

PETROMIL

Con energía todo se puede



General Terms And Conditions Of Sale And Delivery Of Marine Fuels (Gtc)

MAY 2019

1. APPLICATION & DEFINITION

1.1. These terms and conditions for the sale of PETROMIL marine fuels are applicable to each and every sale of marine fuel by, located at Km 9 Vía Mamonal Zona Franca la Candelaria, Cartagena, Colombia, hereinafter referred to as "Seller" to all parties purchasing the product hereinafter referred to as "Buyer". These terms and conditions supersede any prior terms and conditions or general conditions for sale issued by Seller and shall override any other or different terms or conditions stipulated, incorporated or referred to by Buyer, whether in its purchase order or in any negotiations, unless otherwise agreed to in a subsequent writing instrument.

1.2. Marine fuel is defined as commercial grades of bunker fuel oil and/or marine gas oil or their mixtures offered at the time and place of delivery by Seller.

2. PRICE

2.1. The applicable price shall be the one agreed in the exact day of nomination, for the grade of Marine Fuel, at port to be delivered.

2.2. Seller reserves the right to unilaterally cancel this stem if vessel, for any reason, has not been supplied after 8 running days from nomination date.

3. NOMINATIONS

3.1. Buyer shall have the sole responsibility for the selection and acceptance of marine fuels. The quality of each grade of marine fuel shall be the usual production quality of that grade being sold by Seller at the time and place of delivery. Buyer shall

have the sole responsibility for any determination of compatibility of marine fuel purchased from PETROMIL with marine fuel already on board the vessel.

3.2. Buyer shall nominate in writing, at least three (3) days in advance, advising: Buyer's full name, vessel's name, agent, delivery date, bunkering port, grade, quantity of marine fuel, and details for invoicing.

3.3. Nominations will be considered valid only after "STEM CONFIRMED" issued by Seller.

3.4. Buyer, Master, or their agents shall give Seller immediate notice of any change in the delivery date. In case of vessel's failure to arrive at the delivery date stated in the STEM CONFIRMED, Seller will make their best efforts to reschedule vessel's supply, but shall not be responsible for any delay, nor for any damage.

3.5. Buyer or Buyers' agents or representatives at port or place of delivery shall give Seller or Sellers' local representatives, 72 / 48 / 24 / 12 hours' notice of arrival and the exact location and time where and when deliveries are required.

4. DELIVERY

4.1. Buyer shall at its own expenses provide clear and safe berth alongside vessel's receiving lines and shall render all other necessary assistance to the barge effecting delivery on a 24-hour per day basis.

4.2. Seller shall have the right to require Buyer to shift vessel to another berth or anchorage, and to deliver the Marine Fuel

by using extra barges whenever it is deemed necessary by Seller, depending on the barges capacity and the prior commitments of available barges or existing facilities.

4.3. Buyer shall make all connections and disconnections between the delivery hose and vessel's intake pipe and shall be responsible to ensure that the hose is properly connected to the vessel's manifold prior to the commencement of delivery. Buyer shall furnish steam, if necessary, and provide sufficient tankage equipment to receive promptly all deliveries.

4.4. The delivery shall be made during normal working hours unless required and available at other times (holidays, Saturday afternoons and Sundays) and permitted by port regulations, in which event Buyer shall reimburse Seller for any and all additional expenses incurred in connection therewith, including overtime.

4.5. Buyer shall ensure that vessel will be in full compliance with all applicable international conventions, all applicable laws, regulations and/or other requirements of the country of the port and/or place of delivery and all applicable regulations and/or requirements of any terminal or facilities in such port or place where vessel shall be supplied. Buyer shall also instruct Master of the nominated vessel as follows:

a) to be fully aware of Seller's General Terms and Conditions of Sale and Delivery of Marine Fuels;

b) to advise Seller in writing, prior to delivery, of maximum allowable pumping rate

and pressure. Master also has to acknowledge the communication and emergency shut-down procedures; 4.6. Buyer shall notify Seller in writing at moment of the enquire and nomination, of any special condition, difficulty, peculiarity, deficiency or defect regarding vessel's performance or vessel's particulars which may affect the supply;

4.7. Letter of Protest shall be issued in case Master does not agree with the Marine Fuel sampling, quality, quantity or any other matter concerning the delivery. Remarks on the "Bunker Delivery Note – BDN" are not allowed.

4.8. Vessels will be bunkered as promptly as possible, but Seller shall not be liable for demurrage, detention nor any other nor different damages due to any delay caused by weather (whether usual or unusual), congestion at the terminal or prior commitments of available barges or existing facilities, howsoever caused.

