

A pair of brass scales of justice is shown in the background, with the pans hanging from a central beam. The scales are set against a dark, slightly blurred background.

Fuel Supply Contracts and Disputes: A Legal Perspective

**Bunkerworld Business Exchange
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Topics To Be Discussed

- ❖ We will cover U.S.A. law, unless otherwise noted
- ❖ Contract formation basics
- ❖ Main terms for marine fuel purchase contracts
- ❖ Form contracts—BIMCO Standard Bunker Contract
- ❖ Maritime liens associated with bunker supplies
- ❖ Arbitration of disputes
- ❖ Some U.S.A. case law deciding bunker contract disputes

Contract Formation Basics

- ❖ Oral agreements can be enforceable, written contracts are preferable
- ❖ Offer and acceptance forms contract
- ❖ Acceptance: manifestation of mutual assent to terms
- ❖ Conditions to acceptance, and conditions precedent to performance
- ❖ Performance issues and disputes are governed by terms of the contract formed

Main Terms and Attributes of Marine Fuel Contracts

- ❖ Names of the parties to the contract
- ❖ Price
- ❖ Quantity
- ❖ Quality--specifications of fuel, the goods purchased
- ❖ Delivery terms
- ❖ Payment terms
- ❖ Dispute resolution
- ❖ Usually includes name of the vessel or vessels for whom fuel is supplied
- ❖ In general, bunker contracts are “maritime contracts,” usually supporting admiralty jurisdiction over disputes

Customized Variations for Marine Fuel Supply Agreements

- ❖ Exclusivity arrangements—agreement to purchase fuel from one particular supplier, could be worldwide or limited to a port or region
- ❖ Requirements contracts—agreement to supply all fuel that a buyer requires
- ❖ Fleet fuel supply agreements
- ❖ Fuel purchased but not intended for any particular vessel

Form Contracts

- ❖ Supplier's form frequently used
- ❖ General Terms and Conditions
- ❖ Order or Confirmation Note
- ❖ Rider clauses
- ❖ Choice of law and choice of forum clauses are important

BIMCO Standard Bunker Contract Confirmation Note

- ❖ Confirms the details of a particular sale
- ❖ Names buyer and seller, vessel, port of delivery, and delivery means
- ❖ Names type of fuel, grade specifications, and price
- ❖ Space to name dispute resolution alternatives and for additional clauses

BIMCO Standard Bunker Contract CONFIRMATION NOTE



Sellers and Buyers hereby confirm the bunker nomination as follows:

Approved by
The Baltic and International Bunker
Industry Association



1. Place of Nomination	2. Date of Nomination
3. Sellers (Cl. 1)	4. Buyers (Cl. 1)
5. Vessel	6. Port or Place of Delivery/ETA (Cl. 5)
7. Product(s)/Specifications (Cl. 2)	
8. Grade(s)/Quantities (Cl. 2 and Cl. 3)	
9. Price(s)/Currency (Cl. 7)	
10. Delivery Means and Additional Charges (Cl. 7)	
11. Payment (Cl. 8)	
12. Min. Hourly Pumping Rate (Cl. 9(c)(ii))	13. Compensation Rates for Delay (Cl. 9(c))
14. Dispute Resolution Alternative Agreed (Cl. 15)	
15. Additional Clauses, if any	

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All terms and conditions of the "BIMCO Standard Bunker Contract", which the Buyers have had the opportunity to familiarise themselves with, and any agreed amendments thereto, including the Dispute Resolution Clause, are herewith incorporated and shall apply to the delivery of Marine Fuels contracted for above.

BIMCO Standard Bunker Contract General Terms and Conditions

- ❖ These terms are incorporated in the Confirmation Note and become part of the contract
- ❖ The dispute resolution clause calls for a choice of arbitration at London under English law, at New York under U.S.A. law, or at another agreed arbitration forum, with London arbitration and English law as the default selection. Allows for mediation of disputes.
- ❖ Includes details for sampling, quantity measurements, quality specifications, documentation, time within which to make claims, and payment terms
- ❖ Risk passes to Buyer at the Seller's delivery flange, but title passes to Buyer "upon payment"
- ❖ Clause 14 addresses spillage, oil pollution, and Safety and the Environment
- ❖ Clause 9(d) disclaims indirect or consequential loss or damage

Maritime Liens Associated with Bunker Supplies

- ❖ A fuel provider has a maritime lien for “necessaries” on the vessel supplied, under U.S.A. law, in general. See Federal Maritime Lien Act, 46 U.S.C. § 31342. (Note: “public vessels” are excepted.)
- ❖ Lien gives seller security for payment of fuel purchase price
- ❖ Maritime liens are “secret and indelible,” discharged only by payment or by judicial sale of the vessel at public auction
- ❖ Lien is executed, or enforced, by arresting the vessel

Maritime Liens (continued)

- ❖ Lien arises when “necessaries,” such as fuel, are supplied to a particular named vessel
- ❖ Issues can arise whether the buyer is a person who has authority to bind the vessel and incur liens, for example a port husbanding agent, vessel managers, master, chartering broker, or charterers
- ❖ Fuel sale or supply to a fleet, or to an unspecified group of vessels, or to no particularly named vessel, does not necessarily create a maritime lien

Maritime Liens (continued)

