

SWIFT AND BOLD TRANSPORT LIMITED

**STANDARD TERMS AND CONDITIONS FOR THE SALE AND/OR SUPPLY OF MARINE
BUNKER FUELS, LUBRICANTS AND OTHER PRODUCTS**

1 Definitions

Throughout these Standard Terms and Conditions, except where the context otherwise requires, the following definitions shall be applied:

"Banking Day" shall mean a day on which banks are open in the places of business of the Sellers and the Buyers and, where a remittance is in US dollars, in New York or, if other than US dollars, in the country of the price currency.

"Buyer" means the party requesting the Company to sell and supply the Fuels.

"Carrier" means the owner and operator of the road tanker vehicle and/or bunker barge used to deliver the Fuels to the Vessel where such vehicle or barge is not owned or operated by the Company.

"Certificate of Quality" means a certificate evidencing the product characteristics of the Fuels issued on behalf of or by the Refinery or the Physical Supplier.

"Company" means Swift and Bold Transport Limited (Company Registration Number: 9673039) of registered office: Unit 11, Cliffside Industrial Estate, Askew Farm Lane, Grays, Essex, RM17 5XR.

"Conditions" means the terms and conditions for sale set out in this document and in the Company's Confirmation Note. In the event of any conflict between those Conditions and the Confirmation Note, the latter shall prevail.

"Confirmation Note" means the Company's written confirmation sent by the Company to the Buyer.

"Delivery" means the supply and delivery of Fuels to the Vessel on any one occasion.

"Fuels" means all types and grades of fuels, oils, lubricants and goods of whatever description.

"MGO" means marine gas oil.

"Owner" means the registered owner, manager or bareboat charterer of the Vessel.

Unit 11, Cliffside Industrial Estate, Askew Farm Lane, Grays, Essex RM17 5XR

Email: info@swiftandboldtransportltd.co.uk

Phone: 01375 800870

V.A.T Registration Number: 235 1329 31 Company number: 09673039

"Physical Supplier" means the supplier of the Fuels delivered to the Vessel where the Company has undertaken solely to sell the Fuels.

"Price" means the price quoted by the Company and contained in the Confirmation Note and is based on the prices ruling at the time of quotation. For the avoidance of doubt, where specified in the Confirmation Note, the Price will extend to any and all additional charges incurred by the Company and shall include but not be limited to wharfage, barging or other similar charges, mooring charges, port dues, duties, taxes, charges and other costs incurred in the country where the supply of the Fuels to the Vessel takes place.

"Refinery" means a party from whom the Company sources Fuels.

"Seller" means the Company where the Company is not the Supplier.

"Supplier" means the Company if it has undertaken the supply of the Fuels to the Vessel or the Physical Supplier.

"Vessel" means the vessel, ship or craft duly nominated to receive the Fuels as specified in the Confirmation Note.

"VLSFO" means very low sulphur fuel oil.

2 Applicable Conditions

- 2.1 The Company has the option to either simply sell the Fuels to the Buyer and/or in addition to undertake the physical supply of the Fuels to the Vessel.
- 2.2 Where the Company undertakes the physical supply of the Fuels to the Vessel using its own road tanker vehicles these Conditions shall apply to all contracts for the sale and/or supply of fuel by the Company to the Buyer to the exclusion of all other terms and conditions including any terms and conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.3 Where the Company undertakes the physical supply of the Fuels to the Vessel using a road tanker vehicle or bunker barge which it does not own or operate, it contracts as agent for and on behalf of the Carrier to effect delivery to the Vessel on the Carrier's usual terms, a copy of which will be provided upon request.
- 2.4 All orders for Fuels shall be deemed to be an offer by the Buyer to purchase the Fuels pursuant to these Conditions.

- 2.5 Acceptance of the order by the Company contained in the Confirmation Note shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.6 Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Company.

3 The Price

- 3.1 The Company reserves the right to alter the Price to take account of:
- 3.1.1 any increase in price by either the Refinery or the Supplier of the Fuels;
- 3.1.2 any variation after the date of quotation that might occur in the cost of labour, materials, overheads of the Company and transport;
- 3.1.3 any change in duty, tax, surcharge or levy of any kind whatsoever affecting the supply of goods; and
- 3.1.4 any variation in the rate of VAT which shall be charged in addition at the rate appropriate to the relevant tax point.

