



**canden**  
marine fuel services



# Terms and Conditions

Canden Marine Fuel Services Ltd.

282 Elm Street, St. Lambert, Quebec, Canada J4P 1W3

[canden-mtl.com](http://canden-mtl.com)

## 1. TERMS

- (a) These Terms & Conditions of Sale (TCS) substitute any previous terms and conditions of the Seller and shall apply to every Contract for the sale of any Products whether or not reference shall be made to them in any quotation or Order Confirmation.
- (b) No variation to these TCS shall be binding unless agreed in writing by the Seller. The Order Confirmation shall prevail over the TCS in the event of a conflict between them, but to the extent of the conflict only and in all other respects the TCS shall apply.
- (c) These TCS shall have effect from 1<sup>st</sup> of December 2019 being known hereafter as the Effective Date.

## 2. DEFINITIONS

The following words or phrases shall have the meanings prescribed below throughout these TCS and in any Quotation, Order Confirmation or other document issued by the Seller:

- “Agent” means any entity acting on behalf of the Buyer, or the Vessel and/or both including but not limited to a Vessel’s manager, port agent or purchasing agent.
- “Arrival Notice” means a notice sent to the Seller by the Buyer advising: 1) Vessel’s name; 2) Call sign, 3) Name of Owners, 4) Flag, 5) Agents, 6) Length Overall, 7) Gross tonnage, 8) Net Tonnage, 9) Deadweight, 10) Ex-Names, 11) ETA, 13) Requirements.
- “Buyer” means the entities or persons described in the Order Confirmation who contract with the Seller to buy Products, which may include the Vessel’s owner, the Vessel’s technical or commercial managers, the Vessel’s operators/charterers, or a trader who is buying the Products from the Seller and selling such to the owner/managers/operator/charterer).
- “Bunker Surveyor” means an independent surveyor appointed in accordance with these TCS for the determining the quantity of bunkers delivered on board the Vessel.
- “Contract” means any contract between the Buyer and the Seller and incorporating these TCS and the Order Confirmation that is issued by the Seller for each supply of Products.
- “Designated Bank Account” means the bank account identified in the Seller’s invoice for the receipt of payments.
- “Related Products” means all Products supplied by the Seller which are not Bunkers.
- “Bunkers” means oil products supplied for use as fuel in ships’ engines and generators.
- “Order Confirmation” means a confirmation in writing issued to the Buyer by the Seller confirming the terms, conditions and quantities of a supply, and said confirmation resulting in a binding Contract.
- “Price” means (i) the price stated in the Order Confirmation for the Products; and (ii) any applicable taxes, VAT or other duties as may be due from the Buyer to the Seller and whether or not identified in the Order Confirmation; and (iii) any delivery costs.
- “Products” means the Bunkers and/or Related Products the subject of any Contract.
- “Seller” means the entity that appears as the seller in the Contract.
- “Supply Equipment” means the barges, tankers, trucks, pipes and pumps used to deliver the Products to the Vessel, whether owned by the Seller or the physical supplier.
- “Supply Place” means the place where the Products are delivered or intended to be delivered.
- “Bunker Delivery Receipt or BDR” means a document issued by or on behalf of the Seller at the point of delivery recording the quantities and specification of the Bunkers delivered to a Vessel.
- “Vessel” means the Vessel to which the Products are delivered or intended to be delivered and where the context requires reference to Vessel shall mean the Master, Chief Engineer or other member of the crew.

## 3. THE ORDER

- (a) No binding Contract shall be formed until the Seller sends the Order Confirmation to the Buyer.
- (b) Where a Contract is formed through any party acting as an Agent, and whether or not the principal is disclosed or undisclosed, and the Agent HAS notice of the existence of these TCS then the Agent shall be jointly and severally liable for, and guarantee the proper performance of, all the obligations of the Buyer under a Contract as if it were itself the Buyer, and shall be deemed as a principal and not only acting as an Agent.
- (c) It is agreed that all orders of all Products are considered to be emanating from the Master of the vessel, even if relayed by the Buyer to the Seller and even if no written request for the Master of the vessel exists.
- (d) The Marine Fuel shall be used exclusively for the operation of the machinery of the Vessel identified in the

Contract.