5. QUALITY AND QUANTITY DETERMINATIONS

5.1. The quality and quantity of the marine fuel shall be determined by Seller's personnel using Seller's equipment according to Seller's official methods. Buyer may be present or represented when such quality determinations and quantity measurements are taken, but whether or not Buyer or Buyer's representative accepts or declines such invitation, Seller's determination of quality and quantity shall prevail and be binding.

5.2. Seller shall draw two representative sealed samples of each of marine fuel delivered. Buyer may attend or be represented during such sample takings

in which Buyer shall countersign each sample and may retain one sealed and countersigned sample. The sealed samples shall be deemed conclusive and binding as to quality of the delivered marine fuel.

5.3. Seller shall draw an additional third sealed sample from Seller's shore facilities or barge manifold, exclusively for MARPOL (ANNEX VI) regulation. This MARPOL sample is not valid for claim or any other kind of disputes.

5.4. In case of disputes regarding the quality of product, Buyer may require to have Seller's official sealed sample analyzed by a qualified and independent laboratory. Seller will suggest at least 02 (two) alternative laboratories, one of which should be chosen by Buyer to carry out the analysis. Vessel's samples will not be accepted as an evidence of the quality of delivered product.

5.5. Seller or Seller's agent may inspect Buyer's vessel on the event of any complaint, whether at the Buyer's request or otherwise. Such inspection or any analysis made in connection therewith shall be made entirely without any obligation on behalf of Seller to consider or act upon any claim or complaint by Buyer or otherwise and shall be entirely without prejudice to Seller's position.

5.6. The specification of the Marine Fuel delivered shall be in accordance to the description stated in the STEM CONFIRMED. No quality certificates shall be issued to vessel or vessel's representative.

6. PAYMENT

6.1. Buyer shall make payment without

any deduction, discount or setoff whatsoever in U.S. dollars to Seller's account at a bank designated by Seller. Payment shall be deemed to have been made on the date when full payment has been credited to Seller's bank account and Seller's head office has been duly informed that payment was received.

6.2. Buyer may not at any time or for any reason whatsoever assert a set off or invoke any counterclaim or other right as basis for withholding payment.

6.3. Unless otherwise agreed in the "STEM CONFIRMED", payment shall be made prior to delivery. Seller is entitled to request security for payment and shall not be under any obligation or liability to make any delivery until either payment or security has been provided and Seller's head office has been duly informed of the receipt of said payment or security.

6.4. In case of marine fuel being supplied on a credit basis, full payment shall be received by the due date specified in Seller's invoice. If the established credit period expires in a non-working day, Buyer shall arrange payment to be made until the last working day within the applicable credit period. Seller will provide Buyer in due course by an ordinary mail with a commercial invoice and a copy of a bunker delivery receipt.

6.5. Seller's invoice shall be based on advice as to the quantity delivered and on other charges and surcharges if incurred and payment made pursuant to 5.1 above shall be subject to such subsequent adjustment as may be necessary on receipt by the Seller of further delivery details.

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6.6. Payment terms shall be as set out in the Seller's current GTC. Buyer shall periodically provide Seller with the

financial information or security deemed necessary to support any credit extension. If during the term of this contract, the financial capacity of the Buyer becomes impaired or unsatisfactory in the sole judgment of Seller, advanced cash payment or satisfactory security shall be provided by the Buyer on demand by Seller and shipments/deliveries may be withheld until such payment or security is received and considered valid by Seller.

6.7. If buyer is in default of full payment, or if its financial condition in the Seller's opinion becomes impaired, or if proceedings in bankruptcy, creditors' agreement or insolvency are instituted by and or against Buyer, or in the case of Buyer's liquidation or dissolution, any and all postponed or deferred payments including interest thereon, shall become immediately due and payable and Seller reserves the right to offset same against any debts to buyer or its affiliates. Exercise of any of such rights shall be without prejudice to Seller's rights to recover damages or losses sustained and resulting from any default by Buyer. Seller shall also be entitled to suspend deliveries hereunder.

6.8. Seller reserves the right to modify or terminate any credit arrangement without notice and to demand payment in advance, further security or early payment of invoices prior to accepting any marine fuel nomination. The amount due and payable by Buyer hereunder shall become a maritime lien on the vessel to which the marine fuel is delivered, and taking of any additional security measures by Seller shall not operate as a waiver of this provision. Buyer agrees that Seller may file any claim against Buyer regarding any amounts due and owing to

Buyer's affiliates.