4 Delivery

- 4.1 Delivery shall occur when the Fuels pass the Supplier's flange connected to the bunker manifold of the Vessel.
- 4.2 The Buyer shall be responsible for making all connections and disconnections to ensure that all hoses to the Vessel are properly connected prior to the commencement of delivery.
- 4.3 The Buyer shall ensure that the Vessel is in possession of all certificates required to comply with all relevant regulations pertaining to delivery of the Fuels at the port or place of delivery and that the Master of the Vessel or the Master's authorised representative shall:
- 4.3.1 advise the Company in writing, prior to delivery, of the maximum allowable pumping rate and pressure and agree on communication and emergency shut-down procedures;
- 4.3.2 notify the Company 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 Fuels; and
- 4.3.3 provide a free side to receive the Fuels and render all necessary assistance which may reasonably be required.

- 4.4 Subject to 4.2, risk of loss of or damage to the Fuels, and responsibility for loss or damage caused by pollution or in any other manner including but not limited to any loss damage or unsuitability of the Fuels caused by commingling and compatibility passes to the Buyer when the Fuels are delivered.
- 4.5 Ownership of the Fuels remains with the Company until all sums due to the Company by the Buyer on the account whatsoever shall have been paid for. Until such time as payment is made by, or on behalf of, the Buyer, the Buyer agrees that it is in possession of the Fuels solely as bailee for the Company. If the Fuels are added or mixed with other goods which are not the property of the Company before payment is made in accordance with clause 7 below, the property in the whole shall be and remain with the Company until payment is made as aforesaid and the Buyer shall hold the whole as bailee and trustee of the Company.

5 Quantities/Measurement

- 5.1 The quantities of Fuels delivered shall be conclusively determined by the official gauge or meter of the road tanker vehicle or bunker barge effecting delivery; alternatively for deliveries ex-pipe the shore tank figures shall be conclusive.
- 5.2 The Company will not accept a claim for short delivery based solely upon the figures obtained by measuring the Fuels delivered in the Vessel's tanks.
- 5.3 The Buyer waives any quantity claim unless expressly noted in writing on the marine delivery note at the time of the delivery.

6 Lien

- 6.1 Fuels are supplied on the faith and credit of the Vessel to which they are supplied as well as on the faith and credit of the Buyer. It is agreed, accepted and acknowledged that a lien over the Vessel is thus created for the Price of the Fuel supplied. The Buyer, if not the Owner of the Vessel, expressly warrants that the Buyer has the authority of the said Owner to pledge the Vessel's credit and to the creation of such a lien.
- 6.2 Further or in the alternative to 6.1, where the Company is the Seller and has paid the Supplier's invoice, that payment will act as an assignment of the Supplier's maritime or statutory lien, as appropriate, over the Vessel to the Company to the extent of the amount of the Supplier's invoice, and these Conditions shall be deemed to be due notice of such assignment.
- 6.3 The Buyer, if not the Owner of the Vessel, warrants that it has given notice of the provisions of this clause 6 to the Owner of the Vessel. The Buyer assumes sole responsibility for communicating these Conditions to the Owner of the Vessel prior to the day of delivery.

7 Payment

- 7.1 Terms of payment shall be as agreed between the Company and the Buyer as set out in the Confirmation Note. The following terms apply unless the Confirmation Note provides otherwise.
- 7.2 Payment of the Price will be made in US dollars, British pound or euro, whichever currency is stated in the Confirmation Note to the bank account specified in the invoice in full on or before the due date.
- 7.3 The Buyer may not withhold payment of any invoice or other amount due to the Company by reason of any right of set off or counterclaim which the Buyer may have or allege to have or for any reason whatsoever.
- 7.4 The due date is the agreed number of days from the date of Delivery as provided in the Confirmation Note or, in default, is the date of Delivery.
- 7.5 If payment falls due on a non-Banking Day, then payment shall be made on or before the last Banking Day before the due date.
- 7.6 Time for payment is of the essence.
- 7.7 Late payment will attract a financial charge of 2% per calendar month on the outstanding sum calculated on a daily basis from the due date until receipt by the Company of sufficient cleared funds.
- 7.8 In addition, if the Price remains unpaid for more than 15 days after the due date, the Buyer will pay an additional administrative fee of 5% of the Price.
- 7.9 Payment will be made by telegraphic, telex, swift or rapid electronic transfer to the bank account specified in the invoice. All bank and other charges incurred in effecting remittance will be for the account of the Buyer. Advice of remittance should always be given to the Company. Payment shall be deemed to have been made on the date the payment is credited to the bank account.
- 7.10 The Company may in good faith vary, amend, withdraw, substitute or add to the terms relating to payment at any time in the course of the transaction in such a manner as it shall in its absolute discretion consider necessary to protect its interest. In particular, if the financial condition of the Buyer becomes, in the opinion of the Company, impaired or unsatisfactory then the Company may demand that payment be made at any time before the due date of payment whether before or after delivery of the Fuels or may demand the giving of such reasonable security as in its absolute discretion it may specify.

