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## Preamble

These AMT S.A. (the “**Seller**”) “**General Terms and Conditions for Sale of Marine Fuels**” together with the “**Order Confirmation**” collectively defined as the “**Contract**”, constitute the entire Sales Agreement between the “**Buyer**” and the Seller (collectively referred to as the “**Parties**” or individually as a “**Party**”).

Unless specifically agreed differently by the Parties in writing, the Buyer unconditionally agrees to the applicability of this General Terms and Conditions for Sale of Marine Fuels in respect of the Order Confirmation, the invoice or purchase order or other format of quotation or confirmation issued by the Seller or the Buyer, even if such applicability is not explicitly mentioned therein. The Seller hereby gives notice that it objects to any term or condition contained in any document or form supplied by the Buyer to the Seller which is in addition to or different from the terms of the Contract.

In the event of a conflict between the Order Confirmation and the General Terms and Conditions for Sale of Marine Fuels, the Order Confirmation shall prevail to the extent of the conflict only but in all other respects the General Terms and Conditions for Sale of Marine Fuels shall apply.

Each “**delivery**” shall constitute a separate Contract.

## Definitions

Throughout this Contract, except where the context otherwise requires, the following definitions shall be applied:

“**Agent**” means the entity acting on behalf of the Buyer(s) and/or the Vessel.

“**Bunker Tanker**” means the bunker barge or tanker or tank truck supplying the Marine Fuel(s) to the Vessel.

“**Bunker Delivery Receipt**” means the document issued by the Seller or the Seller’s agent or Supplier(s) upon completion of delivery describing the quantities and specification of the Marine Fuel delivered to the Vessel, whether or not signed on behalf of the Vessel.

“**Buyer(s)**” means the party identified in the Order Confirmation as the Buyer and who have contracted with the Seller to purchase, take delivery and pay for the Marine Fuels, which shall include its assignees or successors, agents, managers (the entity that is operationally or technically or commercially managing the Vessel), operators (the entity that may be commercially operating the Vessel), traders (the entity that is buying the Marine Fuels from the Buyer and selling such to the owner/managers/operator), owner, registered owner, charterers of the Vessel (the owner of the Vessel). All persons identified as the Buyer shall be jointly liable for the payment of the Cost of Marine Fuel and the performance of the obligations prescribed in the Contract.

“**Cancelling Date**” means 1700hrs Local Time on the last day of the Delivery Date.

“**Close of Business**” or “**COB**” means 1700hrs Swiss Time.

“**Contract**” means the Sale Agreement between the Seller and the Buyer which consists of these General Terms and Conditions for the Sale of Marine Fuels and the Order Confirmation that is issued by the Seller for each delivery of Marine Fuel.

“**Cost of Marine Fuel**” means the cost calculated by multiplying the Price by the number of Units of Marine Fuel delivered to the Vessel.

“**Day**” means a calendar day.

**“Delivery”** means each separate delivery of the Marine Fuel to the Vessel at the Delivery Place.

**“Delivery Date”** means the date or the date range as stated in the Order Confirmation for the delivery of the Marine Fuel.

**“Delivery Place”** means the location of the delivery of the Marine Fuel to the Vessel as stated in the Order Confirmation or as varied thereafter provided that such variation is confirmed in writing by the Seller.

**“Estimated Time of Arrival”** or **“ETA”** means the written Notice of Arrival of Vessel to the Delivery Place sent by the Buyer to the Seller.

**“Independent Surveyor”** means an Independent Survey Company or a Surveyor appointed by the Seller and/or the Buyer and approved by the Seller.

**“Marine Fuel(s)”** or **“Product(s)”** means any Marine Fuel Oils, Marine Diesel Oils, Marine Gas Oils, Lubricants and other related products derived from crude oil, delivered or to be delivered to the Vessel.

**“Order Confirmation”** means a written confirmation issued by the Seller to the Buyer setting out the details of each Sale of Marine Fuel including i.a. Grade and Quantities of Product, Delivery Means, the Delivery Place, Delivery Date and the agreed Price.

**“Parties”** means the Seller and Buyer collectively.

**“Party”** means the Seller or the Buyer.

**“Price”** means the Price of one Unit of Marine Fuel. Such Price, unless the Seller expressly advises otherwise in writing does not include applicable duties, taxes and other such costs including without limitation those imposed by government authorities, barging and other delivery charges.

**“Seller(s)”** means the party identified in the Order Confirmation as the Seller and who have contracted with the Buyer to sell and deliver the Marine Fuel(s) to the Vessel.

**“Supplier(s)”** means any party instructed by or on behalf of the Seller to supply and/or deliver the Marine Fuel together with the Supplier’s servant(s), agent(s), successor(s), subcontractor(s) and assign(s).

**“Unit”** means one metric ton or such other measurement as the Order Confirmation may specify.

**“Vessel”** means the Vessel, Ship, Barge, on-shore tank, rig or other unit or installation that received, or was intended to receive, the Marine Fuel from the Seller.

