



## GENERAL TERMS AND CONDITIONS

Effective September 17, 2021, the following terms of sale and supply shall constitute the General Terms and Conditions (“General Terms”) of **THE BUNKER FIRM INC.** (“**TBF**”), 1261 Mohawk Road Suite 6, Ancaster Ontario, Canada L9G 3K9.

Unless otherwise agreed in writing, the General Terms shall apply to every sale of marine products including marine fuels, lubricants and other non-fuel products (“Products”) entered into between THE BUNKER FIRM as seller (“Seller”) and any buyer (“Buyer”) of such Products. No variation of these General Terms shall be valid unless expressly agreed in writing by Seller.



## 1 - DEFINITIONS

Throughout this document the following definitions shall be applied:

**"General Terms"** means the present document.

**"Agreement"** and **"Contract"** mean the agreement between the Company and the Buyer evidenced by these General Terms read together with the Bunker Confirmation sent by the Company to the Buyer, shall form part and be considered an integral part of this Agreement. If there is any conflict between these General Terms and the Bunker Confirmation, the terms of the Bunker Confirmation shall prevail.

**"TBF"** means THE BUNKER FIRM and any fully or partly owned subsidiaries thereof bearing or operating under the **"TBF"** name.

**"Seller"** and **"Company"** mean the TBF Group entity contracting to sell and deliver Marine Fuels. Any warranty, assurance, guarantee of performance or liability under the Contract shall only be related to the TBF entity contracting to sell and deliver the Marine Fuels and shall not extend to other TBF Group entities.

**"Buyer"** means the person or entity so identified in the Confirmation and shall include any agent, principal, associate, manager, partner, servant, parent, subsidiary, owner or shareholder thereof and for deliveries in bulk, any Vessel (as defined in "Vessel"), Vessel owner, charterer, operators and/or any party benefitting from consuming the Product, all of whom shall be jointly and severally liable as Buyer.

**"Marine Fuels"** means products, derived from crude oil as generally offered to the Seller's customers for similar use at the time and place of delivery and/or services connected thereto.

**"Owner"** means the registered Owner or Bareboat Charterer of the vessel.

**"Vessel"** means the vessel, ship, facility, tank, container, truck or craft nominated by the Buyer to receive the supply of marine fuels, either as end-user or as transfer unit to a third party.

**"Bunker Confirmation"** means the Seller's written confirmation of each sale and delivery of Marine Fuels.

**"Bunker Tanker"** means bunker barge or tanker, tank truck, terminal, container or shore tank supplying Marine Fuels to the Vessel.

**"Clause"** means a clause in these General Terms and Conditions, and **"Sub-clause"** means a section thereof.

**"Confidential Information"** means business details and proprietary information of the Parties, including but not limited to pricing and credit terms, not generally available to the public.

**"Day"** means a calendar day, unless otherwise stated.

**"BDR"** means the document provided by the physical supplier to the Vessel after delivery of the Marine Fuel(s) is complete, stating the quantity and grade(s) of Marine Fuel delivered.

**"Month"** means thirty (30) calendar days.

**"Parties"** means the Seller and the Buyer collectively.

**"Party"** means the Seller or the Buyer.

**"Due Date"** The date specified in the Bunker Invoice for payment of the Price or in the absence of such date the date of delivery.

**"Notice of Claim"** Written notice of any claim or potential claim by the Buyer to the Company as per clause 11.2 of this document.

**"Physical Supplier"** means the person or entity that physically supplies the Product to the Vessel and shall include the Physical Supplier's servant, agent, successors, sub-contractors and assigns.

**"Place of Supply"** The port, physical address or other readily identifiable geographical location specified in the Confirmation wherein or adjacent to which is the Point of Delivery.

**"Point of Delivery"** The precise place at which delivery is to be effected as provided in the Confirmation or as thereafter confirmed, advised or revised by the Company or the Physical Supplier and which may be a berth, mooring, anchorage, receiving facility or other point within, adjacent to or associated with the Place of Supply.

**"Sanctions"** means any sanction, prohibition or restriction imposed by the United Nations, the United Kingdom, the European Union or the United States, including but not limited to the US Department of the Treasury Office of Foreign Asset Control (OFAC) including the OFAC Specially Designated Nationals or Blocked Persons List (SDN) and the US Department of State or any other applicable economic or trade sanctions.

**"Vessel Interests"** The owners and/or managers and/or Master of the Vessel.



**“Working days”** Monday to Friday inclusive but excluding all public and bank holidays in the United States, United Kingdom and any other day designated as non-working from time to time as notified in writing by the Company to the Buyer.

**“Basic Cost”** means the basic cost of the Product calculated by multiplying the Unit Price by the quantity of the Product delivered to the Vessel.

**“Unit Price”** means the cost of metric ton or other unit of the Product in United States Dollars (USD).

## **2 - INCORPORATION AND MERGER**

**2.1** Each sale of Products shall be confirmed by e-mail, fax or other writing from Seller to Buyer (“Bunker Confirmation”). The Bunker Confirmation shall incorporate the General Terms by reference so that the General Terms thereby supplement and are made part of the terms set forth in the Bunker Confirmation. The Bunker Confirmation and the General Terms shall together constitute the complete and exclusive agreement governing the transaction in question (the “Transaction”). No other prior agreements or understandings, whether verbal or written, shall apply unless specifically referenced in the Confirmation. In the event of an inconsistency or conflict between the terms of the Confirmation and the General Terms, the Confirmation shall control for the purpose of that Transaction with the exception of Clauses 21, 29 and 33 below, which can only be modified by a mutually signed writing between Buyer and Seller.

## **3 - QUALITY**

**3.1** Buyer shall have the sole responsibility for the selection of the proper grades of marine Product for use in the Vessel and the Company shall not be under any obligation to check whether the grade of marine Product is suitable for the Vessel or for non-marine Product its intended use if such was advised to the Company. The Product to be delivered shall be as specified in the Confirmation and in respect of marine bunkering and lubrication products, save where more precisely specified in the Confirmation, these shall be of the Company’s commercial grades of product as currently offered generally to its buyers at the time and Point of Delivery for marine bunkering or lubrication purposes.

**3.2** The Seller warrants that the Marine Fuels are of a homogeneous nature, comply with the grades nominated by the Buyer and are of a quality widely accepted in the industry. Unless otherwise agreed in the Bunker Confirmation, the Marine Fuels will comply with ISO Standard 8217 (E):2010.

**3.3** The Buyer acknowledges and agrees that all grades of Products may contain bio-derived components generally acceptable in the petroleum industry.

**3.4** Should the Confirmation refer to a particular specification, the analysis of any test results of that Product shall make allowances for generally recognized industry standards of repeatability and reproducibility. For the avoidance of doubt, analysis of any sample test results to determine if the Product meets the specification, shall be in accordance with ISO 4259 tolerances. If test results of the samples are found to be within the repeatability and/or reproducibility limits as set out in ISO 4259 (or subsequent amendments to it) for Product, then the Product supplied shall be considered on-specification.

**3.5** There shall be no guarantee, condition, warranty or undertaking (whether express or implied), by common law, statute or otherwise that the Marine Fuels will remain of such quality and/or condition after the determination of quality. The Seller shall have no liability for any deterioration in the condition and/or quality of the Marine Fuels after the transfer of risk in the Marine Fuels to the Buyer for any reason whatsoever.

**3.6** There are no guarantees, conditions, warranties or undertaking (express or implied), by common law, statute, or otherwise as to the satisfactory quality, merchantability, fitness, durability, or suitability of the Marine Fuels for any particular purpose or otherwise, which extend beyond the description in the previous clause. Any such warranties implied by applicable law, are expressly excluded to the fullest extent possible.

**3.7** It is strictly the Buyer's responsibility to keep Marine Fuels delivered to the Vessel segregated from other oil products aboard the Vessel and the Seller shall under no circumstances be held responsible for the quality of delivered Marine Fuels if the same has been comingled or blended therewith aboard the Vessel. The Buyer shall be solely responsible for losses caused as a result of Marine Fuels being comingled or blended with any other oil products aboard the Vessel, including any damage the Marine Fuels may cause to such other oil products.

**3.8** If the Marine Fuels deviate from the description in Sub-clause 3.2, the Buyer shall use best endeavors to mitigate the consequences hereof.

**3.9** Where specifications designate a maximum value, no minimum value is guaranteed unless expressly stated in the Confirmation. Conversely, where minimum values are provided in a specification, no maximum values are guaranteed unless expressly stated in the Confirmation.

**3.10** The Product is, according to normal industry standards, the quality at delivery and prior to appropriate treatment by Receiving Vessel for use.

**3.11** Any certificate of quality ("COQ") provided shall only be indicative of the typical quality of the Product and Seller in no way guarantees that the Product shall match the specifications stated in the COQ.

**3.12** The Seller shall assume no responsibility whatsoever for the compliance by Buyer of any requirement regarding the quality, Sulphur content or other characteristics of the Marine Fuels.

**3.13** The Buyers shall indemnify, protect, defend, and hold harmless the Company from any and against all losses, damages, liabilities, delays, deviations, claims, fines, costs, expenses, actions, proceedings, suits, demands arising out of any supply made by the Company where the Product supplied is as per the specification of the Product mentioned in the Bunker Confirmation.

**3.14** Subject to the provisions of this Clause, the Seller may discharge its obligation to deliver the Product specified in the Confirmation by supplying, in substitution thereof, Product of a different grade and/or brand name always provided that such substitute Product is of equal or superior quality to that specified in the Confirmation.

#### **4 – QUANTITY**

**4.1** The quantity of Products sold in each Transaction shall be as agreed between Buyer and Seller in the Bunker Confirmation. Notwithstanding acceptance of Buyer's order, Seller's obligation to supply such quantities shall be subject to availability of Products from Seller's source of supply at the time and place delivery is requested. Actual quantity delivered may vary in accordance with an operational tolerance of +/- 5% in Seller's option.

#### **5 – MEASUREMENTS**

**5.1** The quantity of the Products delivered shall be conclusively determined from the official gauge or meter of the barge or truck effecting delivery or of the shore tank in case of delivery ex-wharf.

**5.2** The Chief Engineer or his representative shall together with the Seller's representative measure and verify the quantities of Bunkers delivered from the tank(s) from which the delivery is made.

