370
standing the provisions of sub-clause 9(d), if loss is	304	being under the influence of any controlled substance	371
suffered or a liability is incurred by either party hereto as	305	or dangerous drugs other than those medically	372
a direct result of compliance with directions given by the	306	prescribed is prohibited.	373
other party, during or for the purposes of the parties'	307	(f) The Sellers hereby advise the Buyers that they enforce	374
obligations hereunder, then the injured party is to be	308	a company drug and alcohol policy in their facilities and	375
indemnified by the other in respect of such loss or	309	on board their vessels, which the Buyers' personnel	376
liability.	310	must comply with while in such facilities or on board	377
(b) Where claims arise under sub-clause 9(c) and sub-	311	such vessels. It is understood and agreed that the	378
clause 12(a), compensation payable in accordance with	312	selling, possession, distribution, use or being under	379
sub-clause 9(c) shall be taken into account in assessing	313	the influence of alcohol or any controlled substance or	380
sums payable under sub-clause 12(a).	314	dangerous drugs other than those medically prescribed	381
13. Force Majeure	315	is prohibited.	382
Neither party hereto shall be responsible for any loss,	316	15. Dispute Resolution	383
damage, delay or failure in performance under this	317	*) (a) This Contract shall be governed by and construed in	384
Contract resulting from an act of God, or the port of	318	accordance with English law and any dispute arising	385
delivery being affected by war, civil commotion, riot,	319	out of or in connection with this Contract shall be referred	386
quarantine, strike, stoppage, lock-out, arrest, restraint	320	to arbitration in London in accordance with the Arbitration	387
of princes, rulers and people, or any other event	321	Act 1996 or any statutory modification or re-enactment	388
whatsoever which cannot be avoided or guarded against	322	thereof save to the extent necessary to give effect to the	389
by the exercise of due diligence.	323	provisions of this Clause.	390
14. Safety and the Environment	324	The arbitration shall be conducted in accordance with	391
(a) In the event of any spillage (which for the purpose of	325	the London Maritime Arbitrators Association (LMAA)	392
this Clause shall mean any leakage, escape, spillage	326	Terms current at the time when the arbitration	393
or overflow of the Marine Fuels) causing or likely to cause	327	proceedings are commenced.	394
pollution occurring at any stage of the bunkering	328	The reference shall be to three arbitrators. A party	395
operation, the Buyers and the Sellers shall jointly, and	329	wishing to refer a dispute to arbitration shall appoint its	396
regardless as to whether the Buyers or the Sellers are	330	arbitrator and send notice of such appointment in writing	397
responsible, immediately take such actions as are	331	to the other party requiring the other party to appoint its	398
reasonably necessary to effect clean up and which shall	332	own arbitrator within 14 calendar days of that notice and	399
always be conducted in accordance with such local laws	333	stating that it will appoint its arbitrator as sole arbitrator	400
and regulations which may compulsorily apply.	334	unless the other party appoints its own arbitrator and	401
(b) Where it is a compulsory requirement of the law of	335	gives notice that it has done so within the 14 days	402
the port or place of delivery of the Marine Fuels that the	336	specified. If the other party does not appoint its own	403
Sellers shall have in place their own oil spill contingency	337	arbitrator and give notice that it has done so within the	404
		14 days specified, the party referring a dispute to	405
		arbitration may, without the requirement of any further	406
		prior notice to the other party, appoint its arbitrator as	407

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sole arbitrator and shall advise the other party 408
accordingly. The award of a sole arbitrator shall be 409
binding on both parties as if he had been appointed by 410
agreement. 411
Nothing herein shall prevent the parties agreeing in 412
writing to vary these provisions to provide for the 413
appointment of a sole arbitrator. 414
In cases where neither the claim nor any counterclaim 415
exceeds the sum of US\$50,000 (or such other sum as 416
the parties may agree) the arbitration shall be conducted 417
in accordance with the LMAA Small Claims Procedure 418
current at the time when the arbitration proceedings are 419
commenced. 420
*) (b) This Contract shall be governed by and construed in 421
accordance with Title 9 of the United States Code and 422
the Maritime Law of the United States and any dispute 423
arising out of or in connection with this Contract shall 424
be referred to three persons at New York, one to be 425
appointed by each of the parties hereto, and the third by 426
the two so chosen; their decision or that of any two of 427
them shall be final, and for the purposes of enforcing 428
any award, judgement may be entered on an award by 429
any court of competent jurisdiction. The proceedings 430
shall be conducted in accordance with the rules of the 431
Society of Maritime Arbitrators, Inc. 432
In cases where neither the claim nor any counterclaim 433
exceeds the sum of US\$50,000 (or such other sum as 434
the parties may agree) the arbitration shall be conducted 435
in accordance with the Shortened Arbitration Procedure 436
of the Society of Maritime Arbitrators, Inc. current at the 437
time when the arbitration proceedings are commenced. 438
*) (c) This Contract shall be governed by and construed in 439
accordance with the laws of the place mutually agreed 440
by the parties and any dispute arising out of or in 441
connection with this Contract shall be referred to 442
arbitration at a mutually agreed place, subject to the 443
procedures applicable there. 444
(d) Notwithstanding (a), (b) or (c) above, the parties may 445
agree at any time to refer to mediation any difference 446
and/or dispute arising out of or in connection with this 447
Contract. 448
In the case of a dispute in respect of which arbitration 449
has been commenced under (a), (b) or (c) above, the 450
following shall apply:- 451
(i) Either party may at any time and from time to time 452
elect to refer the dispute or part of the dispute to 453
mediation by service on the other party of a written notice 454
(the “Mediation Notice”) calling on the other party to agree 455
to mediation. 456
(ii) The other party shall thereupon within fourteen (14) 457
calendar days of receipt of the Mediation Notice confirm 458
that they agree to mediation, in which case the parties 459
shall thereafter agree a mediator within a further fourteen 460
(14) calendar days, failing which on the application of 461
either party a mediator will be appointed promptly by the 462
Arbitration Tribunal (“the Tribunal”) or such person as 463
the Tribunal may designate for that purpose. The 464
mediation shall be conducted in such place and in 465
accordance with such procedure and on such terms as 466
the parties may agree or, in the event of disagreement, 467
as may be set by the mediator. 468
(iii) If the other party does not agree to mediate, that fact 469
may be brought to the attention of the Tribunal and may 470
be taken into account by the Tribunal when allocating 471
the costs of the arbitration as between the parties. 472
(iv) The mediation shall not affect the right of either party 473
to seek such relief or take such steps as it considers 474
necessary to protect its interest. 475
(v) Either party may advise the Tribunal that they have 476
agreed to mediation. The arbitration procedure shall 477
continue during the conduct of the mediation but the 478
Tribunal may take the mediation timetable into account 479
when setting the timetable for steps in the arbitration. 480
(vi) Unless otherwise agreed or specified in the mediation 481
terms, each party shall bear its own costs incurred in 482
the mediation and the parties shall share equally the 483
mediator’s costs and expenses. 484
(vii) The mediation process shall be without prejudice 485
and confidential and no information or documents 486
disclosed during it shall be revealed to the Tribunal 487
except to the extent that they are disclosable under the 488
law and procedure governing the arbitration. 489
(Note: The parties should be aware that the mediation 490
process may not necessarily interrupt time limits.) 491
*) Sub-clauses (a), (b) and (c) are alternatives; if this 492
Clause has been incorporated into the Contract without 493
an express choice of law and arbitration forum chosen 494
from sub-clauses (a), (b) and (c), then sub-clause (a) of 495
this Clause shall apply. Sub-clause (d) shall apply in all 496
cases. 497