## Buyer’s request / Quotation and Order Confirmation

**(a)** All Sale of Marine Fuels requires a written request to be submitted by the Buyer to the Seller. The Buyer’s request shall include the following:

- Requested Product(s) / Grade(s)
- Requested Quantities of Product(s)
- Name, Flag, Place of Registry and IMO of the Vessel
- Requested Delivery Place
- Requested Delivery Date
- Buyer’s details
- Agent’s details (if a local agent is to be used)

- (b) The Seller will issue a detailed quotation, which shall state, when appropriate, the maximum quantities of Marine Fuel it is willing to supply, the means available to provide the supply at the location requested, the Delivery Place and Delivery Date on which it is willing to supply, and the Price. Such offer, unless it states otherwise therein, will expire at COB on the day that it is provided by the Seller.
- (c) The Contract shall only be concluded and final and binding when the Seller sends the Order Confirmation to the Buyer. A buyer deems to have accepted the Order Confirmation by COB on the same day or by virtue of any act which is, at the Seller's sole discretion, considered a preparation of performance. The Contract is valid and binding regardless of whether the Buyer signs and returns a copy of the hereby to the Seller. The terms and conditions contained in the Contract shall be deemed to record the terms and conditions of the agreement between the Parties accurately unless the Seller hears from the Buyer to the contrary within 48 (forty-eight) hours of transmission to the Buyer or prior Delivery Date whichever occurs first.

## Grades/Quality

- (a) The quality of the Marine Fuel shall be determined by the Seller which shall be of the quality generally offered to the Seller's customers for the similar use.
- (b) The selection and acceptance of a particular grade of Marine Fuel, including determination of compatibility with other Marine Fuel already on board the Vessel, shall be the Buyer's responsibility. There are no conditions, guarantees, warranties or terms, express or implied, by common law or statute or otherwise, as to the satisfactory quality, merchantability, fitness, durability or suitability of the Marine Fuel for any particular purpose whatsoever, or otherwise, which extend beyond the description of the Marine Fuel appearing in Sub-clause 3 (a).
- (c) The Buyers shall have the sole responsibility for the nomination of the grades of Marine Fuels fit for use by the Vessel and the Seller shall be under no obligation to check whether the grade of Marine Fuel is suitable for the Vessel.
- (d) The Buyer may at its own expense appoint an Independent Surveyor to inspect the Marine Fuel to be delivered before it is pumped onto the Buyer's Vessel. Any such inspection shall take place in the presence of personnel and/or a representative of the Seller or Supplier.
- (e) Unless otherwise stated in the Order Confirmation Marine Fuel sold shall conform to those specifications defined under the prevailing ISO Standard or in the absence of such Marine Fuel being available at the Delivery Place the Marine Fuel shall be of the same quality generally offered for sale at the Delivery Place for the grade of Marine Fuel specified by the Buyer. The Marine Fuel shall be used exclusively for the operation of the machinery of the Vessel identified in the Contract.
- (f) The Buyer shall be responsible for keeping the delivered Marine Fuel segregated from any other Marine Fuel or any other product on board the Vessel or from a different Delivery to the Vessel. The Buyer shall not have the benefit of the warranty provided in clause 3(e) if any alterations to the Marine Fuels were carried out by the Buyer or a third party without the Seller's consent, or if a defect is due in whole or in part to the misuse, abuse, improper use or storage of the Marine Fuels.
- (g) Defects and/or complaints on the quality of the delivered Marine Fuels, if any, do not affect the Buyer's obligation to pay for the delivered Marine Fuels as provided in Clause 9.

## Quantities/Measurements

- (a)** The Quantities of Marine Fuel delivered shall, at the Seller's option, be determined by the Seller's or Supplier's personnel or representative from the official gauge or meter of the Bunker Tanker effecting Delivery, or in case of Delivery ex wharf, of the shore-meter.
- (b)** Except where government regulations or local authorities determine otherwise, adjustment in volume owing to difference in temperature shall be made in accordance with API/ASTM-IP Petroleum Measurement Standards.
- (c)** In the absence of manifest error or fraud, the Seller's measurements of volume and calculations of Quantities in accordance with sub-clause 4(a) shall be conclusive evidence of the Quantities of Marine Fuel delivered and shall be included in the Bunker Delivery Receipt to be signed by the Buyer or its representative. Failure by the Buyer to sign the Bunker Delivery Receipt to verify the measurement shall not alter the binding nature of the Quantities as recorded. Subject only to the following clause, measurements by any other means shall not be binding on the Seller. However, should quantity be subject to determination by local customs authorities, the final and binding quantity shall be the one resulting from such determination.
- (d)** The Buyer, at its own expense, shall be at liberty to appoint an Independent Surveyor who shall witness and check such weights and measurements, but determination of quantity shall be made solely by the Seller, and will be conclusive, subject to sub-clause 4(c).
- (e)** The Buyer shall be deemed to have accepted the Seller's or Supplier's measurement of the volume of Marine Fuel delivered unless the Independent Surveyor has witnessed such measurement and has made a complaint in writing as to accuracy at the time of Delivery. The Seller has the option to leave delivery equipment connected to the Vessel at the Buyer's expense until such quantity dispute has been resolved to the Seller's satisfaction. However, the Buyer has no right to leave delivery equipment connected and/or delay unmooring pending resolution of such a quantity dispute. Unless otherwise instructed by the Seller or Supplier and notwithstanding the fact that a quantity dispute might exist, the Vessel shall always promptly disconnect delivery equipment and unmoor on the advice from the Seller or Supplier that Delivery has been completed.