**5.3** Should the Chief Engineer or his representative fail or decline to verify the quantities, the measurements of quantities made by the Seller shall be final, conclusive and binding and the Buyer shall be deemed to have waived any and all claims in regard to the variance.

**5.4** Upon the agreement between the Seller and the Buyer the measurements can be evidenced by an independent certified surveyor. The costs for the surveyor services shall be shared equally between the Seller and the Buyer.



**5.5** Quantities calculated from the Receiving Vessel's soundings shall not be considered.

**5.6** The Marine Fuels shall be measured and calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables or the methods of any other recognized standards authority at the discretion of the Seller or its physical supplier.

**5.7** The physical supplier shall record the quantity of fuel delivered on the Delivery Receipt and the Buyer will be charged for the Marine Fuels on the basis thereof.

## **6 - PRICE**

**6.1** Any offer or price quotation in respect of Marine Fuels shall, unless otherwise agreed by Seller, be valid until 17.00 hours local time of the day the offer or price quotation was given.

**6.2** The price to be paid for Products sold in each Transaction shall be as agreed between Buyer and Seller in the amount expressed per unit and in the currency stated in the bunker Confirmation for each grade of Marine Fuels delivered into the Vessels tanks, free delivered/ex-wharf as applicable and stated in Bunker Confirmation.

**6.3** In the event the price is quoted in volume units, conversion to standard volume shall be at sixty (60) degrees Fahrenheit or at fifteen (15) degrees Celsius.

**6.4** Unless otherwise specified, the quoted price shall be ex-wharf and shall represent only the purchase price of the Products. If the price is quoted as "delivered," then, in addition to the purchase price of the Products, the price shall include the cost of transportation.

**6.5** In addition to the price stated in the Bunker Confirmation, and unless otherwise expressly agreed in the Bunker Confirmation, the Buyer shall pay any and all additional charges associated with the delivery, including, but not limited to, wharfage charges, barging charges, mooring charges, port dues, overtime charges incurred if delivery takes place outside of regular working days and hours at the relevant port of delivery, and duties, taxes, charges and tariffs in the country where delivery takes place.

**6.6** If Buyer is entitled to purchase any Product free of any taxes, duties or charges pursuant to local law, Buyer shall promptly, but in any event not later than five (5) business days following the completion of Delivery, provide the Company with a valid exemption certificate for such purchase.

**6.7** Where the Marine Fuels are supplied without payment by the Buyer of duties and taxes (which shall include, but not be limited to, customs duty, excise duty, VAT, GST and sales tax), the Buyer shall indemnify the Seller against any duties, taxes, charges, costs, liability, interest and penalties that may be incurred by the Seller, at any time, as a result of the failure of the Buyer to provide any necessary proof or other supporting documentation, within the requisite time period.

**6.8** Seller reserves the right, upon notification to Buyer, to adjust the price after the date of the Confirmation to reflect any unanticipated increase in costs to Seller incurred after issuance of the Confirmation. Notice of increase shall be given during the Seller's normal business hours (Monday to Friday inclusive, 08.00-18.00 CET). Notice given outside these hours shall be deemed to have been given at 08.00 on the first business day thereafter. In such event the Buyer may forthwith give written notice of acceptance. If no such notice is received by the Seller within two (2) hours after it has served the notice of increase, the Buyer shall be deemed to have agreed to the revised Unit Price. If Buyer does not accept such adjustment, the delivery of the affected quantity of the Products shall be cancelled without liability to either party.



## **7 – DELIVERY**

**7.1 Allocation** If the Company at any time and for any reason believes that there may be a shortage of Product at the Place of Supply, it may allocate its available and anticipated supply of Product among its buyers in such a manner as it may in its absolute discretion determine. Any such allocation shall constitute full and proper performance of the Company's obligations.

**7.2 Restrictions** The Company shall not be required to deliver Product into any Vessel or other places which are not regularly used for storage of bunkers or lubricants or other products as the case may be. The Company shall not be required to deliver any Product for export for which a government permit is required and has not been obtained.

**7.3** In the event that the Buyer fails to comply with the provisions in the sub-clause 7.2 and/or the Company consents to deliver the Product to any vessel or place which is not regularly used for the storage of bunkers or lubricants or other products, and/or the Buyer transfers the Product to any vessel or place which is not regularly used for the storage of bunkers or lubricants or other products, the Buyer shall indemnify the Company for any and all losses, costs and expenses incurred by the Company relating thereto.

**7.3 Means of delivery** Delivery shall be performed in one or more consignments at the Point of Delivery by such means as the Company shall deem appropriate in the circumstances. If delivery by truck the total quantity of Product as per the Confirmation shall be delivered on a daily basis until completion (public holidays and weekends excepting) unless confirmed otherwise in writing.

**7.4** The Company shall be at liberty to make arrangements with third party Physical Supplier(s) to supply the whole or any part of the Products sold in each supply to the Vessel.

**7.5 Barging** In the event of delivery by barge the Buyer shall, as its own expense, provide a clear and safe berth for the barge(s) alongside the Vessel's receiving lines and shall provide all necessary facilities and assistance required to effect delivery. The Company shall be under no obligation to make deliveries when, in its sole opinion, a clear and safe berth, position or anchorage is not available.

**7.6** The Buyer shall pay and indemnify the Company against all claims, costs, losses and expenses in respect of any loss, damage or delay caused by the Vessel, the Vessel's charterer, the Vessel Interests and/or the Vessel's personnel to any barge and/or its equipment, and injury and/or death caused by the Vessel, the Vessel's charterer, the Vessel Interests and/or the Vessel's personnel to any of the personnel effecting delivery in the course of or in connection with delivery of Product. In particular, any damage caused by contact, collision, swell or any other weather or sea related condition shall be dealt with by the Buyer directly with the owners of the barge. The Company shall not be held liable for any such damages and the Buyer shall indemnify the Company against any claims arising out of such incident.

**7.7 Connection/Disconnection** The Buyer shall be responsible for making all connections and disconnections between the pipelines or delivery hoses and the Vessel's intake line and shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly each and every consignment of the delivery. The Buyer shall be responsible for ensuring that Product is delivered at a safe rate and pressure and that all equipment utilized is in a safe and satisfactory condition. In no case shall the Company be liable for any damage or delay resulting from causes beyond its control or avoidable by reasonable care on the part of the Buyer, the Vessel, the Vessel's charterer or the Vessel Interests.

**7.8 Completion** Delivery shall be deemed complete when the Product has passed the flange connecting the Physical Supplier's delivery facilities with the Vessel provided by the Buyer and/or, where appropriate, has passed the Vessel's rail and/or Point of Delivery.

**7.9 Availability** Subject to the availability of Product, the availability of facilities at the Place of Supply and Point of Delivery, and the customary priority and to the Buyer giving at least 24 hour notice of the vessel's arrival time and readiness to receive the Product, the Company will use its best endeavours to ensure that Product is delivered promptly upon the Vessel's arrival but the Company shall not be responsible for any loss, expense, damage or increased costs incurred in consequence of the Vessel not being supplied promptly or otherwise being delayed or restrained for any reason whatsoever.

**7.10 Delay** In the event that the Vessel's arrival at the Point of Delivery is delayed or likely to be delayed the Buyer must at the earliest opportunity advise the Company and the Vessel's agent at the Place of Supply and must ensure that the Vessel's agent advises the Physical Supplier accordingly.

**7.11** If the Buyer fails to take delivery within the date or range of dates for delivery confirmed in the Bunker Confirmation, the Seller can choose to:

- a) deliver to the Buyer on a date of the Seller's choice at the price stated in the Bunker Confirmation plus any additional costs incurred by the Seller in delivering on a date other than the date or range of dates confirmed in the Bunker Confirmation, including any additional costs due to an increase in the relevant Platts publications or similar quotation, which may be obtained from the Seller upon request,
- b) accept a new date or range of dates for delivery of the Marine Fuels as the basis of a new contract for which a new price can be agreed upon with the Buyer, or
- c) deem the Contract as cancelled. Regardless of the Seller's choice, the Buyer shall be deemed in breach of the Contract and shall be fully liable towards the Seller.

**7.12 Notice and Other Delivery Requirements** The Buyer shall give the Seller at least seven (7) days prior notice of deliveries required, specifying the name of the Vessel, Vessel's agents, approximate date of delivery, grade and quantity of the Product. The Buyer or Vessel's local agents must give general notice in writing to the Physical Supplier of not less than 72 hours general notice (excluding Saturdays, Sundays, public holidays and other non-working days at the Place of Delivery) of the Vessel's readiness to receive the Product and provide the Vessel name, IMO number, exact quantity and time of the Product required, and exact location and time at which delivery is required. After that, the Buyer or Vessel's local agent must give 48/24/12/6 hours definite notice of the Vessel's arrival time and readiness to receive Product, with a copy of the notices to the Company. Notice must be given during the Physical Supplier's normal business hours. Notice given outside these hours will be deemed to have been given at 08.00 on the first working day thereafter. Should the Buyer fail to give notice as required the Company reserves the right to pass on to the Buyer all additional costs which may arise. Furthermore, it is in all circumstances and on all occasions the responsibility and duty of the Buyer to ascertain and where appropriate to comply with:

- a) the precise requirements of the Physical Supplier and any other person, body or authority in respect of the giving of notice of the Vessel's time of arrival at the Point of Delivery, and
- b) the exact location of the Point of Delivery, and
- c) any particular requirements to enable delivery to be effected as efficaciously as possible.

**7.13** It is the responsibility and duty of the Buyer to instruct its agent at the Place of Supply to liaise with the Physical Supplier so as to ensure compliance with the provisions at point a) to point c) inclusive. Any charges and/or damages incurred by the Company which result from Buyer's or its agent's failure to provide sufficient notice set forth, and information in respect of any delays caused by the Vessel, the Vessel's charterer, the Vessel Interests and/or the Vessel's non-compliance with any pertinent port authority or government regulations which are not part of this Agreement, shall be chargeable to the Buyer who expressly agrees to pay any such charges and/or damages.

**7.14** If the Buyer for whatever reason is unable to receive the full quantity ordered and rendered, the Seller shall have the right to invoice the Buyer for the loss incurred by having to transport the Product back to the storage or by having to sell the bunkers in a degraded form at a lower price than that applicable to the grade originally nominated





by the Buyer. The Seller may use this right without prejudice to the Seller's other rights for damages or otherwise pursuant to these terms.

