



AXION FUEL MARINE TRADING FZE

TERMS AND CONDITIONS OF SALE

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1. DEFINITIONS

Throughout these Terms and Conditions of Sale (“**Terms and Conditions**”), save where the context requires, the following definitions shall apply:

Abatement Technology	Means any fitting, material, appliance, apparatus or other procedures undertaken, or compliance methods used by the Vessel to comply with its obligations in Regulation 4 of MARPOL Annex VI.
Adverse Weather Conditions	Means weather and/or sea conditions actually experienced that are sufficiently severe to prevent the Barge or the Vessel (as the case may be) from proceeding to the agreed delivery location or proceeding with the delivery of the Marine Fuels for ship to ship deliveries in accordance with: (a) the weather and/or sea standards prescribed in published regulations in effect at the agreed delivery location; (b) any order of the port master; or (c) an actual determination by the master of the Vessel or the Barge (as the case may be), in each case acting as a reasonable and prudent operator, that it is unsafe for the Vessel or the Barge (as the case may be) to proceed to the agreed delivery location and/or proceed with the delivery of the Marine Fuels.
Barge	Means the marine vessel(s) used by the Physical Supplier to carry out the supply of Marine Fuels to a Vessel.
BDN	Means a bunker delivery note or receipt for any Marine Fuels supplied by the Physical Supplier for each separate delivery under a Contract.
Business Day	Means a day (excluding Saturdays and Sundays) on which banks generally are open, in the jurisdictions in which the Seller is incorporated, for the transaction of normal banking business.
Buyer	Means the buyer of Marine Fuels is named or referred to in the applicable Confirmation.
Confirmation	Means the written confirmation note issued by the Seller to the Buyer, setting out the specific details and additional terms of a Contract.
ETA	Means the estimated date(s) of arrival of a Vessel at the agreed location for each delivery, as set out in the applicable Confirmation.
Governmental Authority	Means in respect of any country, any national, regional, state, municipal or other local government, any subdivision, agency, commission or authority thereof, including any port authority, or any quasi-governmental organization therein, acting within its legal authority.
Lubricants	Means mineral or synthetic lubricating oils, greases, coolants, fluids or other products for the lubrication and/or maintenance of the Vessel's machinery and/or onboard equipment.
Marine Fuels	Means residual or distillate fuel derived from crude oil and/or mineral, synthetic or renewable sources, used by the Vessel for marine applications, more particularly described in the applicable Confirmation.
MARPOL Annex VI	Means RESOLUTION MEPC.176(58) Amendments to the Annex of the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (Revised MARPOL Annex VI) as amended from time to time by the International Maritime Organization.
Physical Supplier	Means the entity carrying out the physical supply of Marine Fuels to a Vessel.
Price Validity Window	Means the period commencing one (1) day prior to the earliest date of the Vessel's ETA and ending one (1) day after the earliest date of the Vessel's ETA.
Road Vehicle	Means the road vehicle used by the Physical Supplier to carry out the supply of Marine Fuels to a Vessel.
Seller	Means the seller of Marine Fuels named in the applicable Confirmation.
Seller Affiliate	Means anybody corporate owned or controlled by the same ultimate beneficial owner as the Seller.
Seller Group	Means the Seller and all Seller Affiliates.
Tax(es)	Means any tax, levy, rate, duty, fee, sales tax, sales and use tax, energy tax, carbon or other greenhouse gas levies, transfer tax, stamp duty, or any other similar tax or governmental charge (other than any port charges) imposed directly or indirectly on the Seller or any Seller Affiliate, the Physical Supplier or the Buyer, its assets, income (except for taxes on the Seller's gross income), dividends or profits (without regard to the manner of collection or assessment, whether by withholding or otherwise) by any government, Governmental Authority or other body duly authorized to impose such tax, levy, rate, duty, fee or other charge.
VAT and/or Other Indirect Taxes	Means any VAT, goods and services tax, sales and use tax, excise duty, energy tax, customs duty, transfer tax, stamp duty, or other similar tax or governmental charge, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of them) that is imposed by any Governmental Authority in respect of any sale of Marine Fuels made under a Contract.
Vessel	Means to marine vessel nominated by the Buyer to receive Marine Fuels delivered by the Physical Supplier, as set out in the applicable Confirmation.