## Sampling

- (a)** The Seller or its representatives shall arrange for samples to be drawn at the time of delivery of the Marine Fuel. Unless otherwise agreed between the Seller and Buyer prior to entering a Contract, the samples shall be drawn from a point and in a manner chosen by the Seller or its representatives in accordance with the customary sampling procedures at the Delivery Place.
- (b)** The sampling mentioned in sub-clause 5(a) shall be performed in the presence of the Seller or its representatives and the Buyer or its representatives, but the absence of the Buyer or its representatives during all or any part of the sampling process shall not prejudice the validity of the samples.
- (c)** On completion of sampling, all samples drawn by the Seller or its representatives are to be sealed, labelled and signed by both Seller or its representatives and Buyer or its representatives. Two samples shall be retained by the Buyer or its representatives, one of these shall be the MARPOL compliant sample. The remaining samples shall be retained by the Seller or its representatives.

- (d) In the event of a dispute concerning the Quality of the Marine Fuel, one, and only one, of the samples retained by the Seller with a seal number reflected on the Bunker Delivery Receipt (or any other document provided by the Seller or the Supplier when delivering the Product), shall be forwarded for testing to an independent laboratory mutually appointed by the Buyer and Seller. The testing shall be limited to analysis of the disputed properties, which must be amongst the properties that formed part of the Contract specification. The results of the analysis of the sample shall be conclusive to determine the Quality of the Marine Fuel supplied. Analysis results of the Seller's or its representative's drawn samples will be the sole binding evidence for the Quality of the Marine Fuel supplied to the Vessel. Where standard specifications are being given or referred to, tolerances in accordance with ISO 4259 in respect of reproducibility or repeatability in Quality are to be accepted without compensation or consequences whatsoever.
- (e) No samples drawn by the Buyer's personnel or samples subsequently taken shall be allowed as evidence of the Quality of the Marine Fuel. If any seals have been removed or tampered with by an unauthorized person, such samples shall be deemed to have no value as evidence.
- (f) If the Seller and the Buyer cannot agree on an independent laboratory to perform mutual analysis or if the Buyer fails to reply to the Seller's notice hereof within 7 days from receipt of such notice, the Seller can at its sole discretion decide which laboratory to perform the analysis, which shall be final and binding for all parties involved.

## Delivery

- (a) Delivery of the Marine Fuels shall be made day and night, Sundays and holidays included, at the Delivery Place, subject always to the custom of that location.
- (b) The Buyer shall send to the Seller within 24 hours of the Contract being concluded a written Notice of Arrival confirming, inter alia, arrival in accordance with the Delivery Date stated in the Order Confirmation and thereafter further Estimated Time of Arrival 72, 48 and 24 hours before the Vessel's arrival at the Delivery Place. If the Contract is entered less than 72 hours before delivery then Notice of Arrival shall be provided in daily countdown from the date of the Contract. The Buyer shall ensure that the Agent at the Delivery Place shall comply with any and all requests from the supplier appointed by the Seller for information of the Vessel's arrival. Failure to provide Notice of Arrival as aforesaid shall entitle the Seller to cancel the Contract. If the Vessel fails to arrive within 12 hours of the original Delivery Date or within 2 hours of the arrival time as stated in the last Notice of Arrival submitted in accordance with sub-clause 6(a) the Seller shall have the right to revise the Price and the Delivery Date and other terms and alternatively shall have the right to cancel the Contract.
- (c) Time shall be of the essence in relation to the arrival of the Vessel at the Delivery Place. If the Vessel is not at the Delivery Place and in all respects ready to take delivery of the Marine Fuel by the Cancelling Date, the Seller shall be entitled to immediately cancel the Delivery without giving prior notice. Whether or not the Seller exercises the option to terminate shall be entirely without prejudice to its right to claim for its damages arising as a result of the Buyer's Vessel not being ready to take delivery by the Cancelling Date. In the event that the Seller elects not to terminate, then the Seller shall be entitled to claim damages arising out of the late arrival, compensation for such damages being calculated at US\$ 5,000.00 (five thousands US Dollars) (without any evidence) unless the Seller is in a position to prove a higher damages in which case the Seller will be entitled to compensation at such higher loss in addition to recovering from the Buyer any increases in the Cost of Marine Fuel resulting from the delayed arrival of the Vessel.