#### 4. ARRIVAL NOTICE

- (a) The Buyer shall provide Arrival Notices as stated herein, and a failure to do so shall entitle the Seller to cancel the Contract.
- (b) Within 24 hours of the Contract being concluded the Buyer shall submit to the Seller a written Arrival Notice confirming the Vessel's arrival in accordance with the Order Confirmation and further Arrival Notices 3, 2 and 1 days before the Vessel's arrival at the Supply Place. Where the Contract is concluded less than 3 days from intended delivery then Arrival Notices shall be provided daily from the date of the Contract.
- (c) If the Vessel fails to arrive within (i) 12 hours of the original delivery period; or (ii) within 2 hours of the arrival time as stated in the last Arrival Notice the Seller shall have the right to revise the Price and the date of supply and other terms and alternatively shall have the right to cancel the Contract.

#### 5. DELIVERY

- (a) The Buyer shall be responsible for ensuring that the Vessel has all necessary permits and complies with all regulations applicable to the receipt, handling and use of the Products and shall comply with all requests for information from the Seller, the Seller's agents or sub-contractors and from any port agent appointed in accordance with clause 5(i). Failure to do so shall entitle the Seller to cancel the Contract.
- (b) The Buyer is responsible for the delivery hose connection and disconnection and for providing necessary assistance and equipment and a free, safe and always accessible side for the delivery of Bunkers and Related Products. The supply barge Master shall have absolute discretion in determining whether mooring alongside the Vessel is safe and where it is not possible delivery may be delayed or cancelled by the Seller and all costs incurred will be for the Buyer's account.
- (c) The Seller does not guarantee the time of delivery or the pumping rate at which the Bunkers are to be delivered to the Vessel. The Seller shall use reasonable endeavors to effect delivery promptly in accordance with the agreed timings but the Seller shall not be liable for any consequences, losses or damages including demurrage howsoever caused suffered by the Buyer arising from (a) congestion affecting the physical supplier of Products at the delivery facilities, (b) prior commitments of available barges, (c) local customs, pilots, port or other authorities or (d) shortage of Products of the required specification or (e) failure or under-performance of the Supply Equipment, or (f) any circumstances out of the direct control of the Seller.
- (d) Where supply is made by ship-to-ship transfer, any damage caused by contact, collision, swell or any other weather or sea related condition shall be between the Buyer and the owners of the supply barge. The Seller shall not be liable for such damages and the Buyer shall indemnify the Seller against any claims arising out of such incident.
- (e) Lightering/barging charges shall be for the account of Buyer, including mooring, unmooring and port dues incurred. If the Buyer causes delay in the supply of Products, it will be liable for all demurrage or additional expenses incurred.
- (f) The Buyer shall be responsible for any costs resulting from its failure to take delivery of the quantities specified in the Order Confirmation, including but not limited to any loss of profit and any loss on the resale of the Bunkers and the cost of the return transport, demurrage on the barge or trucks, and costs of storage or sale of the Bunkers.
- (g) The Buyer is obliged to keep Bunkers supplied pursuant to a single Contract segregated from any other bunker fuels. The Buyer is obliged to keep all other Products in such manner that they can be identified to the Contract.
- (h) In the event that the supply is delayed by the Buyer for whatever reason, or if after the supply, the Vessel fails to leave the Supply Place immediately, the Buyer shall indemnify the Seller for any loss or damage suffered by the Seller resulting from such delay, including any claims incurred or arising due to the delay in the supply of other vessels.
- (i) Where it is mandatory that a port agent be appointed to facilitate the delivery of Bunkers the Seller or the Seller's representative may appoint a port agent strictly on the Buyer and Vessel's behalf. The Buyer and the Vessel shall be jointly and severally liable for the port agent's fees and for any expenses, charges, taxes, duties or fines incurred by the port agent on behalf of the Vessel and Buyer.