2. APPLICABILITY OF THE TERMS & CONDITIONS

- A. These Terms and Conditions, in conjunction with the applicable Confirmation, shall constitute the contract (“**Contract**”) pursuant to which the Seller agrees to sell and procure delivery of Marine Fuels, and the Buyer agrees to accept and pay for such Marine Fuels. The Buyer expressly agrees that it will incur a debt obligation to the Seller for any amounts owed pursuant to that Contract from the time of delivery of such Marine Fuels, irrespective of whether an invoice is issued for such amounts, and where the Buyer wrongfully neglects or refuses to pay any such amounts in accordance with the Contract, the Seller may maintain an action against the Buyer for any such amounts.
- B. Each Contract contains the entire agreement between the Buyer and the Seller and shall supersede all prior agreements, arrangements or stipulations whether oral or written, for the supply of Marine Fuels contemplated in that Contract. In the event of any conflict or inconsistency between the provisions of the Confirmation and these Terms and Conditions, the provisions of the Confirmation shall prevail.
- C. Documentation issued by the Buyer or the Vessel (or any of their respective representatives) including but not limited to any purchase order, nomination or confirmation, shall in no way bind the Seller or vary the terms of the Contract, even where such documentation is issued after the relevant Confirmation and/or where the Seller performs the Contract without having rejected such documentation. The Contract can only be amended or varied by written agreement of both the Buyer and the Seller and any attempt to do otherwise shall be null and void.
- D. If the delivery is contracted for by the Buyer as an agent of any other person, or by any person as an agent of the Buyer, whether such agency is disclosed or not, such agents and principals shall be jointly and severally liable with the Buyer for all obligations of the Buyer under the Contract and for the due and proper performance of the Contract.

3. NOMINATION

- A. The Seller shall not issue a Confirmation unless: (i) it decides in its absolute discretion to do so; and (ii) it first receives an email from the Buyer containing the following information relating to a proposed delivery (a “**Nomination**”):
 - a. The name of the Vessel;
 - b. The name and contact details of the operator of the Vessel;
 - c. The proposed delivery location and delivery mode;
 - d. Any specific delivery conditions required by the Buyer or the Vessel;
 - e. The grades and quantities of Marine Fuels to be delivered;
 - f. The time when the Vessel is expected to be ready for delivery;
 - g. The name and contact details of the Vessel’s agent at the delivery location;
 - h. The Buyer’s company details (full style) and invoicing address;
 - i. Any factor which could, in the reasonable opinion of the Seller, prejudice the Seller’s rights under clause 10;
 - j. Any specific or unusual characteristics of the Vessel which may, in the reasonable; opinion of the Seller, prejudice the Physical Supplier’s ability to deliver Marine Fuels to it; and
 - k. Such other information as the Seller may reasonably request.
- B. In providing a Nomination, the Buyer represents and warrants that it is familiar with and understands all limitations and conditions affecting the delivery location (including those related to the delivery mode) and shall inform the Seller of such limitations and conditions. The Buyer shall only nominate a Vessel that is compatible with such limitations and conditions. The Buyer further represents and warrants that any nominated Vessel operates in compliance with all applicable laws, regulations and other requirements of: (i) the country of the Vessel’s registry; and (ii) the relevant authorities (including port authorities or terminal operators) at the delivery location.
- C. Where the Buyer nominates Marine Fuels that are above the sulphur limits set out in MARPOL Annex VI, the Buyer must at the time of Nomination provide either: (i) confirmation in writing that the Vessel has working Abatement Technology installed in compliance with MARPOL Annex VI (an “**Abatement Technology Notification**”); or (ii) a copy of a valid Fuel Oil Non-Availability Report (FONAR) and the relevant authorization granted to the Vessel for that specific delivery of Marine Fuels.
- D. The Buyer shall indemnify and keep indemnified the Seller against all actions, claims, proceedings, liabilities, damages and all legal costs or other expenses arising out of or in connection with any inaccuracy of the representations and/or breach of the warranties in this clause 3, or related to any claim by a third party based on any facts which, if substantiated, would constitute such a breach.



4. PRICE

- A. The price of the Marine Fuels shall be stated in the Confirmation. The price of the Marine Fuels excludes, and the Buyer shall be liable to pay, any and all additional costs incurred in connection with the delivery, including but not limited to mooring fees, wharfage fees, barging fees, barge demurrage, provision of additional hoses and the use of oil pollution control equipment, in each case as determined in the sole discretion of the Seller.
- B. If the price is quoted in volume units, conversion to standard volume shall be at 60 degrees Fahrenheit or 15 degrees Celsius.
- C. Subject to clause 19, or unless otherwise stated in the Confirmation, the price of the Marine Fuels shall be given in United States Dollars.