- (d) Notwithstanding anything elsewhere herein, the Seller will affect the Delivery of Marine Fuel as promptly as circumstances permit, having regard to congestion affecting the delivery facilities of the Seller, its Suppliers or agents, the prior commitments of Barges and any other reason or circumstance whatsoever. Delivery within the Delivery Date range is not guaranteed and time shall not be of the essence thereof. Neither the Seller nor Supplier shall be liable for any consequences, loss of time, damages, expenses including demurrage, consequential losses or any other loss whatsoever incurred by the Buyer arising from the time of delivery or the rate at which Marine Fuel is pumped into the Vessel.
- (e) The Buyers and the Vessel shall obtain any license or permit required and comply with all regulations applicable to the receipt, handling and use of the Product to be delivered at the Delivery Place and a failure to do so shall entitle the Seller to cancel the Contract. The Buyer shall indemnify the Seller for all consequences, losses and or damages (including fine and penalties) suffered by the Seller as a result of the Buyer or the Vessel or its crew failing to observe any such regulations or obtain any such permits. The Seller shall be under no obligation to perform at a later date any obligation the time for the performance of which has expired during such suspension.
- (f) In the event of Delivery by Barge(s), the Buyer, at its cost, shall provide a clear, safe, always afloat, accessible berth, position or anchorage for the Barge(s) alongside the Buyer's Vessel's receiving lines and ensure that all necessary assistance as required by the Seller or the Supplier is rendered. If the Seller, at its sole discretion, considers that a clear and safe, always afloat, accessible berth, position or anchorage is not available or delivery might or is being delayed, the Seller has the option to cancel the Delivery. Whether or not the Seller exercises the option to cancel shall be entirely without prejudice to its right to claim for its losses arising as a result of Buyer's breach of this Clause in respect of which the Buyer shall indemnify the Seller for any resulting loss, damage, cost, expense, delay to Vessel and for any additional steaming time and bunkers consumed during the delay and during such additional steaming, fines or penalties irrespective of whether or not the circumstances were within the control of the Buyer or its local representative. The Vessel, at its cost, shall moor, unmoor, hoist the bunkering hose(s) from the Barge(s) and lower the hose(s), day or night, Sundays and holidays inclusive, whenever required by the Seller, Seller's representative or Supplier. Any damage caused by contact, collision, swell or any other weather or sea related condition shall be dealt by the Buyer directly with the owners of the barge. The Seller shall not be held liable for any such damages and the Buyer shall indemnify the Seller against any claims arising out of such incident. Where lightering/barging is employed, lightering/barging charges shall be for the account of Buyer. The Buyer will be liable for all demurrage or additional expenses incurred by Seller if Buyer causes delay in the supply of Products. Buyer will also pay for mooring, unmooring and port dues incurred.
- (g) The Buyer shall be responsible for the safe receipt of the full quantity of Marine Fuel contracted, without any risk to the Seller or the Supplier or their agents, servants or property. The responsibility of the Buyer in this Clause includes, but is not limited to, provision of sufficient tankage and equipment, ensuring the readiness of all pipes, manifolds and receiving tanks, relevant valves and that the connection of the delivery hose to the Vessel has been properly and safely made in order to exclude any risk of spillage during the bunkering. Buyer shall be responsible for any costs resulting from Buyer's failure to take full delivery, as well as for any losses incurred by Seller including but not limited to any loss of profit and any loss on the resale of the Products. The Buyer shall bear the risk of the return transport, demurrage on the barge or trucks, storage or selling of the Products.
- (h) The Seller shall conclude Deliveries subject to the availability to the Seller of the particular grade(s) of the Marine Fuel requested by the Buyer.

- (i) The Seller shall be entitled to deliver the Marine Fuel in separate part Deliveries, in which case each part Delivery shall be construed as a separate Delivery. Each such part Delivery may be made in a separate lot at wharf or at shore terminal of the Seller, by Barge or by a combination of the above-mentioned supply methods, at the Seller's option.
- (j) The Seller shall not be required to deliver the Marine Fuel into any of the Buyer's Vessel's tanks which, in the Seller's opinion, are not regularly and customarily used for Marine Fuels.
- (k) The Seller has the right to deliver by Barge, by pipeline, by road or alongside the terminal. The Buyer shall provide a free side for barge deliveries and prompt and safe passage between the public roadway and the actual place of unloading for road vehicles. The Seller shall not be obliged to deliver in locations or over roadways which in its sole discretion are unsafe or might become unsafe for its Barges or vehicles.
- (l) If a charge is imposed on the Seller by the owners/operators of a berth and/or Barge by reason of the prolonged occupation of the berth and/or delays in unmooring from the Barge, for reasons beyond the control of the Seller, its servants or agents, the Buyer shall be liable for such charge.
- (m) The Delivery Date shall be deemed to be the date of completion of Delivery as stated in the Bunker Delivery Receipt. The Seller may elect to discontinue operations at any Delivery Place for any reason without obligation or liability to the Buyer.

