

CALAND ADVOCATEN

ROTTERDAM



SEMAINE SCHADEE – 19 April 2021

BUNKERLEVERANTIES EN HET WEB DAT ALGEMENE VOORWAARDEN HEET



Schema

1. Bunkerleverancier - Contractuele aansprakelijkheid
2. Bunkerleverancier – Buitencontractuele aansprakelijkheid
3. Algemene Voorwaarden: NOVE
4. Derdenwerking algemene voorwaarden



Partij A – Owner van het “MS Schadee”

Partij B - Trader (geen fysiek product)

Partij C – leverancier ex barge

Koop:

- VLSFO 0,5
- 400-600 ton,
- Prijs USD X
- ISO 8217:2017
- Supplier’s terms
- Physical Supplier: C

Conflict: Vessel analyse – voldoet niet, “teveel” styreen: risico “stikken filters”



- CISG

Article 35

(1) The seller must deliver goods which are of the quantity, quality and **description** required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods **do not conform** with the contract **unless** they:

(a) **are fit for the purposes** for which goods of the same description would **ordinarily be used**;

(b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;

(c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;

(d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

- ISO 8217:2017

5.2 The fuel shall be free from any material at a concentration that causes the fuel to be unacceptable for use [...], jeopardizes the safety of the ship, or adversely affects the performance of the machinery



1. Bunkerleverancier - Contractuele aansprakelijkheid

- Gebrekkig voor normaal beoogd gebruik voldoende: bunkers kunnen niet worden verbrand, *zonder schade te veroorzaken* – TKK en schuld

2. Bunkerleverancier – Buitencontractuele aansprakelijkheid



- **Leverancier tevens producent?**

Lichte stelplicht schuld (O'Byrne/Sanofi, NJ 2006/401 en Daf/Achmea, NJ 2017/48)

Voldoende dat gebrekkig voor het normaal beoogd gebruik

- **Slechts leverancier?**

zwaardere stelplicht ten aanzien van schuld: Gebrekkigheid bekend/voorzienbaar of had moeten worden vermoed, zie bijvoorbeeld Huang Shan: "Mountain Lady" (S&S 2007, 126)

- **Samenloop wanprestatie en OD:**

niet conform overeenkomst geleverd? Onrechtmatig jegens derden als product ongeschikt voor het normaal beoogd gebruik (NJ 2000/644). Niet van toepassing op leverancier die niet de producent was

Ook OD als slechts geschikt bij correcte instructie? (zie noot bij Halcion arrest-NJ 1990/652)

3. Algemene Voorwaarden: Nove

8.3.

Unless quality shall compulsorily be determined at the receiving vessel's manifold (but only to the extent that this is the case), **the barge samples shall be conclusive and binding evidence of the quality of the BUNKERS delivered.** [.....]

12. Liability

12.1.

The Seller shall **only** be liable for damages in case of willful misconduct or gross negligence on the side of the Seller itself.

12.2.

Liability of Seller for delay or consequential damages, including but not limited to loss of profit or loss of income and immaterial damages, is excluded. **In any event** the liability of the Seller **shall not exceed the invoice value** of the BUNKERS supplied under the relevant agreement.





7. Law and jurisdiction

17.1.

The agreement entered into with the Buyer shall be governed by the laws of the Netherlands. However, the federal laws of the United States of America shall apply to the substantive issue of whether a maritime lien exists. Applicability of the **CISG is excluded**.



4. Derdenwerking algemene voorwaarden

Wishful thinking



4. Derdenwerking algemene voorwaarden

- “On Supplier’s terms”
- To this contract the Terms and Conditions of Seller shall apply. A copy of said terms can be found here, are attached to this contract and can also be found on Seller’s website. If Seller is not the Physical Supplier, the Terms and Conditions of the Physical Supplier shall apply as well. A copy of those terms will be sent to Seller upon request.

2.2.

Buyer: any party asking offers or quotations for ordering bunkers and/or services and any party **on whose behalf** the said offers, quotations, orders and subsequent agreements or contracts have been made.



A – C: voorwaarden van toepassing?

MONAGAS II (S&S 2003,141): Ja (contractuele vord)

YM Uniform- OWB (S&S 2019/104): Nee

Holland-SCH 123 (S&S 1998,59): Ja (contractuele vord.)

Huang Shan: Mountain Lady (S&S 2007, 126) Nee, geen vertegenwoordiging

S&S 2019/90 (ook OWB): verwijzing naar NOVE op bunkerrequisition – niet ten opzichte van derden.



Hoe dan wel?

Onzekere factor

Derdenbeding versus vrijwaring



DANK VOOR UW AANDACHT!