**7.15** If delivery is required outside normal business hours or on local weekends, Saturday, Sunday or national Christian holidays the extra expenses incidental to such delivery shall be reimbursed by the Buyer as additional costs.

**7.16** The Buyer agrees to reimburse the Seller for overtime and/or other additional expenses incurred due to the failure of the Buyer, its servants or Vessel's local agents to provide the Seller or a physical supplier with sufficient prior notice of amendments of delivery time, quantity changes or cancellations.

**7.17** If Buyer fails to receive or rejects any amount of the full quantity ordered and tendered, Buyer shall be liable for all expenses and loss incurred by Seller and arising out of such failure or rejection by Buyer including any loss incurred by having to transport the fuel back to the storage or by having to sell the fuel in a degraded form at a price lower than that applicable to the grade originally nominated by Buyer without prejudice to Seller's other remedies.

**7.18** Buyer shall pay Seller for delivery services at the rates applicable on the date of delivery and for all additional charges incurred in connection with the delivery, including but not limited to, port dues, wharfage, mooring and unmooring, barge hire, demurrage, provision of additional hose in excess of that normally available and the use of all oil pollution control equipment required to effect delivery. The Buyer further agrees to pay and indemnify against all claims and expenses for any loss, damage or delay caused by Buyer's vessel to the barge.

**7.19 Proof of Delivery** The Buyer or his representative should attend Delivery and obtain at that time all information relating to Delivery including the exact quantities and precise specification of Product delivered. Unless otherwise requested by the Buyer prior to dispatch by the Company of the Confirmation, the Company shall be under no obligation at any time to produce to the Buyer any evidence of Delivery to the Vessel. It is expressly agreed that the furnishing by the Company of Proof of Delivery is not a pre-requisite to payment of the Price.

## **8 – DOCUMENTATION**

**8.1** Before commencement of delivery the Seller shall, without obligation, endeavour to present a bunker requisition form or similar document, duly signed by the Seller or its representative, which shall contain the quantities to be delivered and all information required in accordance with the Bunker Confirmation or any subsequent amendments thereof, including, in particular, the values for viscosity, density, sulphur and flash point.

**8.2** Once the delivery is completed and quantities measured, a Delivery Receipt (BDR) shall be presented to the master of the Vessel or his authorized representative containing the delivered quantity in volume units, density in either kg/L or kg/m<sup>3</sup> at fifteen (15) degrees Celsius as per ISO 3675, flash point, sulphur content in % m/m as per ISO 8754 and viscosity. The master or his representative shall sign the Delivery Receipt and return it to the Seller or its representative. A duplicate copy shall be retained by the Vessel.

**8.3** In the event the master of the Vessel is not satisfied with the sampling, quality, quantity or any other matter concerning the Marine Fuels or delivery thereof, he shall immediately contact the Seller using the 24/7 phone number provided in the Bunker Confirmation or the Buyer, who must take immediate action on the complaints to solve the issue raised by the master of the Vessel.

**8.4** The Buyer warrants that it is authorized by the Vessel's owner(s) and/or operator(s) to order the Marine Fuels delivered to the Vessel and that it has provided a copy of these General Terms and Conditions to the Vessel's owner(s) and operator(s). The Buyer further warrants that by receiving the Marine Fuels and signing the Bunker Delivery Receipt, the master or the chief engineer acknowledges with binding effect for the Buyer that the Vessel is bound by the terms and conditions contained herein.





## **9 - TITLE/RISK**

**9.1 Title** Ownership of the Product shall pass to the Buyer only upon payment for the Marine Fuels delivered.

**9.2** Until such time as the payment is received, the person or entity in possession of the Product delivered shall hold the Product as a mere bailee and shall hold the Product on behalf of the Company and to the Company's order in such a way that it can be identified as the Company's property and/or the property of the Company's agents, successors, sub-contractors and assigns, and shall keep it separate from the Buyer's own property and the property of any other person. In the event that the Buyer fails to make payment in accordance with clause 12, or on demand as provided in this Agreement, the Company has the right to demand immediate return of the Product and any permission to consume the Product ceases and is withdrawn. For the avoidance of doubt, where a mortgagee bank enforces any rights against the vessel and becomes a mortgagee in possession of the product then as bailee the mortgagee bank is liable to the Company for fulfilment of the Agreement.

**9.3** In the event that the Bunkers have been mixed with other bunkers on board the Vessel, the Company shall have the right to trace its proprietary interest in the Bunkers into the mixed bunkers and/or a right of lien to such part of the mixed bunkers as corresponds to the quantity or net value of the Bunkers delivered.

**9.4** Where, notwithstanding these conditions, title in and to the Bunkers delivered has passed to the Buyer and/or any third party before full payment has been made to the Company, the Buyer shall grant a pledge over such Bunkers to the Company. The Buyer shall furthermore grant a pledge (or any other security right requested by the Company) over any other Bunkers present in the respective Vessel, including any mixtures of the delivered Bunkers and other bunkers. Such pledge will be deemed to have been given for any and all claims, of whatever origin and of whatever nature that the Company may have against the Buyer.

**9.5 Risk** The Company's responsibility for Product shall cease and the Buyer shall assume all risks and liabilities relating thereto, including loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage of Product and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties at the time Product reaches the Physical Supplier's end of the delivery hose or pipeline connecting Physical Supplier's delivery facilities to the Vessel's receiving facilities, or in the event that the Buyer arranges its own transportation, the receiving facilities of the barge or coastal tanker nominated by the Buyer. The Buyer agrees to indemnify without limit the Company in respect of any liability, loss, damages, costs, expenses, claim or demand arising in connection with the Product after risk has passed to the Buyer.

## **10 – SAMPLING**

**10.1** With respect to the quality of the Products supplied, samples shall be drawn at the time of delivery by the Seller's representatives. The method of sampling will be governed by local regulation, if such exists, otherwise as per the method used by the local physical supplier. Buyer or its representatives may witness the sampling but the absence of Buyer or its representatives at the time of sampling shall not prejudice the validity of the samples taken.

**10.2** It is the duty of the Buyer to instruct the Physical Supplier to take at least 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. Sample point should be at the sampling valve on the bunkering barge or closest to Vessel's bunker manifold or such other location as set by the Company. The representative samples shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, product name, delivery date and place and seal number, authenticated with the Vessel's stamp and signed by the Seller's representative and the Master of the Vessel or his representative.

**10.3** The seal numbers shall be inserted into the Bunker Delivery Receipts and by signing the Bunker Delivery Receipts both parties agree to the fact that the samples referred to therein are deemed valid and taken in accordance with the requirements as specified in this clause.



**10.4** These samples shall conclusively represent the quality of the Products supplied to the Receiving Vessel.

**10.5** All documentation must be checked by the Buyer or the Buyer's representative and be in order and any discrepancies noted on the Physical Supplier's delivery receipt before signing and stamping.

**10.6** One set of the Physical Supplier's samples shall be retained by the Buyer and at least one set shall be retained by the Physical Supplier, each to be retained for a minimum of 60 (sixty 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, Regulation 18.

**10.7** Any samples drawn by Buyer's personnel either at the time of delivery or at any date after delivery shall not be valid as an indicator of the quality of the Products supplied. The fact that such samples may bear the signature of personnel aboard the delivery conveyance shall have no legal significance as these local personnel have no authority to bind Seller to different contractual terms.

## **11 – CLAIMS**

**11.1** Buyer undertakes the duty and continuing obligation to investigate/test issues with quality or quantity immediately upon delivery of the Product to the Buyer.

**11.2 Notification** Written Notice of Claim must be given to the Company within the time limit specified in clauses below for each type of claim or as specified in the bunker Confirmation and any claim not notified within the specified time limit shall be deemed waived and absolutely barred and the Company shall be discharged of all liability whatsoever and howsoever arising. It is the Buyer's responsibility to ensure that notice of claim is received by the Company whose confirmation of receipt should always be sought. Regardless of whether a claim or dispute has arisen or is anticipated, the Buyer must give Notice of Claim forthwith to the Company of any discrepancy, error or omission present in any form or document tendered, submitted or produced by the Physical Supplier and of any unusual occurrence relating to the delivery. Buyer's submission of any claim does not relieve it of responsibility to make full payments as required under clause 12 and Buyer shall not be entitled to set off any claim from payment.

**11.3 Sufficiency of Information** The Notice of Claim must contain sufficient information to enable the Company to identify the relevant transaction, the nature of the complaint and the loss or damage alleged. Any Notice of Claim which does not give such sufficient information will not be valid for the purpose of compliance with the relevant time limit.

**11.4** In addition, the Buyer must provide a full and complete response to any and all reasonable questions, enquiries and requests, including providing legible copies of supporting documentation reasonably requested by the Company concerning the claim and matters relating thereto. Should a full and complete response not be provided by the Buyer within 30 days of such request, then the Buyer shall bear all consequences of failing to evidence their claim in a timely fashion to include paying damages to the Company to compensate it for any additional administrative or legal costs in dealing with a late evidenced claim together with any losses suffered by the Company owing to its inability to advance any indemnity action because of the Buyer's failure to provide information in accordance with this clause.

**11.5 Categories** For the purposes of these terms and conditions, all possible claims and disputes arising out of the Agreement are divided into three categories: a) Quantity claims and disputes; b) Quality claims and disputes; c) Other claims and disputes



## **11.6 Quantity Claims and Disputes**

**11.6.1** Delivery barges and/or wagons and/or vehicles and/or storage tank loads and/or trucks must be checked by tank-dipping to measure the content and to ensure full turn-out. Flow meters must be checked for seals, correct settings, calibration and general condition. All of these checks must be carried out before and after delivery of each consignment on each barge and/or wagon and/or vehicle and/or storage tank load and/or truck.

**11.6.2** For barge deliveries to Vessel, quantity shall be determined by Physical Supplier (barge) meter.

**11.6.3** For truck deliveries, quantity shall be determined by the weighbridge figures, if available, at the port of loading and the Physical Supplier shall check truck seals prior to dispatch. If weighbridge figures are not available, quantity shall be determined by truck flowmeter ticket/reading.