5. GRADES & SPECIFICATION

- A. The Buyer hereby warrants that it has not relied upon any representations made by or on behalf of the Seller but has relied exclusively on its own knowledge and judgment as to the fitness for its purpose of the Marine Fuels ordered. The Buyer shall be solely responsible for ensuring the fitness of the grade and/or specification of Marine Fuels for any particular use and/or the Vessel. Except as set out below in clause 5(b), all representations, warranties, guarantees and conditions relating to quality, specification, compatibility of the Marine Fuels with any other marine fuels onboard the Vessel, fitness for purpose, description or otherwise, whether express or implied by common law, statute or otherwise, are hereby excluded.
- B. The Marine Fuels supplied pursuant to each Contract shall be:
 - i. Where a specification is stated in the Confirmation, in accordance with the specification stated in the Confirmation; or
 - ii. Where a specification is not stated in the Confirmation, Marine Fuels shall be those generally available to the Physical Supplier at the time of each delivery at the delivery locations.

6. DELIVERY

- A. Unless otherwise notified by the Seller, for each delivery, the Buyer (or the Buyer's representatives at the delivery location) shall give the Seller (and the Seller's representatives at the delivery location) seventy-two (72), forty-eight (48) and twenty-four (24) hours' prior written notice of the Vessel's arrival. The Buyer shall notify the Seller immediately of any change in the Vessel's expected arrival time. The notices given by the Buyer under this clause 6(a) are for the Seller's information only and shall not amend the terms of the Contract.
- B. Unless otherwise agreed by the Seller, the mode of delivery for the Marine Fuels shall be in the Seller's option (including delivery by Barge, Road Vehicle or shore tank to Vessel) and deliveries shall take place within the customary bunkering location and during the normal working hours of the delivery port. Where deliveries occur outside the customary bunkering location or outside the normal working hours of the delivery port the Buyer shall be liable for any additional delivery costs.
- C. If otherwise agreed by the Seller, the mode of delivery for the Marine Fuels shall be in the Seller's option (including delivery by Barge, Road Vehicle or shore tank to Vessel) and deliveries shall take place within the customary bunkering location and during the normal working hours of the delivery port. Where deliveries occur outside the customary bunkering location or outside the normal working hours of the delivery port the Buyer shall be liable for any additional delivery costs.
- D. The Seller shall in no circumstances be liable for any costs, losses or expenses incurred by or relating to the Vessel and/or the Buyer in relation to the time taken to commence and/or complete the delivery of the Marine Fuels, including but not limited to delays, demurrage, detention, loss of hire or freight, and/or Vessel operating costs, whether caused by the Physical Supplier, the Buyer, the Vessel or otherwise.
- E. The Buyer warrants at the time of delivery that the Vessel: (i) can safely receive the Marine Fuels; (ii) has all the certificates required to comply with all relevant regulations relating to the delivery of Marine Fuels at the delivery location; and (iii) is entered with a P&I Club which is a member of the International Group of P&I Clubs, maintains H&M insurance for the Vessel's full declared value and maintains pollution coverage for the Vessel commensurate with coverage for similar vessels in the trade.
- F. The Buyer shall be responsible for: (i) providing a free side of the Vessel for the delivery; (ii) providing safe passage between the Vessel and the Barge, Road Vehicle, shore tank or other delivery facilities and a safe means of access to the equipment for the receipt of the Marine Fuels; (iii) providing safe reception of the full quantity of Marine Fuels contracted for without risk to the Physical Supplier, any agent, employee or supplier of the Physical Supplier or to the property of any such party, (iv) providing reasonable assistance of qualified staff to secure the Vessel moorings; and (v) complying with all reasonable logistical, operational and safety requirements of the Physical Supplier. The Buyer shall be responsible for making all connections and disconnections between the delivery hose(s) and the Vessel's intake pipe and shall ensure the hose(s) are properly secured to the Vessel's manifold prior to commencement of delivery.
- G. Any bunker surveyor appointed by the Buyer or the Vessel to attend the delivery of the Marine Fuels must be duly approved by the relevant authorities in the delivery location. Attendance of any bunker surveyor appointed by the Buyer or Vessel is subject to the prior agreement of the Seller and the Seller accepts no liability whatsoever (including but not limited to liability for any delay) for any



withholding of such approval. Any such bunker surveyor shall be deemed to be a representative of the Buyer and the Buyer shall procure that such bunker surveyor complies with any relevant procedures at the delivery location.