## Bunker Delivery Receipt

- (a) Once Delivery is completed and Quantities measured, a Bunker Delivery Receipt shall be presented to the Master of the Vessel or his authorized representative containing the following information:
  - Delivered Quantity (in volume units)
  - Density (in kg/m<sup>3</sup> at 15o C as per ISO 3675)
  - Flash point
  - Sulphur content (in % m/m as per ISO 8754)
  - Viscosity

The Master or his representative shall sign the Bunker Delivery Receipt, and return it to the Seller or its representative as acknowledgment of the actual volume only. A duplicate copy shall be retained by the Vessel.

- (b) In the event the Master of the Vessel is not satisfied with the Sampling, Quality, Quantities or any other matter concerning the Marine Fuels or their Delivery, he shall make appropriate remarks in the Bunker Delivery Receipt either detailing the complaints or referring to a separate letter of protest to be issued and sent immediately to the Seller.



## Price and Additional Charges

- (a)** The Price of the Marine Fuels shall be in the amount expressed per unit and in the currency stated in the Order Confirmation.
- (b)** Any and all Additional Charges, if applicable, shall be specified in the Sellers' quotation and in the Order Confirmation and shall include but not be limited to:
  - (i) Wharfage charges, barging charges, trucking charges or other similar charges;
  - (ii) Mooring charges or port dues incurred by the Sellers which are for Buyers' account, and;
  - (iii) Duties, taxes, charges or other costs in the country where delivery takes place, for which the Sellers are accountable but which are for the Buyers' account.

## Payment

- (a)** Payment for the Marine Fuels shall be made by the Buyers within the number of days stated in the Order Confirmation after the completion of delivery. In the event payment has been made in advance of delivery, same shall be adjusted on the basis of the actual quantities of Marine Fuels delivered and additional payment and/or refund shall be made within thirty (30) days after the completion of delivery.
- (b)** Payment shall be made in full, without set-off, counterclaim, deduction and/or discount, free of bank charges.
- (c)** Payment shall be deemed to have been made on the date the payment is credited to the bank account designated by the Sellers. If payment falls on a non-business day, then payment shall be made on or before the business day nearest to the due date. If the preceding and succeeding business day are equally near to the due date, then payment shall be made on or before the preceding business day.
- (d)** Any delay in payment shall entitle the Seller to interest at the rate of two (2) per cent per month.
- (e)** In the event of non-payment, the Seller reserves the right to pursue such legal remedies as may be available to them to recover the amount owed. All costs and expenses incurred by the Seller with respect to the collection of overdue payments (including, but not limited to, attorney's fees, expert fees, court costs and other expenses) shall be borne by the Buyer.
- (f)** Promptly upon Delivery, the Seller shall issue its invoice(s) the Price and Additional Charges (if any) supported by the relevant Bunker Delivery Receipt. The Buyer shall not be entitled to insist upon provision of the Bunker Delivery Receipt before making payment, but the Seller shall nevertheless use reasonable endeavors to provide the Bunker Delivery Receipt with its invoice.
- (g)** All sums payable in accordance with the Contract shall constitute a lien on the Vessel.

## Cancellation

- (a)** Without prejudice to any other rights of the Seller under the Contract, if subsequent to Seller's Order Confirmation the Buyer cancels or reduces the Quantities of the Marine Fuel ordered or if the Buyer fails to take delivery of part or all of the Quantities of Marine Fuel by the Delivery Date specified in the Order Confirmation, the Buyer shall pay to the Seller a Cancellation Fee in the amount set out in the Box 14 of Order Confirmation for such Quantities of the Marine Fuel order that is cancelled, reduced or in respect of which the Buyer had failed to take delivery of by the Delivery Date specified in the Order Confirmation, provided that the minimum amount of such Cancellation Fee shall be in any event not less than US\$ 5,000.00 (five thousand US Dollars). If the Seller's losses exceed the Cancellation Fee, then the Seller shall also be entitled to claim for such additional losses, which shall include but not be limited to any costs, expenses or charges incurred by the Seller with its supplier/sub-contractors.
- (b)** The Buyer's: (i) wrongful non-acceptance or rejection of Marine Fuels and/or (ii) cancellation of the Order Confirmation, shall entitle the Seller to recover from the Buyer, automatically, (a) its direct or indirect damages, including but not limited to any costs, expenses or charges incurred by the Seller with its supplier/sub-contractors, transportation costs, storage costs, return of the Marine Fuels, taxes, custom duties, insurance costs, loss of market, loss of reputation, etc. caused by such Buyer's actions and (b) if the Marine Fuels cannot be resold by the Seller to a third party within a reasonable timeframe, the Price of such Marine Fuels as quoted in the Order Confirmation. The payment of any amount which become due by the Buyer shall be paid by the Buyer immediately upon Seller's demand.