**11.6.4** Save for safe access to the Physical Supplier's facilities not being available, the Buyer or Buyers representative must attend all measurements performed by the Physical Supplier both prior to and after supply.

**11.6.5** For truck deliveries the Buyer or Buyer's representative must attend and witness breaking of truck seal, if present, prior to delivery to the Vessel commencing.

**11.6.6** In the absence of full attendance, the Buyer shall not be entitled to complain of an incorrect measurement of the volume of marine Products delivered.

**11.6.7** The delivery of the Product must be supervised at all times and care must be taken to ensure that all documentation is complete and accurate before signing and stamping it.

**11.6.8** Any dispute as to the accuracy of the measurements of the quantity delivered must be presented by the Buyer or Buyer's representative to the Physical Supplier immediately upon identification.

**11.6.9** The Company must immediately be contacted both verbally and in writing to allow it to take all action necessary (including arranging for a surveyor to attend the Vessel if deemed necessary), time being of the utmost essence in this regard.

**11.6.10** The Buyer shall ensure that the Vessel's crew including the master shall assist the Company in this regard, including providing necessary access and assistance to the surveyor if appointed, as well as responding timely to any requests for information including Vessel data logs.

**11.6.11** If the issue cannot be solved locally due to the circumstances, buyer has to expressly note the quantity discrepancy in writing on the Bunker Delivery Receipt ("BDR") and/or Supplier's Receipt at the time of delivery or, in ports where such notation on the BDR and/or Supplier's Receipt is not permitted, present it at the time of delivery to the physical supplier's personnel in a separate letter of protest.

**11.6.12** Any claim as to short delivery shall be presented by the Buyer in writing within twenty-four (24) hours from the time of delivery together with all documents supporting the Buyer's claim, failing which any such claim shall be waived and barred.

**11.6.13** The Company shall not be liable for claims for short delivery based upon figures obtained by measuring Product in the receiving Vessel's tanks.

## **11.7 Quality Claims and Disputes**

**11.7.1** It is the Buyer's sole responsibility to ensure that Product tendered for delivery is fit for use by the Vessel and is delivered into the correct tanks.

**11.7.2** The Buyer and Seller agree that only analyses of sealed samples taken as “drip samples” at the sampling valve on the bunkering barge shall form the basis of documentation that bunker oil was substandard or “off-spec” when delivered. In case that drip sampling is not available onboard barge, tanktruck or shoretank, representative samples shall be taken as a composite of each tank divided with 1/3 from each the top/mid/bottom of the tanks of Supplier’s facilities.

**11.7.3** Any samples drawn from the Receiving Vessel’s tanks shall not be valid as an indicator of the quality supplied.

**11.7.4** Likewise when quantity claims are raised, it is important to check that all documentation is in order and to note discrepancies in the Physical Supplier’s delivery receipt before signing and stamping it.

**11.7.5** In the event of the Buyer having grounds to believe that the Product supplied does not accord with the description in the Confirmation or is defective the Buyer shall immediately:

- take all reasonable steps to mitigate the consequences of having been supplied with possibly defective or incorrect Product.
- give immediate notice with full details of the possibly defective or incorrect Product to the Company together with the Vessel’s position, destination and ETA, the quantities and locations of all bunkers on board the Vessel/stored in the Vessel, the rate and quantity of consumption since delivery and the location of the Vessel immediately prior to delivery of the Product, and for each of the three preceding deliveries to the Vessel, the quantity, quality and specification of Product supplied, the place and date of supply and the name of the supplier;
- inform the Company of the whereabouts of the Buyer’s set of samples.

**11.7.6** The Buyer has to immediately on making a claim give the Company’s representative a reasonable opportunity to inspect the Vessel, including, without limitation, its engines, fuel tanks, equipment, logs, records and copies of communications including communications between the Buyer and the Vessel. Buyer shall ensure that Vessel’s crew assist the Company’s representative in his enquiries and shall respond to requests promptly in time.

**11.7.7** The time limit for receipt by the Company of Notice of Claim in respect of quality and/or claims arising out of quality is 14 (fourteen) days from the date of delivery or such shorter period as may be specified in the Bunker Confirmation, failing which any claim shall be time barred.

**11.7.8** Within 30 days of delivery a detailed written claim together with all available supporting documentation substantiating each and every constituent part of the claim (including but not limited to an analysis report prepared by independent inspectors/laboratory of the Buyer’s retained quality sample and all correspondence to/from the fuel testing organization used by Buyers) to be submitted to the Company.

**11.7.9** In the event of a quality claim by Buyer basis an analysis result showing that any agreed specification parameter(s) has exceeded the confidence level(s) according to the relevant sections on precision and interpretation of test results in the ISO 4259 standard, the official BDN sample(s) in Seller’s or its physical supplier’s possession shall be tested for the allegedly off-specification parameters only and analyzed by a mutually agreed independent surveyor, located in the country (and where available, port) of supply, whose results shall be conclusive and binding on both Buyer and Seller, absent fraud or manifest error. The independent surveyor shall be appointed by the Seller, and the surveyor’s fee shall be shared equally by Buyer and Seller (provided, however, if such surveyor analysis does not show any deviations from agreed-upon quality, the surveyor’s fee shall be for Buyer’s account).

**11.7.10** The sample’s seal must be breached only in presence of both parties unless one/both in writing have declared that they will not be present; and both parties shall have the right to appoint independent person(s) or institute(s) to witness seal breaking. No samples subsequently taken shall be allowed as (additional) evidence. If any

of the seals have been removed or tampered with by an unauthorized person, such sample(s) shall be deemed to have no value as evidence.

**11.7.11** In the event the Product supplied is off-specification and cannot be consumed by the Vessel, Buyer's remedies shall be limited exclusively and solely to the replacement of the nonconforming Product. If the Buyer removes the Product without the express written consent of Company, then all such removal and related costs shall be solely borne by the Buyer.

**11.7.12** If it is alleged that any equipment or machinery has been damaged by incorrect or defective Product full details must be given to the Company at the earliest opportunity and the item allegedly damaged must be preserved and made available for inspection on demand at any reasonable time or times by the Company and/or its representative.

### **11.8 Other Claims and Disputes**

**11.8.1** In all other cases, Notice of Claim must be given to the Company as soon as reasonably possible and in any event no later than 14 (fourteen) days after delivery. If the Bunker Confirmation provides for a shorter period such shorter period shall apply. The quality of the Product shall conform with any specification or description a set out in the Confirmation. For non-bulk deliveries no claim for any defects in quality may be made in respect of Product that has been transported or stored in containers provided by the Buyer.

**11.8.2** Any notice of a claim regarding delay must be given to the Seller no later than fourteen (14) Days after the date of delivery, together with all documents supporting the Buyer's claim, failing which any such claim shall be waived and barred. If a delay results from the Buyer's failure to give proper notices or the Buyer's Vessel failing to receive Marine Fuels at the agreed maximum allowable pumping rate, then the Seller suffering such delay shall be entitled to compensation from the Buyer for such delay.

**11.8.3** All time limits for any claim are subject to substitution by a shorter time limit agreed between the Parties and stipulated in the Confirmation.

**11.8.4 Proceedings** Without prejudice to the provisions stated above, the Company shall in any event be discharged of all liability whatsoever howsoever arising in respect of any Product and/or supplies and/or services provided to the Buyer or which the Company has undertaken to supply and/or provide unless suit be brought and written notice thereof given to the Company within 6 (six) months from the date of delivery and/or date of the Company's undertaking.

**11.8.5** Should any timely claim submitted by Buyer not be settled to Buyer's satisfaction, shall the claim be time-barred, unless arbitration is commenced within six (6) months of delivery.

## **12 – PAYMENT**

**12.1** In most cases, payment terms will have been agreed and will be set out in the Bunker Confirmation. Seller's invoice will reflect same.

**12.2** In the event that delivery documents are not available, Seller may invoice based on email or facsimile advice of delivery details in lieu of delivery documents.

**12.3** Buyer shall have fully and irrevocably waived all objections to Seller's invoices and the contents thereof unless, within seven (7) days after receipt, Buyer shall deliver to Seller written objection to such invoice specifying the error or errors, if any, contained therein.

**12.4** The Buyer shall be obliged to make payment in full and fulfill all other obligations in accordance with the terms hereof, whether or not they have any claims or complaints.

**12.5** Unless the bunker Confirmation otherwise provides, each of the following terms apply:

- a) Payment of the Price will be made in United States dollars, or such other currency as specified in the Bunker Confirmation, in full without set off, counterclaim, discount and/or deduction for any reason whatsoever so as to ensure that the Company receives value for the payment in cleared funds on or before the Due Date.
- b) Timely payment is of the essence for the Agreement. If the payment due date falls on a weekend or any bank holiday in the country where payment is to be remitted (other than a Monday), payment must be made on the first prior available banking day. If the payment due date falls on a Monday bank holiday, payment may be made on the next available banking day.
- c) 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.
- d) Payment will be made by way of telegraphic, telex, swift or rapid electronic transfer to the bank and account specified in the Company's invoice, or as mutually agreed in writing by the Parties to accept payment by other means including cheque. All bank and other charges if any incurred in effecting remittance will be for the account of the Buyer. Advice of remittance including identifying references should always be given to the Company. If payment is not received as a result of the Buyer not complying with the payment instructions, then the Buyer will pay immediately, upon written request, all sums due including interest and all other charges. For the avoidance of doubt, payment shall be deemed to be made only once the funds are cleared free of any charges to the Company's relevant bank account.
- e) Payments received by the Company from or on behalf of the Buyer notwithstanding any specific request to the contrary will be applied in the following order in diminution or extinction of:
  - accrued interest and costs and/or expenses (including legal and enforcement costs) in respect of transactions for which the principal sum has been previously paid.
  - accrued interest and costs and/or expenses (including legal and enforcement costs) arising from all other transactions.
  - any principal sum due and outstanding commencing with the oldest and proceeding chronologically thereafter to the most recent.
  - any principal sum which the Company knows or reasonably expects will fall due at a future date.

**12.6** The Company may in good faith vary, amend, withdraw, substitute or add to the terms relating to payment at any time in the course of a transaction in such manner as it shall in its absolute discretion consider necessary to protect its interests.

