

# Chapter 4

## PURCHASING MARINE FUELS

### SPECIFYING THE RIGHT FUEL

When a shipowner, manager or charterer is ordering bunkers for a vessel, it is strongly recommended they insist the fuel is supplied in accordance with the most recent edition of ISO 8217 – the international standard for marine distillate and residual fuels. This is just as important when drafting and agreeing charterparties.

The bunker clause should refer to the required grade as per ISO 8217 rather than the generic terms used for fuel. For example, if a vessel's engine burns residual fuel with a viscosity of 180 cst at 50°C, then 'RMG 180' should be stipulated in accordance with the required (preferably latest) edition of ISO 8217. It should not be simply described as 'IFO'.

Extra caution is advised when a standard other than ISO 8217 is proposed or used in the charterparty. Some national based standards do not identify the fuel for marine use and, as a consequence, may not be suitable. A good example is that ISO 8217 and SOLAS both require the minimum flashpoint for marine bunker fuel to be 60°C. Other standards not specifically intended for marine fuel (such as automotive fuel) may allow a flashpoint significantly lower than 60°C.

It is important to remember that more recent editions of ISO 8217 do not provide a maximum on the sulphur content for residual fuels. They merely refer to the fact that statutory environmental legislation shall apply. This is in contrast to the earlier editions of ISO 8217, which do state the maximum sulphur content for each grade, but these values are unlikely to align with current environmental legislation.

Therefore, to avoid confusion when agreeing bunkers or drafting rider clauses in charterparties:

1. stipulate the grade as per ISO 8217
2. stipulate which edition of ISO 8217 (preferably the latest)
3. stipulate the maximum sulphur content.

Those responsible for purchasing fuel or for inserting bunker clauses in charterparties are strongly urged to liaise closely with their technical departments to ensure they identify the correct ship-specific fuel oil specification. Most engine manufacturers can provide shipowners with extensive details of the quality of fuel oil required for optimum combustion in their engines. This information, together with ship-specific handling, treatment and storage requirements, should be referred to when specifying fuel oil requirements to charterers, bunker brokers or bunker suppliers.

### ***New fuels - ULSFO and VLSFO***

The introduction in January 2015 of the revised sulphur limits for marine fuels for use in MARPOL Annex VI emission control areas (ECAs) led to the market providing some new types of fuels. This market is expected to expand when the global sulphur cap enters into force on 1 January 2020.

For vessels not fitted with abatement technologies, such as an approved exhaust gas cleaning system (SOx scrubber), bunker buyers need to decide whether to use new blended or ‘hybrid’ low-sulphur products as an alternative to traditional low-sulphur distillates, such as marine gas oil (MGO).

The new fuels are generally referred to as ‘ultra-low-sulphur fuel oil’ (ULSFO), with 0.1% maximum sulphur content, and ‘very-low-sulphur fuel oil’ (VLSFO), which has a 0.5% maximum sulphur content. These are often suffixed with either ‘RM’ for residual marine fuels and ‘DM’ for distillate marine fuels.

A charterer needs to give careful thought and consideration when proposing the use of the new alternative products. Many of the new fuels do not easily fit into the grades specified in ISO 8217 as they are usually specially designed and produced by the oil companies. In some cases, the products are formed by blending distillate and residual products from existing refinery streams.

Bunker quality clauses in the charterparty cannot therefore rely on referencing ISO 8217 standards as they will not be appropriate. The clauses will require careful wording to ensure the fuel is fit for use in the vessel’s plant. A further complication is that a number of engine manufacturers have yet to issue ‘no objection’ letters for all of the alternative fuels available.

There will always be cases where regulations and documentation lag innovation and industry needs. Therefore further guidance may be needed if a blend or hybrid fuel does not meet the criteria of ISO 8217 and a letter of no objection has not been issued by the engine manufacturer.

### **Summary of bunker specification**

In summary, when purchasing fuel or if drafting bunker clauses in charterparties, the following should be undertaken.

- Identify a fuel specification that is suitable for the vessel and its plant.
- Specify internationally recognised standards, such as the latest version of ISO 8217.
- Provide an exact description of the product or grade required, such as RME 180, RMG 180 or RMK 380.
- Specify maximum allowable sulphur limit.



Fig. 6. Typical bunker supply vessel – often referred to as a ‘bunker barge’ (VPS)

## DELIVERY CONTRACTS

The purchaser of the fuel – usually the shipowner or time charterer – may enter into a direct contractual relationship with a bunker supplier or bunker trader. It is also common for the supply of fuel oil to be arranged through a bunker broker.