## Claims

- (a)** Any dispute regarding the quantity or the quality of the Marine Fuel delivered shall be noted immediately at the time of delivery in accordance with sub-clause 7(b), and notified in writing by the Buyer to the Seller no later than fifteen (15) days from the Delivery Date to the Vessel. Should the Buyer fail to notify the Seller of any claim as stipulated herein, such claim shall be deemed waived and barred.
- (b)** A written claim for the purposes of sub-clause 11(a) must provide a complete and comprehensive explanation of the circumstances and basis of the claim, including where applicable the quantities short and/or the discrepancies in quality, and include copies of all supporting documents including the vessel's logs evidencing the matters complained of.
- (c)** In the event of any claim presented in accordance with sub-clause 11(a) the Buyer shall:
- (i)** Cooperate with the Seller and make all necessary arrangements for the Seller or its representatives to investigate such claim, including but not limited to the boarding and inspection of the Vessel, the interviewing of crew and the review and copying of Vessel documents.
  - (ii)** Take all reasonable steps and actions to mitigate any damages, losses, costs and expenses related to any claim of alleged off-specification or defective Marine Fuel. If the Marine Fuel deviates from specifications, the Buyer shall use all reasonable endeavors to mitigate the consequences hereof and shall burn the Marine Fuel if possible even if this requires employment of purification tools or other similar measures.
  - (iii)** Take all reasonable steps to preserve the Seller's recourse against the Supplier of Marine Fuel or any liable third party.
- (d)** A breach by the Buyer of any part of this clause will entitle the Seller to set off losses caused by the breach against any liability to the Buyer.

- (e) Buyer's submission of any claim does not relieve it of responsibility to make full payments as required under the Contract and Buyer shall not be entitled to set off any alleged damages against the amounts due to the Seller.

## Limitation of Liability

- (a) The Seller shall have no liability under this Clause 12 unless and until the Seller has received full payment from the Buyer of all sums due under this Contract.
- (b) The Seller shall not be liable for any consequential or indirect loss or damage whatsoever, including demurrage, loss of profit or any other indirect, special, incidental or consequential loss or damage howsoever arising from any cause whatsoever whether in contract, tort or otherwise including, without limitation, the acts or omissions or negligence of the Seller, its servants, agents or sub-contractors. No liability will be borne by the Seller for deviation costs, demurrage, damage or delays to any vessels or the Buyer's Vessels or to their engines or tanks, and any actual or prospective loss of profits or the damages or loss arising from the exercise of the Seller's right to suspend and/or terminate the delivery of the Marine Fuel.
- (c) The Buyer shall indemnify and hold harmless the Seller, the Supplier and the Seller's and Supplier's servants and representatives for and in respect of any and all claims, losses, damages, liabilities, fines, penalties, expenses and legal costs of whatsoever nature arising out of or in any way for the breach of the Sales Agreements, fault or neglect of the Buyer, its agents, servants, sub-contractors, representatives, employees and the officers and crew of the Buyer's Vessel, delivery of and/or the Buyer's receipt, use, storage and/or transportation of the Marine Fuel. The Buyer further agrees to defend, hold harmless and indemnify the Seller from all claims, proceedings, demands, settlements and/or recoveries that arise from, relate to, and/or are alleged to arise from or relate to, the sampling or the boarding or presence onboard the Buyer's Vessel of any employee, servant, agent or sub-contractor of the Seller.
- (d) Notwithstanding the foregoing provisions of this Clause, in the event that the Seller is found to be liable to the Buyer:
- (i) under no circumstances shall the total maximum liability of the Seller for all claims whatsoever including claims for interest and costs exceed an amount equal to 50% (fifty percent) of the purchase Cost of the Marine Fuel delivered or intended to be delivered under each Contract; and
  - (ii) In respect of any liability for damage to the Vessel, such liability shall in any event be reduced by 20% (twenty percent) of the invoice value of the spare parts for each year or fraction thereof in which the replaced part has been in use; and
  - (iii) It is a precondition to the payment of any compensation by the Seller that all sums standing due to the Seller from the Buyer, including any interest that may have accrued, are first paid and settled in full without deduction or set off.
- (e) The Buyer is under an obligation to take all reasonable actions to avoid, eliminate and/or minimize damages and costs associated with any off-specification or suspected off-specification Marine Fuel, including the retention and burning of Marine Fuel in accordance with Seller's instructions. If the Buyer removes such Marine Fuel without the express written consent of the Seller, then all such removal and related costs shall be for the Buyer's sole account.