**12.7** If at any time the reputation, standing, creditworthiness, liquidity or solvency of the Buyer or any subsidiary, parent, associate or affiliate thereof should give the Company reasonable cause for concern, and/or if any amount due remains outstanding for a period of 7 days from the Due Date, the Company may without prejudice to all other rights and remedies which it may have give notice to the Buyer that credit facilities from the Company to the Buyer are withdrawn or suspended as the case may be and all sums outstanding and/or due for payment at a future date shall thereupon fall due for immediate payment.

**12.8** In the event that the Buyer or any subsidiary or parent thereof shall commit an act of bankruptcy or shall be the subject of proceedings judicial or otherwise commenced for debt, bankruptcy, insolvency, liquidation or winding up, the Company may forthwith terminate the Agreement and the payment shall stand due immediately.

**12.9** The full legal and other costs and expenses incurred by the Company including those of the Company's own legal and credit departments and of other lawyers in connection with any breach by the Buyer of any term of the



Agreement including but not limited to actions for debt shall be for the Buyer's account and shall for all purposes form part of the Price due from the Buyer to the Company for Product supplied.

**12.10** Buyer acknowledges that failure to pay the Invoice in full, as required by the Agreement, in no way obligates the Company to in turn make payment to the Physical Supplier (if the Company is not the Physical Supplier), and further that such failure to pay the invoice in full may give rise to the Physical Supplier seeking to assert its security rights including that of seeking an arrest of the Vessel, which in no way will be indemnified by the Company.

**12.11** All unpaid invoices from Seller to Buyer shall immediately be considered overdue, upon the occurrence of any of the following events: (i) any vessel owned or operated by Buyer has an order issued against it for its arrest or attachment or is arrested or attached by Seller or a third party for unpaid debts; or (ii) there is a change in the financial circumstances or structural organization of Buyer sufficient to cause Seller to believe that its likelihood of receiving payment from the Buyer is jeopardized or that its security interest in any of Buyer's owned, managed, chartered, operated or otherwise controlled vessels is jeopardized.

**12.12** In the event the Buyer is requested to make payment to a bank account other than the one stated in the Bunker Invoice, the Buyer must confirm such change before remitting payment, by emailing the Seller directly to the email address from which the Bunker Confirmation was sent and by calling the responsible bunker trader at the Seller. If payment is made to an account other than the one designated in the Bunker Invoice or verified in accordance with this Sub-clause, and the funds are not received in the Seller's account, payment has not occurred.

### **13 - LIEN & FINANCIAL RESPONSIBILITY**

**13.1** For deliveries in bulk where Product is supplied to a Vessel, in addition to any other security, the Agreement is entered into and Product is supplied upon the faith and credit of the Vessel. It is agreed and acknowledged that the Company is providing necessaries to the Vessel on the order of the Buyer and the Buyer is an authorized agent of the Owner and/or Master. It is expressly agreed and acknowledged that a lien over the Vessel is thereby created for the Price of Product. The Buyer, 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 or entity 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 Buyer.

**13.2** No disclaimer stamp of any type or form will be accepted on the bunker receipt. If any stamp should be applied it will not alter change or waive Seller's lien against the vessel or the bunkers or waive the vessels ultimate responsibility incurred through this transaction.

**13.3** Buyer warrants that the Company shall have the right to assert a maritime lien in rem, attachment or any other claim against the Vessel to which the Product is delivered for the Price of the Product, any interest due thereon including on overdue payments and all associated recovery costs incurred by the Company should the Buyer fail to pay the Company in accordance with the Agreement. Such remedies shall be in addition to, and not in limitation of, any other remedies available to the Company at law, in equity or herein. Buyer warrants that the Product purchased pursuant to the Agreement is for the operation and consumption of the receiving Vessel and that Vessel only.

**13.4** Any notice by the Buyer that a maritime lien, attachment or any other claim against the Vessel may not be created due to a prohibition of lien clause or similar clause in the Buyer's charter party, or for any other reason, including but not limited to insolvency proceedings of any kind, must be given to the Company in the initial purchase order for the Product. It is agreed and acknowledged by the Buyer that the Buyer is under a continuing duty to notify the Company of such a notice of restriction until the Buyer has paid the Company the Price for the Product in full. In the event that the Buyer provides such notice of restriction, the Company has the right to withdraw credit provided to the Buyer and the Buyer shall pay the Company for the Product in cash or an equivalent acceptable to the Company prior to delivery. Any notice of such restriction given by the Buyer, its parents, subsidiaries, affiliates,





agents and/or assigns, the Vessel's charterer, the Vessel Interests, the Vessel's personnel or any other person later than in the purchase order for the Product (including any attempted wording on the delivery ticket or otherwise) shall not modify this Agreement except that any granting of credit by the Company may be rescinded upon the Company's receipt of such notice of restriction, in which case full payment shall be due forthwith from the Buyer.

**13.5** If bankruptcy, liquidation, composition or other similar proceedings are instigated regarding Buyer, in court or out of court, or if there is a reason to believe that Buyer will not be able to effect payment when due, Seller has the right to receive immediate cash payment or immediate satisfactory security regarding any sale to Buyer, whether contracted or not and whether the Marine Fuels has been delivered or not. If Seller does not receive such immediate cash payment or security, Seller has the right to suspend deliveries regarding any sale contracted, which shall not relieve Buyer of any of Buyer's obligations, or, at Seller's option, to cancel any sale contracted, irrespective of whether delivery has been completed or not. The same shall apply if there in Seller's opinion is uncertainty as to who is responsible as Buyer.

**13.6** If Buyer shall default in making any payment when due, Seller has the right to suspend deliveries regarding any sale contracted, which shall not relieve Buyer of any Buyer's obligations and to receive immediate cash payment regarding any sale contracted or, at Seller's option, to cancel any sale contracted, irrespective of whether delivery has been completed or not.

If the delivery is contracted for by an agent of Buyer on behalf of a principal, disclosed or undisclosed, or Buyer on behalf of itself and as agent on behalf of another principal or principals, disclosed or undisclosed, such agent or Buyer, as the case may be, shall be jointly and severally liable with such principal or principals, or other principal, or principals, as the case may be, for the due and proper performance of the contract.

#### **14 – TAXES**

**14.1** Buyer will pay Seller the amount of all excise, gross receipts, import, motor fuel, superfund and spill taxes, and all other federal, state and local taxes (collectively, "Taxes and Assessments") or the foreign equivalent as determined in the sole, absolute and unfettered discretion of Seller (other than taxes on income), and paid or incurred by Seller directly or indirectly with respect to the Products and/or on the value thereof insofar as the same are not expressly included in the price quoted. Any additional Taxes and Assessments incurred by Seller arising from a Transaction and imposed by any governmental and/or any regulatory authority after delivery as a result of an audit, whether domestic and/or international, shall be borne solely by Buyer.

**14.2** Buyer will present Seller with any required documentation, including, but not limited to, registrations, exemptions, certifications, claims, refunds, declarations or otherwise, in a form and format, and on or before whatever due date Seller shall require, to satisfy Seller's concerns in connection with any of the above taxes or assessments. Further, Buyer shall indemnify and hold Seller harmless for any damages, claims, liability or expense Seller might incur due to Buyer's failure to comply with this requirement.

#### **15 – NOTICE**

**15.1** Any Party giving notice under the Contract shall ensure that it is effectively given. Notice shall be considered as received by a Party on the date it is received by that Party during normal working hours. If notice is received after normal working hours it shall be considered as received on the recipients' next working day. Notice to the Buyer is effective if sent by email and/or regular mail to the Party ordering the Marine Fuels. Notice to the Seller is effective if sent by email and/or regular mail to the TBF entity named on the Bunker Confirmation.

#### **16 - FORCE MAJEURE**

**16.1** Seller shall not be in breach of nor have any liability for its failure to perform any obligation under any Transaction in the event that performance is prevented, hindered, delayed, or made more expensive as a result of any one or more of the following contingencies ("Force Majeure Event"), whether or not such Force Majeure Event

may have been foreseen or was foreseeable at the time of contracting and regardless of whether the effect of such Force Majeure Event is direct or indirect:

- a. Any act of God;
- b. fire, accident or explosion;
- c. landslide, earthquake, storm, hurricane, flood, tidal wave or other adverse weather condition;
- d. any war (whether declared or not), revolution, act of civil or military authority, riot, blockade, embargo, trade sanction, terrorism, sabotage, cyberattack or civil commotion;
- e. any hack, electronic intrusion, or other unauthorized access or manipulation of any computer, electronic data, or electronic system;
- f. any pandemic, epidemic or quarantine restriction;
- g. strikes (whether legal or not), labor disturbance, whether involving the employees of Seller, the Supplier or otherwise, and regardless of whether the disturbance could be settled by acceding to the demands of the labor group;
- h. compliance with applicable law or a change, request or order of any governmental authority or agent or regulator;
- i. failures of any electrical supply, telecommunications, transport, equipment, pipeline or plant or any mechanical breakdowns howsoever caused;
- j. shortage in raw material, transportation, manufacturing, or Products from Seller's contemplated source of supply;
- k. any other cause beyond whatsoever the reasonable control of Seller or its Supplier, whether or not foreseeable; or
- l. any determination, at Seller's sole discretion, that proceeding with a delivery would be a violation of the sanctions laws or regulations of the United States or any other jurisdiction to which Seller may be subject.

**16.2** In the event that performance is prevented, hindered, delayed or made more expensive by such a Force Majeure Event, Seller may reduce deliveries in any manner as it may determine in its sole discretion and shall not be obliged to acquire or purchase additional quantities from other suppliers.

**16.3** If performance is made more expensive by such a Force Majeure Event, Seller shall have the option either to reduce or stop deliveries or to continue deliveries and increase prices in fair proportion to the increased cost of operation under such a Force Majeure Event.

**16.4** Seller shall not be liable for demurrage, off-hire or delay or any additional costs incurred by Buyer resulting from or in any way attributable to any of the foregoing Force Majeure Events.

**16.5** Seller shall not be obligated to make up any shortfalls omitted as a result of any Force Majeure Event. Quantities not sold or purchased due to the occurrence of such a Force Majeure Event may be reduced or eliminated from the contractual amount at the discretion of Seller.