- H. If in the Seller's or the Physical Supplier's opinion the Vessel cannot safely receive the Marine Fuels or the Buyer and/or the Vessel is not acting in compliance with MARPOL Annex VI, or any other applicable laws or regulations, the Seller has the option to either: (i) suspend the delivery until, in the Seller's or Physical Supplier's opinion, the Vessel can safely receive the Marine Fuels and/or is in compliance with MARPOL Annex VI or any other applicable laws or regulations; and/or (ii) terminate the delivery or the Contract. Any such suspensions that result in the delivery commencing outside of the Price Validity Window shall be subject to clause 7.
- I. Any addition to or deletion from the BDN by either the Buyer or the Vessel (or any of their representatives) is invalid, of no effect in any jurisdiction, and may not be asserted contrary to the Contract by any person. "No- Lien" stamps on any document, or any similar purported notification which could prejudice the Seller's rights under clauses 10(b) and (c), whether used by the Buyer, the Vessel or any third party, shall not vary the terms of the Contract, and shall in no way prejudice any right of lien, attachment and/or claim the Seller has against the Buyer, the Vessel, the Vessel's registered owner or the Marine Fuels. The Buyer undertakes to indemnify the Seller for all consequences should the Buyer or the Vessel (or any of their representatives) fail to adhere to this clause 6(i).
- J. The Buyer shall indemnify the Seller in respect of any delays or losses incurred by the Barge, Road Vehicle, shore tank or other delivery facilities in connection with the Contract, including but not limited to any delay, refusal or failure by the Buyer or the Vessel to sign the BDN and/or disconnect the delivery hose(s).
- K. Where more than one BDN is issued for a delivery of Marine Fuels, the delivery shall be deemed completed on the issuance of the last BDN by the Physical Supplier ("**Completion**").

7. DELIVERY AMENDMENTS, SUSPENSIONS, CANCELLATIONS & FAILURE

- A. If: (i) the Seller suspends a delivery in accordance with clause 6(h); (ii) the Vessel arrives outside, or the Buyer requests delivery to begin outside, the Price Validity Window; (iii) the Buyer fails to provide an Abatement Technology Notification or Fuel Oil Non-Availability Report in accordance with clause 3; (iv) the Buyer requests a change in the delivery mode; or (v) the Buyer is in material breach of the provisions of the Contract; then in each case the Seller shall not be obliged to perform the delivery and shall be entitled in its sole discretion to:
 - a. Amend the price set out in the applicable Confirmation to take account of increased or additional costs, including but not limited to any increase in delivery costs and/or prevailing market prices; or
 - b. Terminate the Contract with immediate effect upon notice to the Buyer, and the Buyer shall indemnify the Seller in accordance with clause 7(b).
- B. If: (i) the Seller terminates the Contract in accordance with clauses 6(h), 7(a), 16, 19(e)(i) and/or 20(b), (ii) the Buyer purports to cancel or terminate the Contract (other than pursuant to clause 13(e)), (iii) the Buyer otherwise fails to take delivery, in whole or in part, of the quantities of Marine Fuels as specified in the Confirmation (for reasons other than a Force Majeure Event or (where the relevant delivery mode is Barge to Vessel) Adverse Weather Conditions), (iv) the Buyer fails to pay for the Marine Fuels as specified in the Contract, or (v) clause 11(i) applies, then in each case (without prejudice to any other rights or remedies which the Seller has under the Contract or at law) the Buyer shall indemnify and keep indemnified the Seller for any and all direct or indirect or consequential losses incurred by the Seller resulting from such purported cancellation, termination or failure, including but not limited to:
 - a. Any liability incurred to any third party (including any Physical Supplier); b. any difference in price between the Contract price and the market price at the delivery location on the date of such purported cancellation, termination or failure; c. losses, costs and damages associated with terminating, liquidating, obtaining or re-establishing any hedging arrangement, derivative transaction or related trading position; d. costs of selling any undelivered Marine Fuels; e. additional operational expenses such as pump-back fees, inspection charges and storage; and f. demurrage.