- 7.11 If the Buyer fails to make payment for the Fuels in accordance with these Conditions, or
- 7.11.1 if the Buyer commits any other breach of these Conditions, or
- 7.11.2 if any distress or execution shall be levied upon any of the Buyer's property, or
- 7.11.3 if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy, or
- 7.11.4 if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due, or
- 7.11.5 it being a limited company, if any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without any insolvency) shall be passed or presented, or
- 7.11.6 if the receiver, administrator or administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets, or
- 7.11.7 if the Buyer shall suffer any analogous proceedings under foreign law, all sums outstanding in respect of the Fuels shall become immediately payable.
- 7.11.8 in addition, the Company may, in its absolute discretion and without prejudice to any other rights which it may have, suspend all future Deliveries to the Buyer and/or terminate the agreement contained in these Conditions without liability on its part.
- 7.12 Full legal costs (on an indemnity basis) and other costs and expenses incurred by the Company including for the avoidance of doubt the legal and other costs and expenses incurred in exercising any lien due to any breach by the Buyer of any term of these Conditions shall be for the Buyer's account and shall form part of the Price due from the Buyer to the Company.
- 7.13 All payments received from the Buyer in respect of an invoice received after the due date shall be applied towards interest, legal and other costs (to include but not be limited to enforcement costs) and any administrative fee before being applied to the principal sum of any subsequent Delivery.

8 Company's Obligations

- 8.1 The Company shall provide a Certificate of Quality (a) in advance of any VLSFO Delivery and (b) prior to delivery to the Vessel of any MGO Delivery to permit the Buyer to assess the quality and fitness of the Fuels. Any VLSFO Delivery shall take place on the strength and content of the Certificate of Quality and shall constitute prima facie evidence that the Fuels are of satisfactory quality. In the circumstances the Buyer shall have sole responsibility for the nomination and selection of the appropriate Fuels fit for use by the

Vessels. The Fuels to be supplied shall be, except where more precisely specified in the Confirmation Note, the Company's or Supplier's normal commercial grades offered generally to its customers for similar use at the time and place of delivery, details of which are available upon request. Should the Confirmation Note guarantee a particular specification, the analysis of any test result shall make due allowance for generally recognised standards of repeatability and reproducibility. No other warranties, express or implied, as to the satisfactory quality of the Fuels, as to their fitness for purpose or as to whether Fuels will correspond to the description in the Confirmation Note are given or form part of these Conditions.

- 8.2 Where the sale and delivery of the Fuels is an international supply contract as defined by Section 26 of the Unfair Contract Terms Act 1977, the implied conditions as to title, freedom of encumbrance from undisclosed charges and the Buyer's right to quiet possession are all excluded.