**16.6** If due to a Force Majeure Event Seller is unable to supply the total demand for any Product and/or is only able to perform part of its contractual obligations, Seller shall have the right in its sole discretion to allocate its available Product and/or services among its customers, departments and divisions in such manner as it may so determine.

**16.7** Nothing in this provision shall be deemed to excuse Buyer from its obligation to make payments for Products ordered and/or received.

## **17 - SAFETY AND ENVIRONMENTAL PROTECTION**

**17.1** It shall be the sole responsibility of Buyer to comply and advise its personnel, agents and/or customers to comply, both during and after delivery, with all the health and safety requirements applicable to the Products and to ensure so far as possible that any user of such Products avoids, without limitation, any frequent or prolonged



contact with the Products. Seller accepts no responsibility for any consequences arising from failure to comply with such health and safety requirements or arising from such contact. Buyer shall protect, indemnify and hold Seller harmless against any damages, expense, claims or liability incurred as a result of Buyer, or any user of the Products, or its customers failing to comply with the relevant health and safety requirements.

**17.2** In the event of a spill or discharge occurring before, during or after delivery of the Products, Buyer shall immediately notify the appropriate governmental authorities and take whatever action is necessary, and pay all costs to effect the clean-up. Failing prompt action, Buyer authorizes Seller and Supplier, if any, to conduct such clean-up on behalf of Buyer at Buyer's risk and expense, and Buyer shall indemnify and hold Seller and Supplier, if any, harmless against any damages, expense, claims or liability arising out of any such spill or clean-up unless such spill or clean-up shall be proven to be wholly and solely caused by Seller's gross negligence.

**17.3** Buyer warrants that the Receiving Vessel is and shall at all times comply with all governmental, port/terminal and pollution rules and regulations. The Receiving Vessel will not be moored at a wharf or alongside other marine loading facilities of Seller or Supplier unless free of all conditions, deficiencies or defects which might impose hazards in connection with the mooring, unmooring of or delivery of Products to the Receiving Vessel.

**17.4** Buyer undertakes that the Receiving Vessel shall operate its Automatic Identification System (AIS) transponder at all times prior to and during the bunkering operation.

**17.5** If at any time prior to or during Delivery the Company reasonably determines that the environment for Delivery is unsafe or has the potential for a spillage occurring due to conditions including but not limited to, unsafe working environment, lack of or insufficient practices/procedures, facilities, use of tools or equipment and incompatible configuration or bad weather, the Company reserves the right not to commence Delivery or to terminate the supply immediately without prior notice to the Buyer at any time and without liability whatsoever.

## **18 – INDEMNITY**

**18.1** The Buyer hereby indemnifies the Company against any claim for injury and/or death occurring to any person and/or all damage and/or damage to any property and against all actions, suits, claims, demands, costs, charges or expenses arising in connection therewith to the extent that the same shall have been occasioned by the negligence or default of the Buyer, his servants, representative, or agents or any third party in the course of performance of or arising out of or in connection with the Agreement. Buyer shall also indemnify and hold harmless the Company, the Physical Supplier, from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of services or the providing of Product under this Agreement, including claims, damages, losses, penalties or expenses arising under any air, water quality or hazardous waste statute, regulation or ordinance, hereinafter referred to as "pollution claims", to the extent that such claim(s) has been caused or contributed to by the Buyer or failure of or defect in the Buyer's equipment, their agents or employees.

## **19 – LIABILITY**

**19.1** The Seller and the Buyer recognize the risks inherent in ship-to-ship operations and that the decision to proceed with such operations is in the sound discretion of the masters of the vessels involved.

**19.2** The Company shall not be liable to the Buyer for:

- a) any loss of profit, loss of time (including without limitation hire, demurrage, deviation or detention), crew wages, pilotage, towage, port or wharf charges, barge delivery charges, costs of replacement fuel, costs relating to the removal of fuel and obtaining replacement fuel, cost of replacement vessel(s), damage to cargo, cost of tank or equipment cleaning, whether arising directly or indirectly, from any cause whatsoever and howsoever arising, whether in contract, tort or statute or otherwise including but not limited to, the

- exercise of Company's right to suspend and/or terminate delivery of Product, the negligence of the Company, its servants, agents or sub-contractors; and/or
- b) any indirect or consequential loss from any cause whatsoever and howsoever arising, whether in contract, tort or statute or otherwise including but not limited to, the exercise of Company's right to suspend and/or terminate delivery of Product, the negligence of the Company, its servants, agents or sub-contractors; and/or
  - c) any special, incidental, exemplary, punitive loss rising out of or in connection with the Agreement; and/or
  - d) damage to Vessel or the Buyer's property, or for any other loss sustained by the Vessel, its owners, charterers, underwriters, or other parties in interest, in contract, tort or otherwise, other than the circumstances and remedies permitted under this Agreement; and/or
  - e) any loss or liability whatsoever caused by the negligence, or dishonest or fraudulent or deliberate acts or omissions of the Physical Supplier or of any other person including the Company's servants, agents or sub-contractors

**19.3** In any event, Seller's total liability to the Buyer for any and all categories of loss and/or damages of whatsoever kind and type shall not exceed the total purchase price of the provision of the Marine Fuels that is the subject of the claim. This limitation of the Seller's liability to the Buyer shall apply regardless of whether that liability arises in contract, tort or any other way whatsoever and shall be in addition to any other exclusions or limitations available to the Seller under law. In any case, the Seller shall have no liability unless and until the Seller has received full payment from the Buyer of all sums due under the Contract.

**19.4** The Buyer shall only be entitled to recover losses with respect to demurrage, quantity, quality and/or delay claims, damage caused by contact, collision, swell and/or any other weather or sea related condition or incident and any other losses or damages from the Seller to the extent that the Seller is able to recover, and does recover, such costs, losses or damages from the Seller's supplier or the loading terminal operator. The Seller shall not be obliged to pay any amount to the Buyer in excess thereof. The Seller shall however use reasonable endeavours to recover such costs, losses or damages for which the Buyer has presented a claim in accordance herewith.

**19.5** The Buyer shall indemnify and hold harmless the Seller for all legal fees and court fees as well as any expenses and costs incurred by the Seller in connection with the Seller's recovery of damages and losses inflicted on the Seller due to the Buyer's breach of any of its obligations under the Contract and enforcement of maritime lien and other available remedies under applicable laws.

## **20 - COMPENSATION**

**20.1** In the event that the Company's aggregate liability to the Buyer and any other party for any claims arising from quality, quantity, accident, delay, spill or any other cause, whether caused by negligence, dishonest or deliberate acts or omissions of the Physical Supplier or by any other person including the Company's servants, agents or sub-contractors whether based in tort or contract or statute, the total amount payable by way of compensation shall not exceed the Price of that portion of the product sold on which the liability is asserted and in any event, other than in respect of personal injury or death, shall never exceed the Price (excluding Further Costs, interest and other charges payable by the Buyer) of the Product supplied under the Agreement. It is a pre-condition to the payment of any compensation by the Company that all sums due to the Company from the Buyer are first paid and settled.

## **21 - GOVERNING LAW & ARBITRATION**

**21.1** The construction, validity and performance of the Contract and any dispute or claim arising out of or in connection with it or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Maritime Law of the United States, Title 9 of the United States Code, and the Uniform Commercial Code as applied in New York. Any dispute arising out of or in connection with the Contract shall be referred to arbitration before three persons at New York, one to be appointed by each of the Parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be

final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. In cases where neither the claim nor any counterclaim exceeds the sum of US\$75,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced. The arbitrators shall be commercial men and/or familiar with shipping matters.

**21.2** This agreement to arbitrate is without prejudice to Seller's right to use any and all legal process to obtain security for its claims in the United States and/or anywhere in the world pending resolution of the merits of its claim in arbitration.

**21.3** This agreement to arbitrate shall not limit the right of the Seller to commence any proceedings against the Buyer in any other jurisdiction, hereunder to commence proceedings on the merits in the jurisdiction pending an arrest of the Vessels and/or other property.

**21.4** The Parties hereby agree that any arbitration award issued by the Society of Maritime Arbitrators, Inc. shall be confidential and may not be published by the Society of Maritime Arbitrators, Inc. or disclosed in any way unless expressly agreed and authorized by the Parties in a signed writing.

## **22 – VALIDITY**

**22.1** The Standard Terms together with the Bunker Confirmation constitute the entire Agreement and supersedes all prior oral or written agreements, representations and/or warranties. No derogation, addition or amendment to the Agreement shall be of any effect unless and until expressly confirmed in writing by the Company. Any terms, obligations or duties, whether implied by statute or law or otherwise, are expressly excluded and disclaimed. If any provision of the Agreement shall to any extent be invalid or unenforceable the remainder of the Agreement shall not be affected thereby.

## **23 – CANCELLATION**

**23.1** In the event of the Buyer at any time cancelling a request for Product or the Vessel failing to take delivery of part or all of the requested Product for any reason, regardless of fault or causation, the Company shall have the right to pursue a claim against both the Buyer and the Vessel and the Buyer and the Vessel shall be jointly and severally liable for all loss and/or damage and/or expense thereby suffered including loss of profit and, (where the Company has engaged in derivative hedging instruments to offer a fixed price to the Buyer for the Product), loss and damage incurred arising from the Company's purchase of derivative instruments to include, but not limited to, the premium cost of such instruments, net payments made by the Company to the instrument writer and administrative fees. The Company may treat any other breach by the Buyer of any express term of the Agreement as a breach of a condition and it may at its discretion accept the breach, treat the Agreement repudiated and seek such remedies as it considers appropriate. However, the provisions of Clauses 18, 19 and 20 shall survive the termination of the Agreement in any event.