8. MEASUREMENT, QUANTITY & TOLERANCE

- A. The Physical Supplier (or its representative) shall take measurements of the volume and calculate the quantity of each grade of the Marine Fuels delivered ("**Measurements**"). In every case the Measurements shall (in the absence of fraud or manifest error) be final and binding on the parties as to the quantity delivered. The Buyer, the Vessel or their representatives shall be entitled to witness such Measurements.
- B. Any claim by the Buyer for incorrect Measurements shall be waived and absolutely barred unless: (i) the Buyer, the Vessel or their representatives have witnessed the taking of such Measurements and issued a letter of protest on the date of Completion detailing the claim; and (ii) the Buyer subsequently presents such claim to the Seller in writing (together with full supporting documentation evidencing that the Measurements are incorrect) within fifteen (15) days from (and including) the date of Completion.
- C. Subject to clause 8(d), if the quantity of each grade of Marine Fuels delivered by the Physical Supplier is greater or less than the quantity of that grade of Marine Fuels set out in the applicable Confirmation (and such difference cannot be attributed to incorrect Measurements), the Buyer, the Vessel or their representatives must issue a separate letter of protest on the date of Completion detailing the claim. Following the issue of the letter of protest, any claim for over or under delivery shall subsequently be presented by the Buyer to the



Seller in writing (together with full supporting documentation evidencing the applicable over or under delivery) within fifteen (15) days from (and including) the date of Completion, failing which any such claim shall be waived and absolutely barred (and in such case the Buyer shall be deemed to have accepted the quantity of Marine Fuels delivered).

- D. The quantity of each grade of Marine Fuels set out in a Confirmation shall be subject to a tolerance of +/- 5% in the Seller's option (the "**Tolerance**"). If the quantity of Marine Fuels delivered by the Physical Supplier is greater or less than the quantity set out in the Confirmation (but only within the amount of the Tolerance) the Buyer is bound to accept and pay for the actual delivered quantity at the price set out in the Confirmation. Where the price set out in the Confirmation is a lump sum, the price will be adjusted on a pro-rata basis to reflect the actual quantity delivered.

9. SAMPLING & QUALITY

- A. In relation to reach delivery, subject to any mandatory requirements at the delivery location, the Physical Supplier shall take a minimum of three (3) samples of each grade of the Marine Fuels. All such samples shall be drawn from the barge, road vehicle, shore tanks or other delivery facility manifold unless the Physical Supplier elects otherwise. Each sample shall be:
- i. Securely sealed;
 - ii. Labelled with the Vessel's name, product type, delivery date, delivery location and seal number;
 - iii. Authenticated with the Vessel's stamp;
 - iv. Signed by the Physical Supplier and the Master of the Vessel (or any of their authorized representatives); and
 - v. Recorded on the BDN.

At least one (1) sample shall be retained by the Physical Supplier (the "**Supplier Retained Sample**") and two (2) samples shall be passed to the Buyer, the Vessel or their representatives (the "**Vessel BDN Samples**") for its retention (the "**Sampling Procedure**").

- B. The Buyer, the Vessel or their representatives shall have the right to witness the Sampling Procedure. Their failure to do so, for any reason, shall not prejudice the validity of the Sampling Procedure. In the event of such failure to witness the Sampling Procedure, the Buyer shall be deemed to have waived any claim as to the validity of the Sampling Procedure or that the Supplier Retained Sample(s) are not representative of the Marine Fuels delivered.
- C. Where the Seller is the Physical Supplier, it shall retain the Supplier Retained Sample(s) for a minimum of fifteen (15) days from (and including) of the date of Completion, unless a claim is brought by the Buyer to the Seller in accordance with clause 9(d), in which case it shall retain such Supplier Retained Sample(s) until the claim has been resolved.
- D. Any claim in respect of the quality of the Marine Fuels must be notified to the Seller in writing within fifteen (15) days from (and including) the date of Completion, failing which such claim shall be waived and absolutely barred. Such claims must include an analysis of a sample of the Marine Fuels carried out in accordance with the relevant test method in ISO 8217 by a qualified independent laboratory. If the sample analysis results are within the recipient confidence limit in ISO 4259:2006, the Marine Fuels shall be considered to be on-specification. The Buyer shall provide a separate analysis of a Vessel BDN Sample (from a laboratory to be mutually agreed) if requested by the Seller.
- E. If a quality claim complies with the foregoing provisions in this clause 9, the Seller shall arrange for the specific alleged off-specification parameter(s) of a Supplier Retained Sample to be analyzed at an ISO certified independent inspection company (the "**Test**"). Where the parties do not agree on the choice of inspection company and/or location of laboratory for the Test the Seller is entitled to choose at its sole discretion. The Buyer may at its own cost witness the entire Test and/or the breaking of the seal but failure by the Buyer to do either will in no way prejudice the validity or results of the Test.
- F. The results of the Test shall be conclusive as to the quality of the Marine Fuels and final and binding on the Buyer and the Seller. The results shall be considered as a recipient single result when interpreted in accordance with ISO 4259:2006. If the Marine Fuels are determined to be off-specification the Seller shall be liable for the costs of the Test, in all other circumstances the Buyer shall be liable and shall indemnify the Seller in respect of such costs.
- G. Samples drawn by the Buyer, the Vessel or their representative(s) shall have no relevance whatsoever in determining the quality of the Marine Fuels delivered.