6.9. Without limitation to the foregoing or to the Seller's other rights under the contract or otherwise the Seller shall have the right to require, in respect of any payment not made by the due date, the payment by the Buyer to the Seller of interest thereon at 1.5 % per thirty days period, and pro rata for part thereof, such interest to run from the due date until the date payment is received by the Seller's bank.

7. TITLE & RISK

7.1. All deliveries shall be deemed complete and title and risk of losses shall pass to Buyer when the marine fuel has passed the flange connecting the delivery facilities provided by Seller. Thereafter, Seller shall in no event be responsible or liable for any loss or damage.

8. LIABILITY

8.1. Seller shall not be liable for any damage, which the Buyer or any third parties sustain due to the alleged negligence or misconduct of Seller's representatives in the execution of the delivery.

8.2. Seller does not warrant nor shall be deemed to warrant the safety of any place(s) or facility(ies) where Buyer's vessel loads and assumes no liability in respect thereof, except for loss or damage evidently caused by its failure to exercise reasonable care.

8.3 Seller shall not be liable for any indirect or consequential losses of whatsoever nature, irrespective of negligence, defect, misconduct or breach of duty (statutory or otherwise), arising from the performance

or non-performance of any obligations under this GTC.

8.4. Limitation of Liability – Seller's maximum aggregate liability to the Buyer under or in connection with any delivery howsoever arising shall not exceed in aggregate the price payable by the Buyer for such delivery.

9. DELAYS

9.1. If Buyer, its agents, servants, vessel officers or vessel crew causes any delay to Seller's facilities in performing deliveries of fuel oils, Buyer shall pay demurrage to Seller at Seller's established rates, according to barges and existing facilities cost and reimburse Seller for any and all other expenses in connection therewith.

10. FORCE MAJEURE

10.1. Seller shall not be in breach of its obligations hereunder to the extent that performance is prevented, delayed or (in the sole but reasonable judgment of Seller) made substantially more expensive as a result of any one or more of the following contingencies:

- a) any cause beyond Seller's reasonable control.
- b) labor disturbance, whether involving Seller's employees or otherwise and regardless whether the disturbance could be settled by acceding to the demands of a labor group.
- c) compliance with a request or order of any government authority or person purporting to act there fore.

d) shortage in raw material, transportation equipment, manufacturing capacity, or marine fuel from Seller's then contemplated source of supply, thereof or generally, not demonstrated by Buyer to be due to Seller's lack of diligence.

11. CLAIMS

11.1. Buyer waives any claims against Seller with respect to any quantity dispute or delay in operation, unless Buyer or Buyer's representative issue a written notice, by a Letter of Protest, to Seller's representative at the time of loading. Seller shall also be notified in writing of any claimed defect in the quality immediately after such alleged defects are verified. Each of the foregoing preliminary notices shall be followed by a formal written notice of claim to Seller containing all details necessary to allow evaluation of the claim.

If buyer fails to give any initial notice or if the formal written notice is not received by the seller within 21 (twenty one) running days after delivery of the marine fuel to vessel, any claim shall be conclusively deemed to have been waived.

11.2 In case of quality claim being presented within 21 (twenty one) calendar days after the delivery date, the official sealed sample shall be jointly analyzed until 90 (ninety) calendar days after the delivery date. If the official sealed sample is not jointly analyzed until such deadline quality claim shall be conclusively deemed to have been waived.

11.3. If vessel arrives out of the delivery date or if vessel cannot receive bunkers on the delivery date agreed on the stem confirmation, Seller reserves the right to evaluate whether claims will be

considered.

12. WAIVER

12.1. No waiver by either party of any breach of any of the terms and conditions herein contained to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or of any other term or condition.

13. INDEMNITY

13.1. Buyer shall indemnify Seller against any and all damages and liabilities arising out of or resulting from any act(s) or omission(s) of Buyer, its servants, agents, vessel officers or vessel crew in connection with marine fuel delivery. Indemnification shall include all costs, reasonable attorneys' fees and other damages, including but not limited to, the cost of compelling Buyer's compliance with these terms and conditions.

13.2. Notwithstanding anything to the contrary in this Agreement each party shall bear full responsibility, without limit, for gross negligence or willful misconduct and in no event will a party be required to release or indemnify the other party for gross negligence or willful misconduct of itself and/or its agents, representatives, employees and/or contractors.

14. ASSIGNMENTS

14.1. Seller may assign its obligations in whole or in part or may cause any or all of its obligations hereunder to be performed by an affiliate.

14.2. Buyer shall not assign any right nor delegate any obligation under this GTC without Seller's prior written consent.