## Risk/Title

- (a)** The risks in and to the Marine Fuel shall pass from the Seller to the Buyer according to the rules of Incoterms® 2010 applicable to the Delivery Terms of the Marine Fuels set out in the Box 15 of Order Confirmation. Rules of Incoterms® 2010 shall apply when not in contradiction with the Terms and Conditions of the Contract. In the case of any inconsistency between the Order Confirmation, this General Terms and Conditions for Sale of Marine Fuels and the Incoterms® 2010, the Order Confirmation and other provisions of the General Terms and Conditions for Sale of Marine Fuels shall prevail over the Incoterms® 2010.
- (b)** Title and/or property rights in and to the Marine Fuel delivered shall remain vested in the Seller, and regardless the applicable Incoterms® 2010, until full payment has been received by the Seller of all amounts due in connection with the respective Delivery. Until that time, the person in possession of the Marine Fuels delivered shall hold the Marine Fuel as a mere bailee.
- (c)** Although the Marine Fuel remains the Seller's property until fully paid for, it shall be at the Buyer's risk from the time of Delivery. Delivery is completed and risk in the Marine Fuel passes to the Buyer once the Marine Fuel has passed the Seller's or its Supplier's flange connection. At that stage the Buyer assumes all risks, including loss, damage, contamination, leakage, fire, spills, deterioration, depreciation, evaporation and shrinkage to the Marine Fuel delivered and shall insure the Marine Fuel against any such loss or damage. In the event of such loss or damage, the Buyer shall hold the proceeds of such insurance on behalf of the Seller as trustee of the Seller.
- (d)** Until full payment of any amount due to the Seller has been made, the Buyer shall not be entitled to use the Marine Fuel other than for the propulsion of the Vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the Marine Fuel to any third party or other vessel. In the event that the Marine Fuel has been mixed with other bunkers onboard the Vessel, the Seller shall have a valid claim and lien on such part of the mixed bunkers as corresponds to the quantity or net value of Marine Fuel delivered by the Seller.
- (e)** In case of breach of sub-clause 13 (c) by the Buyer, the Seller is entitled to take back the Marine Fuel without prior juridical intervention, without prejudice to all other rights or remedies available to the Seller. In such case, the Marine Fuel supplied in each Contract is sold and applied to the credit of the Vessel, as well as on the promise of the Buyer to pay amounts due in connection with the respective Delivery. It is agreed that the Seller shall have and may assert a maritime and/or contractual lien against the Buyer's Vessel for any amounts due under the Contract. Any such lien shall extend to all hire and/or sub hire and/or freight and demurrage and/or sub freights and demurrage for any amounts due under the Contract.
- (f)** In case the Marine Fuel, in part or full, is no longer present or can no longer be identified or distinguished from other bunkers, the Seller has the right to arrest and attach the Vessel at any port where the Buyer's Vessel may be found, and also any sister ship and/or any other assets of the Buyer or of the owner of the Vessel, wherever situated in the world, without prior notice.
- (g)** Where title in and to the Marine Fuel delivered has passed to the Buyer and/or any third party before full payment has been made to the Seller of all sums due in connection with the Delivery, the Buyer shall further be deemed to have granted a pledge in such Marine Fuel to the Seller. The Buyer shall furthermore be deemed to have granted a pledge in any other Marine Fuel present in the Vessel, including any mixtures of the delivered Marine Fuel and other Marine Fuel. Such pledge will be deemed to have been given for any and all claims, of whatever origin and of whatever nature that the Seller may have against the Buyer.

## Termination

Without prejudice to accrued rights hereunder, the Seller shall be entitled to terminate this Contract in the event of:

- (a)** any application being made or any proceedings being commenced, or any order or judgement being given by any court, for
  - (i) the liquidation, winding up, bankruptcy, insolvency, dissolution, administration or re-organization or similar, or
  - (ii) the appointment of a receiver, liquidator, trustee, administrator, administrative receiver or similar functionary of the Buyer of all or a substantial part of its assets (otherwise than for the purpose of a reconstruction or amalgamation);
- (b)** the Buyer or any of their affiliates failing to pay their debts as they become due or suspending payment of their financial obligations, ceasing to carry on business or compounding or making any special arrangement with its creditors, or;
- (c)** any act being done or event occurring which, under the applicable law thereof, has a substantially similar effect to any of the said acts or events described above.

## Substitution

Seller reserves its right to substitute for itself a third party for the performance of all or part of its obligations.

## Validity of the Contract

- (a)** The Contract contains the entire agreement between the Seller and the Buyer with respect to the matters set forth in the Order Confirmation and supersedes all prior agreements, whether oral or written, in connection therewith.
- (b)** Notwithstanding anything contained herein, the Buyer accepts that even if it is established that the Seller is in breach of its contractual obligations including those as to quantities, quality or specification this shall not nullify any part of the Contract in any way, neither shall it affect the duties, liabilities and obligations of the Buyer towards the Seller, irrespective of any claim made or proven of whatsoever nature by the Buyer.
- (c)** If any provision of this Contract is or becomes or is held to be illegal, invalid or unenforceable in any respect under any law or jurisdiction, the provision shall be deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if such amendment is not possible the provision shall be deemed to be deleted from this Contract to the extent of such illegality, invalidity or unenforceability, and the remaining provisions shall continue in full force and effect and shall not in any way be affected or impaired thereby.

