

COMMODITIES: AUGUST 2023

STASCO GTCS 2023 – GENERAL TIDY UP OR SIGNIFICANT REDRAFT?

Shell International Trading and Shipping Company Limited ("STASCO") has recently released its new General Terms & Conditions for Sales and Purchases of Products and Crude Oil 2023 (the "2023 GTCs") [General Trading Terms and Conditions | Shell Global](#).

These GTCs are an update on STASCO's 2010 GTCs (the "2010 GTCs").

The headline structural differences between the 2010 GTCs and the 2023 GTCs are as follows:

- unlike the 2010 GTCs, the 2023 GTCs are now no longer split across two sets of GTCs in respect of the trading of crude oil and products;
- instead, the 2023 GTCs are now split into five separate documents covering each delivery term (namely FOB, CIF, DAP, Tank/Pipe, and Road/Rail), and in respect of both crude oil and products trades. The general terms applicable to all delivery terms are then embedded within each of these five documents. This is as opposed to the 2010 GTCs, where there was one set of GTCs covering each delivery term (as split between the first Parts of those GTCs) and then a separate Part of the GTCs covering general terms applicable to all deliveries under each of the previous Parts;
- there are now separate terms for DAP deliveries (unlike previously where the DES terms were embedded within the Part on CIF and CFR terms); and
- generally, the 2023 GTCs are intended to be more interactive and user-friendly in that: cross-references and defined terms are hyperlinked to relevant parts of the GTCs; there are several explanatory tables and diagrams (most likely, in our view, of varying utility); and the writing has been modernised to make the GTCs easier to read and use, i.e., with shorter sentences and less dense text.

Considering 13 years has passed between the two sets of GTCs, the substantive differences between the 2010 GTCs and the 2023 GTCs are quite minimal. Please see below a brief summary of the key legal / commercial differences introduced by the 2023 GTCs. (References to section numbers of the 2010 GTCs are references to the section numbers of the 2010 terms for crude trades.)

- **Nomination of Vessels:**
 - There are slightly different requirements for what details must be specified in the nomination of Vessels (compare the definition of "Nomination" in the 2023 GTCs with, for example, Section 5.2 of the 2010 GTCs).
 - There are now different times in which the parties must provide their Vessel Nomination. For example, under the FOB terms, the Buyer need also now only provide its Vessel Nomination to the Seller 5 days before the first day of the Laydays, instead of 8 days before. See also Section 18 of the CIF terms.
 - There are slightly different times in which parties must accept or reject Nominated Vessels (see Section 15 of the FOB terms of the 2023 GTCs).
 - There are standard additional sanctions requirements in respect of the Vessel (see for example Schedule B paragraph B15 of the FOB terms of the 2023 GTCs).
- **Quality and Quantity Claims:** Claims must be notified within 45 days of completion of discharge, rather than within 60 days as in the 2010 GTCs. The difference in quantity that can allow for a quantity claim has been increased from 0.2% to 0.3%. The Buyer can also now claim for excess Base Sediment and Water (BS&W) – see, for example, Sections 11.4 to 11.7 of the FOB terms of the 2023 GTCs.

- **Line Flushing:** There is a new section in the 2023 GTCs on line flushing. A party may instruct the party arranging shipment to request that the Vessel performs line flushing or line displacement operations, provided that the instructing party must then indemnify the party arranging shipment for any costs sustained as a result.
- **Delay / Demurrage:** In line with recent case law, there is now an express clause that all claims for delay are limited to the Demurrage Rate. Supporting documents for demurrage claims must also now be brought within 90 days instead of 180 days (demurrage claims must still be notified in writing within 45 days, as before).
- **Negative Price Event:** There is now a new section on negative price events. See, for example, Section 45 of the FOB terms of the 2023 GTCs. This provides that if there is a negative price event, the Buyer will pay nothing for the Goods and the Seller will not be required to pay to receive the Goods.
- **Force Majeure:**
 - There is an express obligation on the Relying Party to use reasonable endeavours to mitigate and overcome the effects of Force Majeure, and to provide the other party with updates on the extent and expected duration of the Force Majeure.
 - There is also a new express clause providing that a delay in giving notice of force majeure will not preclude force majeure, but that delay may lead to damages being owed for late notice (if any such damages can be proved). Note that we expect that Section 34.3 of the 2010 GTCs would have been interpreted the same way in any event (due to the reference to notice being given "as soon as possible", rather than by an exact date).
 - There is a difference in timings for when parties can terminate due to Force Majeure (see Section 58(b) of the FOB terms of the 2023 GTCs). The party affected by Force Majeure can now only terminate 7 days after the last day of the Laydays.
- **Payment:**
 - There is a minor difference in the payment deadlines for payment of balances due under final invoices of 3 banking days instead of 2 banking days.
 - There is a new express obligation to repay advance payments made by the Buyer where the Goods are not delivered (see, for example, Section 47.6 of the FOB terms of the 2023 GTCs) – this means that Buyers could claim back advance payments under this clause as well as via the usual claims for unjust enrichment.
- **Interest:** There is an updated interest clause to provide for the SOFR 30-Day Average rate of interest.
- **Security:** Unlike in the 2010 GTCs, the Seller can now only demand Payment Security (where not already provided for in the Special Provisions) if the Seller has reasonable grounds to believe that the financial condition of the Buyer has deteriorated or that the Buyer's ability to make payment will be adversely affected by sanctions or geopolitical events (compare Section 50.13 of the FOB terms of the 2023 GTCs with Section 32.10 of the 2010 GTCs). There is also a new clause that the bank providing the Letter of Credit must remain acceptable to the Seller, otherwise the Seller can demand a re-issue of the Letter of Credit at the Buyer's cost.
- **Time Bar:** Notably, the time bar for claims remains as being that legal proceedings must be commenced 1 year within the date of delivery. However, there are exceptions to the time bar in respect of indemnities provided in respect of certain payment, tax, and line flushing indemnities.
- **Dispute Resolution / Arbitration:** STASCO has dropped High Court dispute resolution and has changed all terms to English law and London-seated arbitration, with a graduated scheme of LMAA Small Claim Procedure, LMAA terms and LCIA arbitration depending on how large the dispute is.
- **REACH:** There are new standard clauses relating to REACH.
- **Sanctions:** The sanctions clauses have been updated. This includes that there is now a warranty that each party will comply with applicable Trade Control Laws.
- **Data Privacy:** There is a new standard clause on data privacy.
- **Notices:** There are minor differences to the effective dates of notices (see Section 85 of the FOB terms the 2023 GTCs).
- **Waiver:** There is a new provision that waiver must be given in writing to be effective.
- **Sustainability:** There is a new Schedule A on sustainability warranties and obligations. These terms largely relate to the sustainable / responsible sourcing of any renewable components and feedstocks.

- **Letter of Indemnity:** In the standard form Letter of Indemnity, there is a new liability limit for the indemnifying Seller of 200% of the invoice value of the Goods, and the indemnity will expire latest 2 years from discharge.

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