Where a broker is used, the purchaser will request a quote from one or more bunker brokers. They will in turn contact suppliers or traders and invite offers to supply the fuel oil. After negotiation, one of the offers will be accepted. In these circumstances the bunker broker is an agent of the purchaser of the fuel oil. As such, the ship operator will only have a claim against the broker when the broker has exceeded the terms of its authority or has failed to carry out its role with due care.

If there is a breach of contract on the part of the supplier, such as when the supplier provides poor quality fuel oil or the wrong quantity, the broker will not be liable to the purchaser unless there are exceptional circumstances. Examples of such exceptional circumstances are:

- where the broker has induced the purchaser to enter into the bunker delivery contract by making representations which it knew to be untrue at the time they were made
- where the purchaser has specified a certain characteristic, such as maximum sulphur content, and the broker has failed to pass this information to the supplier.

Whether the contract is direct with a trader or supplier, or concluded via a broker, a contract comes into existence when an offer is accepted. This will normally be evidenced by an email confirming the terms agreed – otherwise known as the ‘confirmation of stem’. While this sets out the main terms of the contract, it will not generally be an exhaustive list of contract terms. Commonly the details of the contract will be set out in standard terms and conditions, which one party will ask to be incorporated into the contract. Invariably, the terms and conditions incorporated are those of the supplier.

### ***Terms of the contract***

As the confirmation of stem does not state all the terms of the contract, the parties then need to agree the detailed terms to be set out in the contract. As a matter of English law, the terms of the contract will derive from three sources.

1. Terms expressly agreed between the parties — the confirmation of stem.
2. Terms incorporated into the contract — usually the supplier’s own standard terms and conditions.
3. Terms implied by law.

Each of these is explored in more detail in the following sections.

## CONFIRMATION OF STEM

Terms expressly agreed between the parties will normally be evidenced by the correspondence confirming the stem. In the event of a dispute as to what may or may not have been agreed between the parties, it may be necessary to examine the correspondence which led to the confirmation of stem.

Commonly, the confirmation of stem will provide for the following:

- price
- place and date of supply
- amount of fuel oil ordered
- quality by reference to a standard specification
- incorporation of standard terms and conditions.

This simply provides the bare bones of the contract. The detail will be provided by standard terms and conditions, which are normally incorporated into the supply contract.

## **SUPPLIER'S STANDARD TERMS AND CONDITIONS**

Standard terms and conditions can be incorporated into the contract in three ways.

- They may be incorporated by a specific reference, usually contained in the confirmation of stem.
- There may have been previous dealings between the parties, during which the supplier's terms and conditions were consistently used.
- More rarely, they may be incorporated through what is considered customary in that particular trade. In other words, the parties are aware that such conditions are habitually imposed in that trade and aware of the substance of those conditions.

A supplier's standard terms will commonly contain provisions relating to:

- the admissibility of evidence
- the time within which claims must be brought by the purchaser ('time bar')
- the law applicable to the supply contract.

In the event of a dispute — and even where no dispute arises — these terms are essential to the smooth operation of the contract. The purchaser should always ask to be supplied with a copy of the terms and conditions before concluding the contract.

Suppliers' standard terms have often been considered onerous on the buyer and too far in favour of the supplier. For many years, attempts to create a standard bunker contract that could be used across the industry were unsuccessful, but the 'BIMCO Terms 2015 Standard Bunker Contract' looks to remedy this. Although this contract has not gained widespread industry usage – most suppliers prefer their own terms and conditions – it nevertheless provides a starting point for negotiations. It serves as a useful reference for the purchaser of marine fuel oils wanting a more balanced, operator-friendly document. An updated version, 'BIMCO Bunker Terms 2018', has now been adopted by BIMCO's Documentary Committee but has not yet been released publicly (in 2018).

### ***Terms, conditions and clauses of note***

Suppliers' terms and conditions generally adopt similar layouts and will include terms dealing with the following aspects of the supply of fuel oil.

#### ***Payment***

Normally, the terms and conditions will state the manner and timing by which payment should be made. In the event of a late payment, this may include a contractual right to interest.

### **Example of late-payment clause**

In respect of all sums which are overdue the buyer shall be liable to pay to the company interest calculated at 2% per calendar month pro-rated and compounded on a daily basis from the due date until receipt by the company of sufficient cleared funds. Accrued interest and costs and/or expenses incurred by the company in requesting payment of outstanding amounts will be added at monthly intervals to and become part of the outstanding sum. In the event that this contractually agreed rate of interest is in excess of that permitted by relevant law there shall be substituted the maximum rate so permitted.

