

# Malte Fuel & Wash General Terms and Conditions

2019-11-19

## 1. Applicability and definitions

- 1.1. In these General Terms and Conditions Supplier shall mean Malte Fuel & Wash, reg. no 556851-1942. Purchaser shall mean the company that has ordered or bought Products and/or Services from the Supplier (each a "Party" and together the "Parties").
- 1.2. These General Terms and Conditions constitutes an integral part of the agreement entered into by the Parties (the "Agreement"). The Agreement consists of any quotation letter, order, order confirmation, these General Terms and Conditions and all documentation referred to as being a part of the Agreement. Deviations from these General Terms and Conditions must be agreed upon in writing between the Parties to become effective. Thus, the Purchaser's delivery terms must be expressly agreed upon in writing to become effective.
- 1.3. In these General Terms and Conditions, Product(s) shall mean the Supplier's current product range available on the Suppliers webpage [www.maltefw.com](http://www.maltefw.com) and all other products offered by the Supplier or all products which the Supplier undertakes to supply, which the Supplier undertakes to sell to the Purchaser, and which are set forth in detail in an Agreement.
- 1.4. In these General Terms and Conditions, Service(s) shall mean all Services that the Supplier undertakes to perform towards the Purchaser in connection with the Product.

## 2. Order

- 2.1. The Purchaser may place his order with the Supplier by e-mail, by phone, orally, or by letter. An order is binding on Supplier and Purchaser once it has been confirmed by Supplier to the Purchaser.

## 3. Delivery

- 3.1. Any time of delivery stated by Supplier is Supplier's best estimate of a calculated delivery date. If the Supplier has reason to believe that delivery cannot be met on the expected delivery date Supplier shall inform the Purchaser accordingly and advise when delivery is expected to be effected.

- 3.2. If a delivery is delayed by more than one month, the Purchaser may, in writing, request delivery within a reasonable and final period of time, which may not be shorter than one week. If the Supplier is unable to deliver within the requested period, and this is not subject to any circumstances attributable to the Purchaser, the Purchaser shall have the right to cancel the order for the delayed Products.
- 3.3. The Purchaser's right to cancel any delayed Products in accordance with the provisions of section 3.2 constitutes the only remedy which the Purchaser shall have the right to claim in the event of delayed delivery in such event as indicated in section
- 3.4. If the Supplier's delivery is delayed, but not to the extent as indicated in section 3.2, the Purchaser shall have the right to a penalty of 1 % of the total price for the delayed delivery for each commenced week which the delay lasts, to a maximum of 10 % of the total price. If the Purchaser has the right to maximum penalty and if the Supplier has not yet effected delivery, the Purchaser shall have the right to cancel the order for the delayed products.
- 3.5. If the delay is caused by a circumstance which, pursuant to section 11.1, constitutes grounds for relief or by any action or omission by the Purchaser, the delivery period shall be extended for a period which is reasonable considering the circumstances.
- 3.6. Upon delivery the Purchaser shall inspect the goods delivered for any visible defects, ensure that the number of pallets, boxes and parcels correspond with the number given in the delivery notes and that the quantities delivered correspond with the quantities given on the boxes and parcels and acknowledge receipt of the Products on the carrier's delivery note.
- 3.7. Should the delivered quantity of Products deviate from the quantity ordered by the Purchaser, or if the wrong type of Products have been delivered the Purchaser shall without delay but not later than the second following work day notify the Supplier. Should any damages be noted which are assumed to have occurred during the transport, such damages shall furthermore be immediately reported to the carrier or noted on the shipping

document. If the Purchaser has not informed the Supplier during the time window set out above concerning any visible defects, shortage of quantities or wrong type of Products, that will constitute an acceptance of the delivery regarding visible defects, shortage of quantities or wrong type of Products, and the Purchaser no longer has the right to claim any deviation or damages of such kind.

#### **4. Prices and Payment**

- 4.1. The price of the Products and/or Services shall be set to the price which the Supplier applies at the time of receiving the order from the Purchaser, unless the parties have expressly agreed otherwise. All prices are quoted for delivery FCA Halmstad (Incoterms in the applicable wording on the date the Agreement was entered into) and are excluding VAT, any other taxes or fees and costs for packing of the Products and/or Services and transport packaging. If the parties have agreed that Supplier shall arrange the transport such freight charges will be charged in accordance with Supplier's price list valid at the time of delivery.
- 4.2. Upon variations in exchange rates exceeding 2 % up to the time of invoicing of the Product, the Supplier may adjust the indicated prices. The Supplier's right to adjust the prices shall also apply when a certain price has been agreed upon by the parties.
- 4.3. Payment shall be made upon invoicing and no later than the date set forth in each invoice, unless otherwise expressly agreed in writing. The Purchaser shall under no circumstances, such as due to delays or deficiencies, be entitled to withhold payment. Upon delays in payment, interest on overdue payments shall accrue from the maturity date, with the from time to time applicable reference rate of the Swedish Riksbank, with an addition of eight percentage points. If the Purchaser does not pay on time, the Supplier may further, after having given the Purchaser notice in writing thereto, suspend its performance of an Agreement until payment has been made.
- 4.4. If the conduct or the financial circumstances of the Purchaser are such that there is reason for the Supplier to suspect that the Purchaser will not effect full payment, the Supplier may suspend the performance of the Agreement and demand advance payment or adequate