- ❖ A Rule C arrest of a vessel that purchased fuel can be used to enforce a lien on that vessel
- ❖ A Rule B arrest or attachment of any vessel owned by the buyer, or other property of buyer, may be available to obtain security for fuel sold and supplied to some other vessel owned by the same buyer
- ❖ Executing the lien, and Rule B and Rule C arrests or attachments, all require filing a lawsuit
- ❖ Some jurisdictions outside U.S.A. do not recognize a maritime lien for supplying bunkers

Arbitration

- ❖ Requires agreement to arbitrate disputes rather than litigate in courts
- ❖ Court assistance to execute liens, to arrest vessels or property, is usually still available to obtain security in aid of arbitration
- ❖ Common Arbitration Forums
 - HMAA, Houston Maritime Arbitrators Association
 - SMA, New York Society of Maritime Arbitrators
 - LMAA, London Maritime Arbitrators Association
 - Others in various ports and regions
- ❖ Rules of the arbitration forum are important. They can include an abbreviated “documents only” process, one or three person arbitration panel, and other considerations

Some U.S.A. Cases on Marine Fuel Purchase Contracts

- ❖ *Equatorial Marine Fuel Management Services Pte Ltd. v. MISC Berhad*, 591 F.3d 1208 (9th Cir. 2010)
 - “[C]ontracting, like dancing the tango, takes two; one party’s belief that there was an agreement isn’t enough.” *Id.* at 1211.
 - \$22 million claim for bunker purchase price, bunker trader became insolvent
 - Buyer contracted with bunker trader, who contracted with Equatorial as supplier, who delivered fuel through another party
 - Buyer paid the trader, but trader did not pay supplier
 - Supplier sued buyer for alleged breach of contract and unjust enrichment
 - Held: Rule B attachment of buyer’s vessel vacated because supplier did not have a valid contract with the buyer, and buyer had paid the bunker trader so buyer was not unjustly enriched

Some U.S.A. Cases (continued)

- ❖ *Exxon Corp. v. Central Gulf Lines*, 500 U.S. 603, 111 S.Ct. 2071 (1991)
- ❖ U.S. Supreme Court case defining contours of admiralty jurisdiction, deciding that there is no *per se* exception from admiralty jurisdiction for agency contracts
- ❖ Exxon was Waterman's exclusive worldwide bunker supplier pursuant to a fuel requirements contract
- ❖ Court holds that the nature and subject matter of a transaction for supplying marine fuel to ships relates to maritime commerce sufficiently to support admiralty jurisdiction over the transaction

Some U.S.A. Cases (continued)

- ❖ *Triton Marine Fuels, Ltd. v. Bridge Oil, Ltd.*, 575 F.3d 409 (4th Cir. 2009)
- ❖ Fuel supplier's in rem action against the vessel for \$260,400 for fuel ordered by bareboat charterer's sub-charterer, who did not pay after fuel was supplied
- ❖ Supplier's Bunker Confirmation contract contained a U.S.A. choice of law clause, and named the buyer as the sub-charterer "acting on behalf of" the M/V Pacific Chukotka and her owners, charterers, and others
- ❖ Held: The U.S.A. choice of law provision is enforceable and the supplier is entitled to a maritime lien under U.S.A. law
- ❖ Although the bareboat charter party prohibited the charterer from incurring any maritime liens, the sub-charterer had "presumptive authority" to bind the vessel and there was no evidence the bunker supplier had "actual knowledge" of the no lien clause
- ❖ "Fuel bunkers are considered necessities within the meaning of the FMLA." *Id.* at 414 n.2.

Some U.S.A. Cases (continued)

- ❖ *Bunker Holdings, Ltd. v. Triton Marine Fuels, Ltd.*, 346 Fed. Appx. 969, 2009 WL 2705417 (4th Cir. 2009) (unpublished)
- ❖ Illustrates the importance of choice of law provisions in bunker contracts
- ❖ Cypriot bunker supplier's Confirmation Note and Standard Terms and Conditions chose Greek law
- ❖ Contracts were confirmed by email, vessel was the M/V Pacific Chukotka
- ❖ Supplier argued its contractual and non-contractual claims were made under Russian law, where the fuel was delivered
- ❖ Court held the Greek choice of law provision was enforceable
- ❖ Result: This fuel supplier went unpaid, although a different supplier to the same vessel, under a different contract choosing U.S.A. law, was paid (or at least had a lien) in the *Bridge Oil* case, 575 F.3d 409.

Some U.S.A. Cases (continued)

- ❖ *Bominflot, Inc. v. M/V Henrich S*, 465 F.3d 144 (4th Cir. 2006)
- ❖ Supplier made three bunker deliveries to a vessel, pursuant to a contract with the vessel time charterer who became insolvent and did not pay the purchase price
- ❖ Supplier's contract General Conditions contained an English law choice of law clause, and a statement that the Seller has "a lien" against the receiving vessel
- ❖ The court affirmed dismissal of the supplier's case because English law applied and "English law does not recognize the existence of maritime liens for bunkers." *Id.* at 145.
- ❖ The court said that Brazil and the U.S.A. recognize a maritime lien for necessities for bunker supplies, but South Africa, Germany, and England do not
- ❖ Regarding the contract term that the seller has "a lien," the court said "maritime liens are *stricti juris* and cannot be created by agreement between the parties." *Id.* at 146.

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