**23.2** Buyer agrees and acknowledges that in order for Seller to offer the product to Buyer over the applicable delivery period, Seller has entered into or may enter into one or more transactions with third parties, including derivative and/or hedging transactions using financially settled instruments with third parties or physical products purchase and sale transactions with Seller's physical supplier. In the event that Buyer does not purchase the entire quantity of product from Seller as contracted, Seller may suffer losses as a result of exposure under the foregoing transactions. As such, Buyer agrees to purchase and accept delivery of the full quantities contracted, and to do so within the designated delivery period. In the event that Buyer purchases less than the full contracted quantity for any reason, or purchases such quantities outside the designated delivery period(s), regardless of fault or causation and without regard to Force Majeure, then, without prejudice to Seller's other rights and remedies it may have against Buyer, Buyer shall be liable to Seller for all damages incurred, including those incurred by Seller as a result

of having entered into the foregoing transactions or having to enter into any replacement transactions, and any and all costs of maintaining, terminating and/or reestablishing any hedge or related trading positions or transactions (and discounted to present value or bearing interest, as appropriate), in each case as determined by Seller in a commercially reasonable manner, as well as the costs of storing, transporting or disposing of the Product quantities not purchased by Buyer and any related administrative and legal fees. Buyer further acknowledges that Seller shall not be obligated to perform any or Seller's obligations hereunder if there is an event of default or another breach by Seller's physical supplier with respect to Seller's purchase and sale agreement with such physical supplier.

#### **24 - SANCTIONS COMPLIANCE**

**24.1** This Clause shall apply where any sanction, prohibition or restriction is imposed on any specified persons, entities or bodies including the designation of any specified vessels or fleets under United Nations Resolutions or trade economic sanctions, laws or regulations of the European Union or the United States of America. The warranties set forth in this Clause shall apply at the date of entering into a Contract and continuing until delivery of the Marine Fuels and payment by the Buyer to the Seller has been made in full.

**24.2** The Parties warrant that:

- neither Party is subject to any of the sanctions, prohibitions, restrictions or designation referred to in sub-clause 24.1 above which prohibit or render unlawful any performance under the Contract;
- the Parties are respectively selling and buying the Marine Fuels as principals and not as agents, trustees or nominees of any person with whom transactions are prohibited or restricted under the sub-clause 24.1 above.

**24.3** The Buyer further warrants that:

- the Vessel is not a designated vessel and is not and will not be chartered to any entity or transport any cargo contrary to the restrictions or prohibitions in sub-clause 24.1 above;
- the Marine Fuels purchased under the Contract will not be sold to any entity subject to the sanctions, prohibitions, restrictions or designation referred to in sub-clause 24.1 above;
- should the Buyer sell any of the Marine Fuels purchased under the Contract, it shall obtain the same warranty from its own buyers.

**24.4** The Seller further warrants that the Marine Fuels do not originate or have been exported from a place that is subject to any of the sanctions, prohibitions, restrictions or designation referred to in sub-clause 24.1 above.

**24.5** If at any time during the performance of the Contract either Party has reasonable grounds to believe that the other Party is in breach of a warranty as aforesaid, the Party not in breach may terminate the Contract forthwith.

**24.6** Without prejudice to the generality of the foregoing, the Seller reserves the right at all times, whether prior to or after confirmation of nomination of a Vessel, to decline to supply Marine Fuels to such Vessel if the Seller reasonably considers that such supply could cause the Seller to be in violation of, or exposed to, punitive measures under any sanctions, prohibitions, restrictions or designation referred to in the first paragraph above.

**24.7** Notwithstanding anything to the contrary in this Clause, the Buyer and the Seller shall not be required to do anything which constitutes a violation of the laws and regulation of any state or intergovernmental organisation to which either of them is subject.

**24.8** The Buyer and the Seller shall be liable to indemnify the other Party against any and all claims, including return of any payment, losses, damage, costs and fines whatsoever suffered by the other Party resulting from any breach of warranty as aforesaid and in accordance herewith.



## **25 - AGENTS AND BROKERS**

**25.1** Unless the person or entity with whom the Company is corresponding specifically declares in writing to the Company prior to dispatch by the Company of the Confirmation that it is not the Buyer and at the same time provides in writing to the Company the full name and address of the Buyer, then the person or entity with whom the Company is corresponding shall be deemed to be the Buyer.

**25.2** Without prejudice to the provisions of sub-clause 25.1, in the event that the person or entity with whom the Company is corresponding is an agent of the Buyer, then such person or entity shall be jointly and severally liable with the Buyer to perform the Buyer's obligations under the Agreement notwithstanding that such person or entity purports to contract as a mere agent.

**25.3** All sales made under these Standard Terms and Conditions are made on the order of the registered owner of the Vessel, in addition to any other parties that may be listed as Buyer in the Confirmation. Any Product ordered by an agent, management company, charterer, broker or any other party is ordered on behalf of the registered owner of the Vessel and the registered owner of the Vessel is jointly and severally liable as a principal for payment of the Price for the Product.

## **26 - ANTI-BRIBERY & CORRUPTION**

**26.1** The Buyer represents, warrants and undertakes that it nor any member of its organization has committed any breach and shall at all times comply with all applicable laws, regulations, rules, decrees and/or official government orders and requirements of the United States, the European Union, the United Kingdom, Denmark, and any other relevant jurisdiction relating to anti-money laundering and anti-bribery, and have procedures in place that are, to the best of its knowledge, designed to prevent the commission of any offence under such legislations by any member of its organization or by any person providing services for it or on its behalf.

**26.2** The Buyer represents and warrants that it has neither paid nor received a bribe or made a corrupt payment, whether directly or indirectly, in connection with this Agreement.

**26.3** The Buyer shall promptly notify the Company if, at any time during the term of this Agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the representations and warranties set out in the previous paragraphs.

In the event the Buyer is in breach of the provisions in this Clause, the Company may terminate this Agreement and the Company shall not be liable to the Buyer for any losses, claims, costs, expenses, damages or liabilities arising in connection with any such termination.

To the full extent permitted by applicable law, the Buyer shall indemnify the Company against any and all costs, expenses, losses and liabilities it incurs as a result of the Buyer being in breach of its obligations under this Clause.

## **27 – CONFIDENTIALITY**

**27.1** Neither Party shall disclose to third parties any Confidential Information except with the prior written consent of the other Party, or to the extent required by law or regulation or by request of a government or agency thereof, or to the extent the disclosure is made in connection with an arbitration between the Parties or an action to enforce or vacate an arbitration award. The Parties shall take reasonable precautions to ensure that no unauthorised disclosure of Confidential Information takes place. If a Party is uncertain to whether information is confidential, that Party shall consult with the other Party. Notwithstanding the above, the Seller may at its sole discretion disclose Confidential Information to third parties in its normal course of business, however the disclosure shall be limited to information relevant for the Contract.

**27.2** Should either Party be required by law to disclose Confidential Information, the disclosing Party must notify the other Party and shall disclose only the minimum Confidential Information required to satisfy legal requirements.



**27.3** Information is not confidential for the purposes of this Clause if it was in the possession of the Party prior to receipt from the other Party; becomes public available other than as a result of a breach of the Contract by one of the Parties; or is lawfully received from a third party.

**27.4** This Clause shall survive termination of the Contract.

## **28 - ASSIGNMENT AND SUBCONTRACTING**

**28.1** The Buyer may only assign or novate any of its rights or obligations under the Contract with prior written consent of the Seller. The Seller may, at its sole discretion assign or novate the Contract wholly or partially, including but not limited to the right to receive payments thereunder, and/or perform through subcontractors. If supply is performed through subcontractors, these present General Terms and Conditions shall prevail over any subcontractor's general terms and conditions regardless of anything stated to the contrary on any subcontractor's bunker delivery note/receipt.

## **29 - CREDIT AND SECURITY – ADEQUATE ASSURANCE**

**29.1** Products supplied in each Transaction are sold and effected on the credit of the Receiving Vessel, as well as on the promise of Buyer to pay, and it is agreed and Buyer warrants that Seller will have and may assert a maritime lien against the Receiving Vessel for the amount due for the Products delivered. This maritime lien shall extend to the vessel's freight payments for that particular voyage during which the Products were supplied and to freights on all subsequent voyages. Disclaimer of lien stamps placed on a Bunker Delivery Receipt or Ship's Receipt for delivered Products (or any similar notification which could prejudice the Seller's rights) whether used by the Buyer, the Receiving Vessel (or its representatives) or any third party shall have no effect towards the waiver of such lien and shall not vary the Confirmation, and shall in no way prejudice any right of lien, attachment and/or claim the Seller has against the Buyer, the Receiving Vessel, the Receiving Vessel's registered owner or the Products.

**29.2** Buyer further warrants that:

- there is no provision contained in the Receiving Vessel's charterparty (or similar contractual arrangement) which purports to limit the Receiving Vessel, its Master, the charters and/or agents or representatives of the Receiving Vessel from incurring a maritime lien; and
- in addition to any other parties that may be listed as Buyer in the Confirmation, the Receiving Vessel and its registered owner are jointly and severally liable for payment of the Products; and
- until the payments for the Products have been received in full by the Seller, the Seller shall have a maritime lien, attachment and/or claim against the Vessel and/or the Marine Fuels delivered. Such maritime lien, attachment and/or claim shall be without prejudice and in addition to any other remedy available to the Seller. The Buyer shall not do anything nor enter into any agreement that will in any way prejudice the Seller's right or ability to assert or enforce any such maritime lien, attachment and/or claim. If the Marine Fuels have been commingled on board the Receiving Vessel, the Seller retains its right of maritime lien, attachment and/or claim against the Receiving Vessel and/or against such part of the commingled marine fuel as corresponds to the quantity of the Products delivered.

**29.3** Seller, at any time and for any reason in its sole discretion and at its sole option, may require Buyer to pay cash (in an amount reasonably determined by Seller in its commercially reasonable judgment) to reflect the value of any future deliveries of Product or may require Buyer to post an irrevocable standby letter of credit or other security required by Seller, and may suspend all further deliveries of Product until such security is received. If such requested security is not received within the time specified by Seller, then such failure shall be an event of default hereunder with respect to Buyer, allowing Seller to terminate or suspend its obligations with respect to the applicable Transaction(s) or any other agreement between Buyer and Seller, as well as impose cancellation fees set forth in Clause 10 below, or exercise any other remedies allowed by applicable law, equity or otherwise



**29.4** If the purchase of Products is contracted for by Buyer's agent, then such agent, as well as Buyer as principal, shall each be bound by and be fully liable for obligations of Buyer in the Transaction.

**29.5** All sales made under these terms and conditions are made to the registered owner of the Receiving Vessel, in addition to any other parties that may be listed as Buyer in the confirmation. Any Products ordered by an agent, management company, charterer, broker or any other party are ordered on behalf of the registered owner of the Receiving Vessel and such registered owner is fully liable as a principal for payment of the Seller's invoice.