security to resume the performance. If such circumstances are discovered after the Product has been shipped, the Supplier may prevent the delivery of the Product. The Supplier shall urgently notify the Purchaser in writing of its decision to suspend the performance of the Agreement.

- 4.5. The Supplier may cancel the Agreement if the Purchaser has not paid within three months after the payment date. Without prejudice to the right to interest on overdue payments, the Supplier shall in such case be entitled to recover damages.

#### **5. Liability for defects**

- 5.1. Apart from situations as indicated in section 3.7, a Product or a Service which is not in conformity with the agreed specification shall be considered deficient, unless the non-conformity is without significance for the intended use of the Product. The Supplier's liability for other defects is limited to defects caused by defective construction, materials or workmanship. The liability for defects comprises any defect existing at the time when the risk for the Products passed over to the Purchaser and which appears and is notified in writing within 12 months from Supplier's delivery.
- 5.2. The Supplier shall not be liable for any defects in the Products due to any material supplied by the Purchaser or any construction or design suggested by the Purchaser. Nor shall the Supplier be liable for any defect due to the Purchaser or a third party not following the Supplier's care instructions or for any defect caused by any misapplication, faulty installation or neglected maintenance and normal wear.
- 5.3. Should the Purchaser notice a defective Product the Purchaser shall without delay, counted from the time when the defective Product was noticed or should have been noticed, make a complaint to the Supplier. The Supplier obliges itself to, at its own discretion, either substitute or repair the defective Product or credit the Purchaser for the defective Product. The Parties may also agree on the Purchaser being given a discount instead. When returning the Product the Purchaser shall follow Supplier's guidelines for returning products and making complaints in force at that time unless otherwise agreed by

the parties. The Purchaser shall carry the costs for any return of defective Products. All defective Products shall be returned to the Supplier.

## **6 Damages**

- 6.1 The Supplier shall only be liable for any damages which the Products may cause persons or other property if such liability is imposed upon the Supplier according to the Swedish Product Liability Act (1992:18).
- 6.2 The Purchaser shall without delay and in writing notify the Supplier of any product liability demands imposed upon the Purchaser and shall attend to such demands in accordance with the Supplier's instructions. The provisions above shall also apply for any demands which may be imposed upon the Purchaser after termination of the Agreement. The Parties shall devote themselves to any claims for product liability being directed to the Supplier or whomever the Supplier may appoint.

## **7. Limitation of liability**

- 7.1. 7.1 The Supplier's liability under this Agreement is limited to any direct damages and each damage to an amount corresponding with 20 % of the total price for the specific Product type that the Supplier has delivered to the Purchaser during the previous 12 months and which caused the damage. The Supplier's total liability in accordance with this Agreement shall for each calendar year be limited to 20 % of the total price for the specific Product type that caused the damage and which the Supplier has delivered to the Purchaser during the previous 12-months. Should the Supplier have delivered the specific Product type to the Purchaser during a shorter period than 12 months, the amount above shall be limited to 20 % of the monthly average for the Product type that the Supplier has delivered to the Purchaser and which caused the damage.
- 7.2. 7.2 The Supplier shall in no way be liable for any indirect losses or consequential damages e.g. missing profit or loss of production unless the Supplier has caused the damage by gross negligence or by intent.

- 7.3. 7.3 The Supplier's liability for any faults, insufficiencies, delays and other breaches of contract shall be limited to what is expressly stated in these general terms. The Purchaser shall have no right to resort to any other remedies than those given in these general terms and conditions.

## **8. Ownership reservation**

- 8.1. The Product shall remain the property of the Supplier until it has been fully paid, to the extent this ownership reservation is valid.