#### 6. PRICE/ PAYMENT/ RISK AND PROPERTY

- (a) The Buyer shall pay the Price as provided by the Contract. The Seller shall issue an invoice following delivery of the Products, but the Buyer's liability to pay the Price shall exist independently of any such

- invoice.
- (b) Any additional costs incurred by the Seller arising due to any change in the Seller's contemplated source of supply or otherwise shall be added to the Price, if necessary by raising an additional or revised invoice.
  - (c) Where the Buyer buys on the basis that it is entitled to exemptions for tax and/or duty then it is the Buyer's obligation to properly complete and submit to the Seller and the relevant tax authority as may be necessary any required declaration and to establish its entitlement to such exemptions. Where a relevant tax authority may deny exemption or alter its position in relation to the Buyer's tax status and entitlement to tax and/or duty free sales such that this gives rise to additional financial obligations to the Seller then all such sums shall form part of the Price and the Buyer shall pay them to the Seller upon its first written demand.
  - (d) All sums payable pursuant to a Contract shall constitute a lien on the Vessel.
  - (e) The Buyer shall become liable for the Bunkers and risk in the Bunkers shall pass immediately upon their passing the supply barge/tanker manifold. The Buyer shall become liable for Related Products and risk in them shall pass immediately upon them passing the Vessel's rail or being delivered to the designated place of delivery.
  - (f) Title to the Products shall pass only when the Products have been fully paid for by the Buyer and all other sums due by the Buyer to the Seller under any Contract have been paid and until such time the Seller shall retain title to the Products.
  - (g) Unless otherwise agreed the Buyer shall make payment by bank transfer in United States Dollars, free of bank charges, to the Designated Bank Account and only payment to that account of all sums due shall release the Buyer from its obligation to make payment to the Seller.
  - (h) The Buyer shall not claim any discount or deduction, and neither shall it withhold payment either in part or in full by reason of any set-off, counter-claim or for any other reason, whether relating to the Contract or past agreements or Contracts.
  - (i) If the Buyer withholds payment or sets-off any sums for any reason whatsoever, including by reason of an alleged quality or short delivery claim, or fails to pay any sum due within the agreed time, then the Buyer shall pay compensation to the Seller equivalent to 20% of the sum due. This compensation represents a reasonable pre-estimate of the Seller's loss, by reason of additional management time, the loss of opportunity to reinvest the missing funds and currency exchange fluctuations and is payable in addition to interest and the primary sums due.
  - (j) In the absence of alternative agreement recorded in the Order Confirmation the Price shall be due immediately upon delivery of the Products, or in all other cases immediately upon an invoice being issued.
  - (k) Where it is agreed that payment is deferred beyond that stated in clause 6(i) the Seller, shall upon giving written notice, be entitled to withdraw such credit and demand immediate payment. The Seller does not need to provide reasons, but may, for example and without limitation, withdraw credit if there is reason to believe that the Buyer's (or companies related to the Buyer) financial position has deteriorated or the Seller has cause to alter its assessment of the credit risk. If credit is withdrawn the Seller may cancel an order without recourse by the Buyer or withhold delivery until payment of the Price is made.
  - (l) The Seller shall use reasonable endeavors to provide a BDR with its invoice but the Buyer shall not be entitled to insist upon provision of a BDR before making payment.
  - (m) The Buyer shall pay interest to the Seller at the rate of two per cent per month (compounded monthly) on all sums that remain unpaid from the date that they became due. Where the Seller issues an interest note this shall be binding as to the interest due. The Buyer's obligation to pay interest exists independently of any interest note that may be issued.
  - (n) Allocation of payments from the Buyer shall be at the Seller's sole discretion and regardless of any allocation stipulated by the Buyer. The Seller shall be entitled to extinguish claims for compensation, interest, legal fees or any other sums due from the Buyer in priority to invoices for Products and regardless of the date that any obligation arose.
  - (o) In the event that the Seller incurs costs (including but not limited to lawyers' fees, attestation expenses, translation costs or fees of third-party debt collection agencies) in seeking to collect overdue sums the Buyer shall indemnify and pay to the Seller upon demand such costs.