15. ENVIRONMENTAL PROTECTION

15.1. If a spill occurs while marine fuels are being delivered, Buyer shall promptly take such action as is reasonably necessary to remove the spilled marine fuels and to mitigate the effects of such spills. Buyer shall cooperate and render such assistance as is required by Seller in the course of such action. All expenses, claims, losses, damages, liabilities and penalties arising from such spills shall be borne by the party that caused the spill, due to a negligent act or omission. If both parties have acted negligently, all expenses, claims, damages, liabilities and penalties shall be divided between the parties in accordance with the comparative degree of negligence. The burden of proof to show Seller's negligence shall be Buyer's responsibility. Buyer shall give Seller all documents and other information concerning any spill, any program for the prevention thereof that are required by Seller or required by law or regulation applicable at the time and place of delivery.

16. NOTICES

16.1. Unless otherwise provided, all notices, statements and further relevant communications, to be sent and or submitted hereunder by both parties, shall be only considered sufficiently transmitted and received if in writing and sent by post, or email to the previously designated address by Seller and Buyer. In case of any eventual change on the designated address, it shall be necessary to notify in writing, not less than 15 (fifteen) days, the other party.

17. CANCELLATION & BREACH

17.1. If, by virtue of the occurrence of any

of the events referred to in Section 10.1 above, there is, in Seller's sole discretion, such a shortage of Seller's supply of the quality and grade of marine fuel or other petroleum products sold hereunder at the loading ports designated herein that Seller is unable to meet its own planned requirements and those of its subsidiary and affiliated companies and its requirements for sales to other customers of all kinds or otherwise, Seller may without liability withhold, reduce, suspend or cancel deliveries hereunder to such extent as Seller considers necessary due to the circumstances.

17.2. Notwithstanding the provisions of Sections 10.1 and 17.1, Buyer shall not be relieved of any obligation to make payments hereunder in U.S. dollars for all marine fuel delivered hereunder.

17.3. Under no circumstances shall Seller be obligated to purchase or acquire marine fuel to replace supplies lost as a result of any of the events enumerated in Section 10.1. Should Seller thereafter purchase or otherwise acquire additional marine fuel of the same grade and quality, whether from a current supplier or otherwise, Seller shall not be required to allocate any such marine fuel to Buyer.

17.4. Performance shall be excused as provided herein even though the occurrence of the contingency in question may have been foreseen or be foreseeable at the time of nomination acceptance or subsequently become foreseeable.

18. CONDUCT OF THE PARTIES

18.1. Buyer and Seller each agree and undertake that in connection with the

contract, they will each respectively comply with all applicable laws, rules, regulations, decrees and/or official government orders of Brazil relating to antibribery and anti-money laundering.

18.2. Each party represents, warrants and undertakes to the other that they shall not, directly or indirectly, pay, offer, give or promise to pay or authorize the payment of, any monies or other things of value to: (i) a Government Official; (ii) any director, officer, employee, or agent/ representative of an actual or prospective counterparty, supplier or customer of the Buyer or Seller; or (iii) any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities

18.3. Each party further agree that each shall establish and maintain appropriate business standards. Each party shall exercise reasonable care and diligence to avoid any real or apparent impropriety or to prevent any actions or conditions which could result in a conflict with any other party's best interests with respect to this Agreement. This obligation shall apply to the activities of the employees and agents of one party in their relations with the employees and agents of any other party, and of third parties who perform or assist in the performance of services under this contract. The parties' effort shall include, but not be limited to, establishing precautions to prevent their respective employees agents or representatives or include, but not limited to, establishing precautions to prevent their respective employees agents or representatives from making, receiving, providing or offering substantial gifts, extravagant entertaining, payments, loans or other considerations for the purpose of influencing any individual to

act contrary to any party's best interests with respect to this contract.

18.4. Each party may terminate the contract forthwith upon written notice to the other Party at any time, if in its reasonable judgment the other Party is in breach of any of the representations, warranties or undertakings in Clauses 18.1 or 18.2 above.

19. ADDITIONAL PROVISIONS

19.1. No claim shall be made and no recovery shall be had hereunder for any indirect special, incidental or consequential damages.

19.2. This GTC shall be governed by the Colombian law applicable, to the exclusion of any other legal system. Each party expressly submits itself to the jurisdiction of the Colombian courts without prejudice to Seller's right to enforce maritime liens in any appropriate court.

19.3. There is no implied warranty of workmanlike performance with respect to this GTC other than services provided by Seller's employees in conjunction with the delivery of marine fuels as provided for in this GTC.

19.4. This GTC contains the entire agreement of the parties with respect to the subject matter hereof and there are no other promises, representations or warranties affecting it and it shall not be modified or amended in any way except in writing by the parties.