### **30 - ADDITIONAL PROVISIONS / MISCELLANEOUS**

**30.1** If any part of this Agreement is declared invalid, it shall not affect the validity of the remainder of the agreement or any part thereof.

All rights and remedies of the Company hereunder are cumulative, and election of one remedy shall not exclude another.

**30.2** These terms supersede all previous Standard Terms and Conditions of Sale of marine Products of the Company and sets forth the final and exclusive expression of the parties' agreement unless it is modified in writing, which modification must be signed by the Company. It supersedes all oral or implied agreements. Any reference to any previous terms and conditions of the Company shall be deemed to be a reference to these terms.

**30.3** Any disclaimer notices or other writing by Buyer or vessel interests or their agents on the marine fuel delivery receipt, or any other document, seeking unilaterally to alter or amend any part of this Agreement shall be ineffective.

**30.4** This Agreement and the Confirmation sent by the Company to the Buyer constitutes the entire agreement among the Parties hereto with respect to the subject matter hereof and supersedes all oral communication and prior writings with respect thereto including the purchase order, if any, sent by the Buyer.

**30.5** Claims, notices and other communications hereunder shall be in writing and shall be mailed via certified or registered mail or by overnight courier to the attention of the Legal Department of the particular Seller in each Transaction and unless otherwise agreed in writing by the Seller, a copy of such notice shall also be mailed, faxed and/or e-mailed to Seller at the address designated by Seller for invoicing. Either Buyer or Seller may by notice to the other change the address, facsimile number or electronic messaging system details at which notices or other communications are to be given to it by giving fifteen (15) days prior written notice of its new address to the other party.

**30.6** No amendment or waiver, whether partial or whole, of any Transaction or any provision hereof shall be effective unless agreed in writing by the Seller. Any written waiver, whether partial or whole, by Seller on one occasion shall not constitute an effective waiver of any right or remedy available at law, in equity, or otherwise, including any right or remedy contained in the Transaction or these General Terms on a subsequent occasion, regardless of presentment of the same issue or matter, unless expressly provided for in the prior written waiver.

**30.7** A failure or delay in exercising any right, power or privilege in respect of these General Terms or any Transaction will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

**30.8** Buyer shall not assign, transfer, delegate or novate any Transaction or any right or obligation, in whole or in part, arising under a Transaction without the prior written consent of Seller. Upon provision of such consent, Buyer shall principally liable for and shall not be relieved of or discharged from any obligations hereunder unless and until released from same in writing by Seller. Any Transaction and any amounts due from the Buyer pursuant to any



Transaction may be assigned or pledged at any time by Seller, in its sole discretion, without prior notice to, or consent of, Buyer.

**30.9** Unless consented to in writing by Seller, Buyer undertakes to keep confidential the terms of any Transaction and any Transaction specific information, including but not limited to pricing information, except as required by applicable law, whereupon Buyer shall, where permitted to do so, immediately advise Seller of such disclosure.

**30.10** If any part of the General Terms is deemed invalid, all other conditions and provisions hereof shall remain in full force as if the invalid portion had never been part of the original agreement.

**30.11** The headings used herein are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting these General Terms.

**30.12** Neither these General Terms, nor any Confirmation, shall be altered or amended except by an instrument in writing signed by or on behalf of Seller. Seller may amend these General Terms from time to time without advance notice to Buyer. Any such amendment shall be effective and apply with respect to all Transactions for which a Confirmation is sent after the effective date of the amended General Terms.

**30.13** No ambiguity in any provision of these General Terms or any Confirmation shall be construed against a party by reason of the fact it was drafted by such party or its counsel. Acceptance of, or acquiescence in, a course of performance rendered under these General Terms or any Confirmation shall not be relevant or admissible to determine the meaning of the General Terms or any Confirmation, even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. The General Terms shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, legal representatives, and successors.

### **31 - WAIVER OF IMMUNITIES**

**31.1** The failure by any party to the Agreement to enforce any right against any other party shall not be construed as a waiver of that right or in any way affect the validity of the Agreement. In particular, the granting by the Company of any additional time to make payment or the waiving or reducing of any interest or other charge shall not prevent the Company at any time thereafter from relying upon its strict contractual rights.

**31.2** To the fullest extent permitted by applicable law, Buyer expressly and irrevocably waives, and agrees not to assert, a defense of sovereign immunity or other similar grounds in any action or proceeding which may be commenced or asserted against by Seller against Buyer or Buyer's revenues and/or assets in connection with a Transaction, whether in whole or in part or otherwise, which status would otherwise entitle Buyer to assert or allege such a defense in any claim against it from:

- suit;
- jurisdiction of any court;
- relief by way of injunction, order for specific performance or for recovery of property;
- attachment of Buyer's revenues and/or assets (whether before or after judgment); or
- execution or enforcement of any judgment to which Buyer or Buyer's revenues and/or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction.

### **32 - COMPLIANCE WITH APPLICABLE LAWS**

**32.1** Each party represents and warrants to the other that at all times during the term of any Transaction it will comply with all laws and shall obtain all appropriate government approvals applicable to the performance of its obligations under any Transaction. Notwithstanding the foregoing:

- a) Each party represents and warrants to the other that at all times during the term of any Transaction:
- it is knowledgeable about Anti-Bribery Laws applicable to the performance of its obligations under any Transaction and will comply with all such Anti-Bribery Laws;
  - neither it nor, to its knowledge, any director, officer, agent, employee or other person acting on its behalf, has made, offered or authorized, or will make, offer or authorize, either directly or indirectly, any unlawful payment, gift, promise or other advantage related to any Transaction; and
  - it has instituted and maintains policies and procedures designed to ensure continued compliance with Anti-Bribery Laws applicable to its performance under any Transaction, including, but not limited to, the maintenance of accurate books and records. Regardless of whether they may be directly applicable to a party, as a minimum, “Anti-Bribery Laws” means the United States Foreign Corrupt Practices Act of 1977 and the United Kingdom Bribery Act 2010 (each as amended from time to time) and all other applicable national, regional, provincial, state, municipal or local laws and regulations that prohibit the bribery of, or the providing of unlawful gratuities or other benefits to, any government official or any other person.
- b) Each party represents and warrants to the other that at all times during the term of any Transaction:
- it is knowledgeable about Trade Laws applicable to the performance of its obligations under any Transaction and will comply with all such Trade Laws;
  - except as authorized or otherwise not prohibited under the terms of any applicable Trade Laws, neither it, nor any of its subsidiaries or, to its knowledge, any director, officer, employee, agent, or affiliate, is an individual or entity (“Person”) that is or is owned or controlled by Persons that are (i) the subject of Trade Laws, or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Trade Laws;
  - it obtains and maintains all certifications, credentials, authorizations, licenses and permits necessary to perform under any Transaction in compliance with all applicable Trade Laws; and
  - it has instituted and maintains policies and procedures designed to ensure continued compliance with all Trade Laws applicable to its performance under any Transaction, including, but not limited to, the maintenance of accurate books and records. Regardless of whether they may be directly applicable to a party, as a minimum, “Trade Laws” includes all sanctions, embargoes, or other trade restrictions administered or enforced by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”, including the OFAC Specially Designated Nationals List (“SDN List”)), the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury, or any other applicable authority or regulatory body.
- c) Each party represents that it will conduct its activities applicable to the performance of any Transaction in a manner that complies with the UK Modern Slavery Act 2015 and the United Nations Universal Declaration of Human Rights, which include, but are not limited to: refusing to use forced or child labor; refusing to tolerate discrimination, harassment, abuse, or retaliation in their work place; and providing wages, benefits, and working hours that meet or exceed the applicable legal standards and regulations.
- d) Notwithstanding any other clause of any Transaction, either party may terminate any and all Transactions immediately upon written notice to the other party at any time, if, in its reasonable judgment, the other party is in breach of any of the representations and warranties in sub-clauses (a) or (b) of this clause.

### **33 - ENTIRE AGREEMENT**

**33.1** These General Terms along with the Confirmation shall constitute the entire agreement between Buyer and Seller with respect to the subject matter of the Transaction and shall supersede any prior agreements or understandings, whether oral or written, between Buyer and Seller with respect to such subject matter. Buyer and



Seller acknowledge that they are not relying upon any representations or statements except as specifically set forth herein.

#### **34 – APPLICABILITY**

**34.1** Unless explicitly agreed otherwise, these terms and conditions shall apply to all offers, quotations, orders, services relating to supplies of the Product by the Seller.

**34.2** Each Agreement shall be evidenced by the Seller s written Confirmation. In the event of any conflict between these terms and conditions and the terms of the Confirmation, the ones of the latter shall prevail.

**34.3** An Agreement between the Buyer and the Seller shall not be deemed concluded and these terms and conditions shall not apply without written Confirmation of the Seller.

#### **35 - ARREST OF VESSEL**

**35.1** Notwithstanding anything to the contrary herein and without prejudice to any rights or remedies otherwise available to the Seller, the Buyer, by its acceptance of these conditions, expressly authorizes the Seller to arrest the Vessel in question, or any other Vessel owned or operated by the Buyer, under any applicable jurisdiction as security for the obligations of the Buyer. Should the Buyer fail to make any payment to the Seller immediately when due the Seller may dispose of such arrested Vessel whether by sale or otherwise as applicable under the relevant jurisdiction. Any costs or expenses of whatever kind incurred by the Seller in respect of such arrest shall be for the sole account of the Buyer and shall be added to the claim for which arrest is made.

**35.2** The Seller shall have the right to obtain a payment guarantee from the Owner. If such guarantee has been given by the Owner and the Owner has not paid the outstanding amount to the Seller within 5 (five) business days after proper written notice has been received, the Seller has the right to arrest the Vessel or any other Vessel owned or operated by the Owner. The Seller shall further have the right to dispose of such Vessel as set forth in Clause LIABILITY.

#### **36 – INSURANCE**

**36.1** The Buyer is responsible for effecting and maintaining in force adequate insurance which will fully protect the Buyer, the Company and all third parties from all risks, hazards and perils associated with or arising out of or in connection with the Agreement and delivery.

#### **37 - LICENSES, PERMITS, APPROVALS**

**37.1** Either party is responsible for obtaining respective necessary permits, licenses and approvals required to enable either party to execute all their rights and obligations under the Agreement.