## 7. QUALITY

- (a) The Buyer is responsible for selecting and nominating the grade of Products.
- (b) Bunkers shall conform to the prevailing ISO Standard specifications or where no such Bunkers are available at the Supply Place the Bunkers shall be of the same quality generally offered for sale at the Supply Place for the grade specified by the Buyer.

## 8. QUANTITY

- (a) The quantity of Bunkers delivered shall be ascertained by measurements taken at the supply tanks or shore tanks or by their meters, by the supplier's personnel and shall be conclusive evidence of the quantities delivered. Those measurements shall be recorded in the BDR to be signed by a representative of the Buyer which shall be a binding record whether or not signed by the Vessel provided that the Vessel was given opportunity to do so. Subject only to the following clause, measurements by any other means shall not be binding on the Seller.
- (b) The Buyer may request an independent surveyor to measure the quantity of delivered Bunkers. Any such surveyor shall be appointed by the Seller or jointly appointed by both the Buyer and the Seller and shall only measure the supply tanks or shore tanks. The measurement carried out by the surveyor in accordance with this clause shall be conclusive evidence of the quantities delivered and shall be recorded in the BDR to be signed by the Vessel. The party requesting the survey shall pay the surveyor's expenses and costs.
- (c) Both the Seller and Buyer shall have the right to witness the measurement operations. Failure by the Buyer to sign the BDR to verify the measurement shall not alter the binding nature of the quantities as recorded.

## 9. SAMPLING

- (a) The Seller shall procure for samples to be drawn at delivery of the Bunkers. Unless otherwise agreed the samples shall be drawn from a point and in a manner chosen by the Seller or its representatives in accordance with the customary sampling procedures at the Supply Place.
- (b) The sampling shall be performed in the presence of the Buyer, the Vessel and Seller, but the absence of the Buyer or the Vessel during all or any part of the sampling process shall not prejudice the validity of the samples.
- (c) Samples will be sealed, labelled and signed by both Seller and Buyer/Vessel. Two samples shall be retained by the Buyer or its representatives, one of these shall be the MARPOL compliant sample. The remaining samples shall be retained by the Seller.
- (d) In the event of a quality dispute one of the samples retained by the Seller with a seal number reflected on the BDR, shall be tested by an independent laboratory mutually appointed by the Buyer and Seller. Testing shall be limited to analysis of the disputed properties, which must be amongst the properties that formed part of the Contract specification. The results shall be the conclusive evidence of the quality of the Bunkers supplied. Where standard specifications are being given or referred to, tolerances in accordance with ISO 4259 in respect of reproducibility or repeatability in quality are accepted.
- (e) If the Seller and the Buyer cannot agree on an independent laboratory or if the Buyer fails to reply to the Seller's notice hereof within 7 days from receipt of such notice, the Seller can at its sole discretion decide which laboratory to perform the analysis, which shall be final and binding for all parties.
- (f) Where the seal of any sample has been removed or tampered, or where the seal number does not correspond with those recorded in the BDR that sample have no evidential value.

## 10. CLAIMS

- (a) Any dispute regarding the quantity of Bunkers shall be notified to the Seller by telephone as well as in writing by the Buyer or Vessel immediately and while the delivery hoses are still connected and in the absence of such notice any claim as to quantity shall be deemed to be waived and barred. A notification inserted in the BDR or in a separate protest handed to the physical supplier of Bunkers shall not qualify as notice.
- (b) Any quality claim shall be presented in writing to the Seller immediately the issue becomes known to the Buyer and in any event no later than 10 days from the date the Bunkers were delivered to the Vessel. Any claim regarding the quality of the Bunkers shall be deemed waived and barred if not brought in accordance with this clause.
- (c) A written claim for the purposes of clauses (a) and (b) shall include a complete and comprehensive explanation of the circumstances and basis of the claim, including where applicable the quantities short and/or the discrepancies in quality, and include copies of all supporting documents including the vessel's logs evidencing the matters complained of.
- (d) In the event of any claim the Buyer assist the Seller or its representatives with its investigation of such claim, including but not limited to the boarding and inspection of the Vessel, the interviewing of crew and the review and copying of Vessel documents.
- (e) The Buyer shall take all reasonable steps on its own behalf and on behalf of the Vessel to mitigate any damages, losses, costs and expenses related to any quality claim. Where Bunkers deviate from specification, the Buyer shall use all reasonable endeavors to mitigate the consequences thereof

including burning the Bunkers where possible with the use of purification tools or other similar measures.