9 Liability of the Company

- 9.1 The Buyer and/or its agent shall give the Company seventy-two (72) and forty-eight (48) hours approximate and twenty-four (24) hours definite notice of the arrival of the Vessel at the port or other geographical location specified in the Confirmation Note where the Delivery is to take place.
- 9.2 Notwithstanding clause 9.1, any time for performance under these Conditions or for delivery given by the Company is an estimate only. Notwithstanding acceptance of the Buyer's order as evidenced by the Confirmation Note, the Company's obligation to supply Fuels shall be subject to availability of Fuels of the Supplier at the time and place of delivery. The Company shall not be liable for any damages, costs, claim, loss or demurrage or expenses whatsoever including consequential loss arising out of delay.
- 9.3 Subject always to clause 9.1, if the Vessel to be supplied is delayed in arriving or is likely to be so delayed, the Buyer shall promptly advise the Company. At the Buyer's request the Company will endeavour to supply a Vessel so delayed on terms originally agreed but the Company reserves the right to pass on to the Buyer all additional costs, consequent upon the delay, including any increase in the Price as defined in clause 3.
- 9.4 The Company shall not be liable for Vessel's demurrage or off charter hire or for any consequential or indirect loss arising out of any breach of contract, statutory duty or negligence by the Company. In the event of any such breach of these Conditions by the Company, the Buyer's remedy shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Fuels supplied.
- 9.5 The Buyer will indemnify the Company against any claims or demands whatsoever, howsoever arising, by whomsoever made, in excess of the Company's liability under these Conditions.

10 Buyer Default/Cancellation and Delay

- 10.1 If the Buyer at any time subsequent to the Confirmation Note cancels a supply of Fuels or if the Vessel fails to take delivery of part or all of the requested Fuels for whatever

Unit 11, Cliffside Industrial Estate, Askew Farm Lane, Grays, Essex RM17 5XR

Email: info@swiftandboldtransportltd.co.uk

Phone: 01375 800870

V.A.T Registration Number: 235 1329 31 Company number: 09673039

reason including circumstances outside of the Buyer's control then the Company, without prejudice to any other rights or remedies, shall be entitled to any cancellation fee imposed by the Supplier and to the difference between the Price and amount received by the Company upon resale to any third party and all costs and damages arising from any underlying physical or derivative paper contract which the Company has entered into in order to effect the supply.

10.2 In the event of delay caused by the failure of the Buyer to give notice as required by clause 9.1 the Company shall be entitled to compensation for that delay at the agreed rates per day or pro rata stated in the Confirmation Note.

10.3 Without prejudice to clause 9.5 the Buyer shall defend, indemnify and hold harmless with regard to any liability, loss, claim, expense or damage the Company may suffer

due to or in any way connected to the act, omission or fault of the Buyer in connection with the sale supply and delivery of the Fuels.

11 Environmental Protection

11.1 Notwithstanding and without prejudice to clause 4.2 above, if a spill (which for the purpose of this Clause shall mean any leakage, escape, spillage or overflow of the Fuels) does occur while the Fuels are delivered or being delivered the Company shall take such action as it considers, in its absolute discretion, reasonably necessary to remove the spilled Fuels and to mitigate the effects of such a spill and which shall always be conducted in accordance with such local laws and regulations which may compulsorily apply. The Company is authorised at its option on notice to the Buyer to take such measures and incur such expense, whether by employing its own resources or by contracting with others, as are reasonably necessary in the judgment of the Company to remove the spilled Fuels and to mitigate the effects of such a spill. The Buyer shall co-operate and render such assistance as is required by the Company in the course of such action.

11.2 The Buyer will indemnify the Company against any expense incurred, costs, liabilities, fines and penalties arising out of such a spill unless proven to be wholly caused by the Company's negligence.

12 Assignment

12.1 The benefit of these Conditions shall not be assigned by the Buyer without the Company's consent. The Company may assign and shall give notice of this to the Buyer.

13 Brokers and Agents

13.1 Unless the party with whom the Company is dealing specifically declares to the Company prior to despatch by the Company of the Confirmation Note that the party with whom the Company is dealing is not the Buyer and at the same time provides to the Company the full name and address of the Buyer then the party with whom this Company is dealing shall be deemed to be the Buyer.

13.2 Without prejudice to clause 13.1 above in the event that the party with whom the Company is dealing is an agent of the Buyer then the party with whom the Company is dealing shall be jointly and severally liable with the Buyer to perform all the Buyer's obligations under these Conditions notwithstanding that the party with whom the Company is dealing purports to contract as an agent only.

14 Claims Time Limits

14.1 Short time limits are the norm within the bunker industry for the notification of claims. Such short time limits are demanded by Suppliers. Therefore, the time limits contained in this clause 14 will not be relaxed by the Company in any circumstances.

14.2 Written notice of any claim or potential claim must be given to the Company within the following specified time limits. Such notice should give sufficient details so that the

14.3 Company can identify the relevant supply and investigate and pursue a claim itself and can only be made by way of an email to Marine@swiftandboldtransportltd.co.uk. The Company will always acknowledge receipt of such a notice.