## Force Majeure

- (a)** Both Parties shall be released from their respective obligations, other than the Buyer's obligation to make payment, in the event that a delay in performing or inability to perform any of the Party's obligations in this Contract as a result of Force Majeure. For the purpose of this Contract "Force Majeure" means any unavoidable circumstance beyond the control of a Party including but not limited to an Act of God, storm, flood, tempest, riot, civil disturbance, war (declared or undeclared), military action, insurrection, act of government or military agency acting under actual or assumed authority, expropriation, failure of any source of supply, acute or unusual material shortages, strike, lockout, labour disturbances, or lawful or unlawful labour disputes, prohibitive governmental regulation and any other causes whatsoever beyond the control of the Seller or the Buyer. Provided however, that extended labour problems affecting the Buyer's operations shall not be considered Force Majeure.
- (b)** The Party affected by an event of Force Majeure will inform the other Party within 7 (seven) days following the date when it becomes aware of it. If, within a cumulative period of 10 (ten) days suspension, the affected Party is unable to resume performance under this Contract, the Parties shall mutually agree restructuring of their obligations and failing such agreement being reached, any Party may terminate this Contract upon written notice, in which case all money due for the Marine Fuel delivered by the Seller to the Buyer shall be paid by the Buyer.

## Safety and the Environment

- (a)** The Buyer shall be responsible for ensuring that it complies with all national and international trading and pollution regulations, and all environmental and health and safety regulations with regard to the receipt and use of Products and shall indemnify the Seller for all financial consequences, including clean-up costs and fines, of a breach of this provision.
- (b)** The Buyer warrant that the Vessel is entered with a P&I Club and insured for pollution liability risks.

- (c) The Buyers hereby advise the Sellers that they enforce a company drug and alcohol policy on board their vessels.
- (d) The Buyer shall provide its employees, agents, contractors, users and customers with health, safety and environmental information including the Material Safety Data Sheets (“HSE Data”). The Buyer shall be responsible for ensuring that all relevant requirements, obligations, recommendations, international regulations, directives, conventions or guidelines in respect of health, safety and the environment relating to the delivered Marine Fuels are complied with.
- (e) The Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of any Marine Fuels.
- (f) In the event of any spillage (which for the purpose of this Clause shall mean any leakage, escape, spillage or overflow of the Marine Fuels) causing or likely to cause pollution occurring at any stage of the Delivery of Products to the Vessel, the Buyers and the Vessel shall promptly take such actions as are reasonably necessary to remove the Marine Fuel and mitigate the effects of such Spill. However, notwithstanding the cause of such Spill, the Seller is entitled at its option to take such measures and incur such expenses (whether by employing Seller’s own resources or by contracting with others) as are reasonable in the sole judgment of the Seller to remove the Marine Fuel and mitigate the effect of such Spill. If the Seller has exercised its option to itself take measures in response to a Spill the Buyer agrees to cooperate and render such assistance as is required by the Seller in the course of such action. The Buyer shall indemnify and hold the Seller and its representatives harmless against any damages, expenses, claims or liabilities of whatever nature, unless such Spill is proven to be caused solely by the Seller’s negligence. The Buyer agrees to give or cause to be given to the Seller upon demand or as required by applicable laws or regulations all documents and information concerning any Spill.

## Jurisdiction and Applicable Law

- (a) The Contract is governed by English Law. This choice of law is made without prejudice of the application of the mandatory provisions of the applicable law of the Delivery Place.
- (b) Any dispute arising out of the execution of the Contract shall be settled by the Parties through friendly consultations.
- (c) If no agreement can be reached by the Parties, any claim against the Seller in connection with the Contract shall be brought before the competent arbitration tribunal appointed as per sub-clause 19(d) within one (1) year of the Delivery Date of the Product. Failing that, the Seller will be discharged from all liability whatsoever in respect of the execution of the Contract, and any claim that the Buyer might have will be definitively time barred.
- (d) Any claim arising from or relating to the Contract shall be finally settled under the Terms of the London Maritime Arbitrators Association (LMAA) by a sole arbitrator if the amount in dispute is below one (1) million USD or by three arbitrators if the amount in dispute is higher. The arbitrator(s) shall be appointed in accordance with the said Terms. The place of arbitration shall be London, England, and the arbitration shall take place in English.
- (e) The arbitration clause does prevent the Seller from seeking interim relief for its claim(s) against the Buyer before the jurisdictions of the place where the Buyer has its registered office, place of business, assets, or vessels.