- (f) The Buyer shall take all reasonable steps to preserve the Seller's recourse against the physical supplier of Bunkers or any culpable third party.
- (g) The Seller shall be entitled to set off losses caused by a breach by the Buyer of any part of this clause against any claim that the Buyer may have against the Seller.
- (h) Notwithstanding that the Buyer has given notice of any claim in accordance with the provisions of these TCS any claim by the Buyer against the Seller in respect of a Contract must be brought before the relevant tribunal within 6 months of the date of delivery of the Products, failing which such claims shall be deemed waived and time barred.

## 11. LIABILITY

- (a) The Buyer shall indemnify the Seller against any claims, losses or costs of whatever kind related to the Contract, including the legal costs of dealing with such claims, instituted by third parties against the Seller to the extent that such claims exceeds the Seller's liability towards the Buyer according to these TCS.
- (b) The Seller's liability for any damage whatsoever arising under a Contract howsoever caused and including the negligence of the Seller, its servants, sub-contractors or agents and whether based in tort or contract and including claims for product liability and pollution shall be limited to the lesser of
  - i. US\$500,000; or
  - ii. the Price of the specific Products giving rise to the claim on which the Seller's liability is based. Where a Contract provided for the supply of more than one type of Product and the claim relates to just one Product then only that Product shall be taken into account in calculating the limit of the Seller's liability.
- (c) The Seller shall not be liable for any consequential losses whatsoever, including, without limitation, delay, detention, demurrage, charter hire, crew wages, pilotage, towage, port charges, lost profits or increased cost or expenses for obtaining replacement fuel.
- (d) The Seller shall not be liable under any circumstances for punitive damages.
- (e) Where damages are claimed for damaged engine parts, and subject always to the limitations herein, in assessing the damages there shall be a reduction in the replacement value payable by the Seller of 20 percent for each year or fraction thereof for which the replaced part has been in use.

## 12. ENVIRONMENTAL PROTECTION

- (a) The Buyer is responsible for compliance with all applicable laws and regulations in connection with its trading, pollution, the environment and health and safety as they relate to the Vessel and Buyer and their use and receipt of Products. The Buyer shall indemnify the Seller for all financial consequences, including clean-up costs and fines, arising from a breach of this provision.
- (b) In the event of a discharge of Products ("Spill") during delivery to the Vessel, the Buyer and the Vessel shall take all action necessary to mitigate the effects. The Seller is entitled at its option to take such measures and incur such expenses it deems reasonably necessary to mitigate the effect of a Spill and in such cases the Buyer shall cooperate and render assistance as is requested. Unless a Spill is proven to be caused solely by the Seller's negligence the Buyer shall indemnify and hold the Seller and its representatives harmless from any consequential damages, expenses, claims or liabilities of whatever nature.
- (c) The Buyer agrees to give or cause to be given to the Seller all documents and information concerning any Spill as the Seller may request or as required by applicable laws or regulations.

## 13. FORCE MAJURE

Neither Buyer nor Seller shall be responsible for any loss or damage resulting from any delay or failure in delivery or receipt in Products hereunder due to fire, explosion or mechanical breakdown, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes or other differences with workmen unions, or from any delay or failure in delivery or receipt of Products hereunder when the supplies of Buyers or Sellers or the facilities of production manufacture, consumption, transportation, distribution of Buyer and Seller are impaired by causes beyond Buyer's or Seller's control, or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or Buyer's or Seller's compliance therewith, or by governmental proration, regulation or priority, or from any delay or failure due to any causes beyond Buyer's or Seller's control similar or dissimilar to any such cases. When such cause or causes exist, the party affected shall have the right, upon notice without delay as soon as practicable to the other of the nature and probable duration of such cause or causes, to restrict or cease deliveries or

acceptance hereunder in a fair and equitable manner for the duration of such cause.