## **9. Intellectual Property**

- 9.1. Unless otherwise agreed between the Parties, the Supplier or the Supplier's licensor shall own all rights, comprising any intellectual property rights relating to the Products, including but not limited to trade marks, protection of design, copyright and patents. The Purchaser shall not acquire any intellectual property right or other rights to the Products by means of this Agreement.
- 9.2. The Purchaser shall immediately and in writing notify the Supplier if a third party addresses any claim towards the Purchaser due to a Product infringing or is claimed to infringe upon a third party's intellectual property right. The Purchaser is obliged to attend to such claims according to the Supplier's instructions and the Supplier is not liable for any infringement should the Purchaser violate this obligation.
- 9.3. Should such infringement conclusively exist or if, according to the Supplier's own assessment, it is probable that such infringement exists, the Supplier shall at its own expense and at its own discretion either (i) ensure the Supplier's right to continue to use and sell said Product, (ii) substitute the Product with another equivalent product whose use shall not imply any infringement, or (iii) change the Product correspondingly to ensure that no infringement exists.
- 9.4. The Supplier is not liable for any infringement or alleged infringement upon a third party's intellectual property right by the Product if the Supplier has modified, created or produced the Product according to the Purchaser's wishes, instruction, specification or design. The Purchaser shall indemnify the Supplier against any claim, lawsuit or other legal proceeding which may arise following an actual or alleged infringement of such Product

and for each loss, cost, damage and expense (also including any costs for legal counselling and costs for administrative work) which the Supplier incurs accordingly.

## **10. Confidentiality**

10.1. The Purchaser may not, without the Supplier's written approval, provide third parties with documents or otherwise disclose information of confidential character about the Agreement, the Products, or the Supplier, unless disclosure is necessary for the performance of the Agreement. The Purchaser shall enter into nondisclosure agreements with its employees or take other appropriate measures to ensure that confidentiality is maintained. The confidentiality undertaking does not apply to information, which the Purchaser can demonstrate was duly brought to its notice other than by the Agreement, or which is commonly known. The confidentiality undertaking shall remain in full force and effect after the termination of this Agreement.

## **11. Force majeure**

11.1. A circumstance which prevents or substantially obstructs the performance of any of the Parties' undertakings under the Agreement, and which the Party could not dispose of, including but not limited to stroke of lightning, fire, earthquake, flooding, war, mobilization or major military conscription, uprising or riot, requisition, seizure, currency restriction, public regulation, fuel restrictions, general scarcity of transportation or energy, or strike, blockade, lock-out or other labor dispute, regardless of whether the Party is a party to such dispute, and defects or delays in deliveries from sub-suppliers caused by the above mentioned circumstances, shall constitute grounds for relief which entitles the relevant Party to appropriate time extensions and relief of liability from conditional fines and other sanctions. A Party shall notify the other Party in writing without unreasonable delay from the day the Party realized or ought to have realized the grounds for relief.

11.2. If the performance of the Agreement is delayed for more than six months due to a circumstance set out in section 11.1, each Party shall be entitled to withdraw from the Agreement and shall not be liable to

compensate the other Party for such withdrawal.

## **12. Subcontractors**

12.1. The Supplier shall have the right to engage a subcontractor to fulfil its obligations under the Agreement. Should the Supplier engage a subcontractor the Supplier shall be liable for such subcontractor as for its own obligation

## **13. Termination**

13.1. Each Party shall have the right to terminate the Agreement by giving written notice to that effect to the other Party (i) if the other Party should commit a material breach of contract and neglect to remedy such breach of contract within 30 days after receipt of notice to that effect, or (ii) if the other Party should declare himself insolvent, enter into liquidation, be declared bankrupt, initialise company reorganization, enter into composition proceedings or otherwise be considered as insolvent. The notice of termination shall be given without delay once the breach of contract becomes known or should have become known to the aggrieved Party.

13.2. In addition to the provisions stated above the Supplier shall at all times have the right to terminate the Agreement with immediate effect if (i) the Purchaser has delayed payments, or (ii) the ownership or control of the Purchaser is essentially changed.

## **14. Governing law and dispute resolution**

14.1. This Agreement shall be governed and construed by laws of Sweden, with the exception of governing law regulation.

14.2. Any disputes arising out of or in connection with this Agreement shall be finally settled by arbitration proceedings administered by the Stockholm Chamber of Commerce (SCC). The Arbitration Rules shall apply, unless the SCC in its discretion determines, considering the complexity of the dispute, the amount in dispute and other circumstances, that the Rules for Expedited Arbitrations shall apply. In the former case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators. The seat of arbitration shall be Gothenburg, Sweden. The language to be used in the arbitral proceedings shall be Swedish.

14.3. The following information shall be regarded as confidential and may not be disclosed: (i) information about past or current arbitration proceedings, which is sufficiently detailed to identify the parties, (ii) written statements in arbitration proceedings, as well as what is orally alleged before the arbitration board and (iii) the arbitration board's decision, to the extent that there is a risk that a party may be identified. Without prejudice to the above, a party which seeks execution is entitled to disclose confidential information to the enforcing authority, to the extent required.

14.4. Subject to section 14.2 the Supplier is always entitled to initiate proceedings regarding payment of unpaid invoices at a competent court or any other competent