### *Evidence*

Standard terms and conditions will often seek to limit the evidence that may be admitted in the event of a quality or quantity dispute arising between the parties. The procedures are often long and complicated and the consequences of failing to comply severe. The following clause is taken from a typical supplier's conditions.

### **Example of evidence clause**

It is a pre-condition to the company's liability for any quality claim that at the time notice of claim is given the set of samples retained by the physical supplier are available for analysis by a reputable independent testing laboratory, approved by the company, in accordance with established procedures and the analysis is carried out in the presence of a representative of the company. The buyer hereby acknowledges that the sealed samples retained by the physical supplier are representative of the product delivered and that the company has no duty to consider any other independently produced samples. The results of the analysis shall be final, binding and conclusive on all parties. In the event that the physical supplier is unable or unwilling to make available for analysis the samples within seven days from the date of delivery or such shorter period as may be specified in the confirmation, the company will accept the buyer's set of sealed samples provided by the physical supplier as representative of the product delivered for analysis in accordance with the provisions of this clause, provided that the buyer's request in writing to the physical supplier for the sealed samples is copied to the company at the same time the request is sent to the physical supplier.

### *Sampling*

Sampling requirements, and identifying who must be present at the time samples are drawn, are all commonly regulated by the standard terms and conditions. The following is an example.

### **Example of sampling clause**

It is the duty of the buyer to instruct the physical supplier to take three representative samples of every consignment and load of the product on commencement of delivery in accordance with the custom at the point of delivery. The three representative samples must be sealed and labelled and the label signed by a representative of the physical supplier and by an officer of the vessel and/or other senior representative of the buyer. One set of the physical supplier's samples shall be retained by the buyer and one set by the physical supplier, each to be retained for a minimum of 60 days after delivery to the vessel. The third sample shall be retained by the vessel in accordance with the provisions of MARPOL 73/78, Annex VI. The third sample may only be used for the purposes of confirming the sulphur content of the marine fuel and such other matters as are specifically set out in MARPOL annex VI, 18.

MARPOL Annex VI imposes specific requirements on ship operators to retain a sample taken from the bunker manifold of the receiving vessel. It must be held on board for a period of not less than twelve months from the time of delivery. The sample should be sealed and its label signed by both the supplier's representative and the master or officer in charge of bunkering. IMO Resolution MEPC. 182(59) *Guidelines for the sampling of fuel oil for determination of compliance with revised Annex VI of MARPOL* provides useful guidance.

Some suppliers' standard terms and conditions make reference to the MARPOL requirement, but some do not. This can lead to a conflict between the sampling requirements agreed under the bunker delivery contract and those required by law.

### *Time limit*

Standard terms and conditions nearly always stipulate a time limit within which claims should be brought. Although these may be subject to a test of reasonableness imposed by legislation, purchasers should always make best efforts to submit their claim within the stipulated time limit. An example of a trader's terms with regard to time limits is as follows.

#### **Example of time-limit clause**

Time limits: because the company is frequently placed under strict time limits by its suppliers for presentation of claims, it is necessary that it too must impose rigid time limits on receiving notice of claims from its customers. In consequence of the company's strict time limits, customers should ensure that they maintain their own equally strict internal checking and reporting procedures. It must be clearly understood that the company will not relax its time limit in any circumstances. The time limit for receipt by the company of notice of a quality claim is seven days from the date of delivery or such shorter period as is specified in the confirmation.

Normally such clauses are enforceable and it is important that any time limits are observed.

### *Lien clause*

A lien is a right to withhold the property of another until the price — in this case for the fuel oil — is paid. A typical lien clause might read as follows.

#### **Example of lien clause**

Where product is supplied to a vessel, in addition to any other security, the agreement is entered into and product supplied upon the faith and credit of the vessel. It is agreed and acknowledged that a lien over the vessel is thereby created for the price of the product supplied and that the company in agreeing to deliver product to the vessel does so relying upon the faith and credit of the vessel. The customer, if not the owner of the vessel, hereby expressly warrants that he has the authority of the owner to pledge the vessel's credit as aforesaid and that he has given notice of the provisions of this clause to the owner. The company shall not be bound by any attempt by any person to restrict limit or prohibit its lien or liens attaching to a vessel unless notice in writing of the same is given to the company before it sends its confirmation to the customer.