14.4 The time limits for the receipt by the Company of a notice of a claim are:

14.4.1 for quality claims and disputes, 30 days from the date of delivery; and

14.4.2 for quantity claims and disputes, 3 days from the date of delivery; and

14.4.3 for all other claims and disputes, 28 days from the date of delivery.

14.5 Any claim not made and notified within the time limits contained in clause 14.3 above shall be deemed to be waived and absolutely barred.

14.6 Notwithstanding the provisions of clause 14.3 above the Company shall in any event be discharged of all liability whatsoever howsoever arising in respect of the Fuels delivered unless suit is brought and written notice thereof given to the Company within 12 months from the date the Fuels were delivered or should have been delivered to the Vessel.

15 Claims Procedures

15.1 If the Buyer makes a claim against the Company with respect to either quantity or quality of the Fuels supplied the Company will be entitled and the Buyer if Owner will permit (and if not Owner will procure permission for) the Company to attend on board the Vessel to inspect the Vessel's records taking copies where necessary for its investigations. Failure to allow the Company access to the Vessel shall amount to waiver of the Buyer's claim.

15.2 Where a claim is made with regard to the quality of the Fuels supplied the following procedures shall apply:

15.2.1 for deliveries by road transport tanker, a minimum of 3 samples will be taken from the road transport tanker during delivery to the Vessel, which will be retained by the Company;

15.2.2 for delivery by bunker barge, on delivery to the Vessel a minimum of 3 representative samples will be taken at the barge manifold. All samples will be signed and sealed by an officer of the Vessel. One sample will be retained by the Vessel;

15.2.3 for delivery to the Vessel ex-pipe a minimum of 3 samples will be taken from the shore tank and retained by the operators of the shore tank facility;

15.2.4 within a reasonable period, not exceeding 3 days after notification has been given by the Buyer, in accordance with 14.3.1, the Company shall invite the Buyer to jointly appoint a laboratory to test one of the samples taken in accordance with this clause 15. The Buyer has the right to witness the testing;

15.2.5 if the Buyer fails to make the joint appointment the Company shall be at liberty to solely appoint the laboratory and the Buyer will be bound by the findings of the laboratory without further reference.

15.3 Where a claim is made with regard to the quantity of the Fuels supplied, then;

15.3.1 subject always to clause 5 above, if there is a discrepancy the Vessel shall forthwith and in any event before leaving the port where delivery has taken place issue a letter or note of protest specifying the details of the problem. The letter or note of protest should be forwarded to the Company immediately or at the latest within 3 days. If any such step required by this clause is not taken within the required time limits, any subsequent claim shall be deemed to be waived and absolutely barred and the Company shall be entitled to reject the claim in its entirety.

16 Headings

16.1 All headings are for ease of reference only and shall not affect the construction of these Conditions.

17 Entire Agreement

17.1 These Conditions constitute the entire agreement and supersede all prior oral or written agreements, representations and warranties.

18 Severance

18.1 Any provision of these Conditions which is or may be void or unenforceable shall to the extent of such invalidity or enforceability be deemed several and shall not affect the other provisions in these Conditions.

19 Waiver

19.1 No waiver or forbearance by the Company (whether expressed or implied) in enforcing any of its rights under these Conditions shall prejudice its rights to do so in the future.

20 Force Majeure

20.1 The Company shall not be liable for any failure to fulfil any obligation under these Conditions if fulfilment has been delayed, hindered or prevented by any circumstance whatsoever which is not within the immediate control of the Company including but without limiting the generality of the foregoing, any strike, lock out or labour dispute or reasonable apprehension of such a dispute, any governmental order, request or restriction, any limitation restriction or interruption of existing or contemplated sources of supply of Fuels or the means of supply of Fuels.

21 Contracts (Rights of Third Parties) Act 1999

21.1 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to the supply of Fuels under these Conditions.

22 Proper Law and Jurisdiction

22.1 Any dispute under these Conditions shall be governed by English law and subject to the jurisdiction of the Business and Property Courts of England and Wales, except that the Company shall have the option to take any action or actions as it in its absolute discretion shall consider necessary to enforce its rights under these Conditions in any court or tribunal in any state or country including instigation of proceedings in rem against the Vessel.