## 14. COMPLIANCE CLAUSE

- (a) If the Seller has grounds to believe that the Buyer or the Vessel or any other person or entity in any way related to them or to the Contract or its performance are listed on the US OFAC Specially Designated Nationals List or subject by any US, UN EU sanctions or any other sanctions binding or effective on the Seller or its group companies the Seller shall be entitled to cancel the Contract and to charge the Buyer the expenses thereby incurred, or take any other measures which the Seller deems appropriate.
- (b) The Buyer acknowledges that anticorruption laws and regulations, including but not limited to the U.S. Foreign Corrupt Practices Act ("FCPA"), shall apply to the parties. The Buyer and Seller shall comply with all applicable anticorruption laws and regulations and will not, offer, promise, pay, or authorize the payment of any money or anything of value, or take any action in furtherance of such a payment, whether by direct or indirect means, to any public official or private individual to influence the decision of such person in the performance of his duties to a government or to his company. Any breach of this clause will void the related Contract and in the sole discretion of the Seller any other Contract between the parties, making any claims for payment, delivery or any other obligation of the Seller under this Agreement void. The Buyer is liable for any and all costs or losses incurred by the Seller due to such breach and/or a Contract becoming void as a consequence.

## 15. CANCELLATION AND INDEMNITY

- (a) Where the Seller cancels a Contract due to (i) the Buyer's breach of the Contract; or (ii) a reason that pursuant to these TCS entitle the Seller to cancel; or (iii) the effect of sanctions necessitating the Seller's withdrawal from a Contract then the Buyer shall have no recourse to the Seller and the Buyer shall be responsible for all losses, costs and expenses suffered by the Seller by reason of the cancellation, which shall include but not be limited to the Seller's loss of profit on the Contract, costs or charges reasonably incurred to the Seller's sub-contractors or suppliers, and administrative costs.
- (b) Where the Buyer cancels the supply after the Order Confirmation the Buyer shall be liable for any costs, expenses or charges incurred by the Seller and the Buyer shall be liable to pay to the Seller the difference between and the price payable to the Seller's supplier and its selling price to the Buyer, such sums to be paid immediately upon demand.
- (c) The Buyer shall indemnify the Seller for all consequences, losses and or damages (including fine and penalties) suffered by the Seller as a result of the Buyer or the Vessel or its crew failing to observe any provisions of the TCS.

## 16. LAW AND JURISDICTION AND MARITIME LIEN

- (a) These General Terms and Conditions and each Contract to which they apply shall be governed by the general maritime law of the United States of America and disputes shall be determined by Arbitration in London by a sole arbitrator according to the LMAA Terms 2017. In case of breach of contract by the Buyer, the Seller shall moreover be entitled to take such legal action in any court of law in any state or country which the Seller may choose and which the Seller finds relevant in order to safeguard or exercise the Seller's rights in pursuance of this present Agreement.
- (b) This Contract is entered into and product is supplied upon the faith and credit of the Vessel, and it is agreed and acknowledged that a lien over the Vessel is created for the price of the Products supplied together with any interest accrued. The Buyer, if not the Owner of the Vessel, hereby expressly warrants that they have full authority of the Owners/Managers/Operators/Charterers to pledge the Vessel in favor of the Seller and that they have given notice of the provisions of this Contract to them. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien(s) attaching to a Vessel. The laws of the United States, including but not limited to the Commercial Instruments and Maritime Lien Act, shall always apply with respect to the existence of a maritime lien, regardless of the country in which Seller takes legal action. Seller shall be entitled to assert its rights of lien or attachment or other rights, whether in law, in equity, or otherwise, in any jurisdiction where the Vessel may be found.
- (c) The lien in favour of the Buyer arises and exists in addition to any other security the Seller may have.
- (d) No notice, comment or stamp in the BDN seeking to prevent a lien on the Vessel arising shall be valid or operate to waive the Seller's maritime lien on the Vessel unless the Seller has been notified of the intention to exclude the liability of the Vessel at least 12 hours in advance of the supply by sending written notice to [bunkers@canden-mtl.com](mailto:bunkers@canden-mtl.com). Notification to the physical supplier of Bunkers shall not be effective notice.