10. RISK & TITLE

- A. Risk in the Marine Fuels shall pass to the Buyer where the Marine Fuels first pass the presenting outboard flange face of the Vessel connection to the barge, road vehicle, shore tank or other delivery facility manifold. The Seller's responsibility for the Marine Fuels ceases and the Buyer assumes all risks, including risk of deterioration, contamination and depreciation of the Marine Fuels, at that point.
- B. The Seller shall retain title to the Marine Fuels until the Seller has received full payment for the Marine Fuels and any other amounts and debts howsoever arising owed by the Buyer to the Seller. Until receipt of such payments the Buyer agrees that it is possession of the Marine Fuels solely as bailee for the Seller, and shall not be entitled to:
- i. Use the Marine Fuels other than for the propulsion or operation maintenance of the Vessel; or



- ii. Blend, encumber, pledge, alienate, or surrender the Marine Fuels to any third party or other vessel.
- C. Marine Fuels delivered pursuant to the Contract are sold and delivered on the financial credit of the Vessel as well as on the promise of the Buyer to pay. The Buyer therefore expressly represents and warrants that:
 - i. The Marine Fuels are delivered with the authorization and on behalf of the Vessel, its registered owner, Master, charterers and/or agents;
 - ii. There is no provision contained in the Vessel's charterparty (or similar contractual arrangement) which purports to limit the Vessel, its Master, charterers, agents and/or representatives of the Vessel from incurring a maritime lien;
 - iii. In addition to any other parties that may be listed as Buyer in the Confirmation, the Vessel and its registered owner are jointly and severally liable for payment of the Marine Fuels; and
 - iv. Until the payments referred to in clause 10(b) above 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 Vessel, the Seller retains its right of maritime lien, attachment and/or claim against the Vessel and/or against such part of the commingled marine fuel as corresponds to the quantity of the Marine Fuels delivered.

11. HEALTH, SAFETY & ENVIRONMENT

- A. The Buyer shall provide its employees, agents, operators, contractors and the Vessel with all relevant health, safety and environmental information concerning the Marine Fuels (including any Material Safety Data Sheets provided by the Physical Supplier).
- B. The Buyer represents and warrants that it has policies of environmental responsibility in place concerning the Marine Fuels. The Buyer shall, and shall ensure that its employees, agents, operators, contractors and the Vessel, comply fully with all applicable laws and government or Governmental Authority regulations with respect to the environment.
- C. The Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from the Buyer's, its agents', operators', contractors' or the Vessel's failure to account for or properly and competently manage any hazards inherent in the nature of any marine fuels or the operations contemplated in connection with the Contract.
- D. The Buyer shall, and shall ensure that its employees, agents, operators, contractors and the Vessel, at all times comply with any obligations, requirements or recommendations contained in any law, statute directive or regulation of any territory, state or jurisdiction in or through which the Marine Fuels may be delivered, sold, transported or used and all government, Governmental Authority, state or local regulations (including terminal requirements or guidelines however described) at the delivery location including but not limited to those related to fire, transportation, handling, use, storage, spillage, escape, discharge or loss of marine fuels. Compliance by the Buyer with the obligations referred to in clause 11(b) shall not excuse the Buyer from its obligations under this clause 11(d).
- E. If a spill of Marine Fuels occurs or threatens to occur before or during a delivery and/or at any point after Completion where the Seller retains title to the Marine Fuels, the Buyer shall immediately take all action reasonably necessary to control and stop the spillage and to mitigate its effects.
- F. Notwithstanding clause 11(e) above, the Seller and/or the Physical Supplier may, at its sole discretion, take such measures it considers to be required to control and/or stop the spillage and to mitigate its effects and the Buyer shall use its best endeavors to cooperate fully.
- G. The Buyer shall indemnify the Seller against all liability, costs and expenses (including but not limited to those incurred by the Physical Supplier) arising from or in connection with any spillage except to the extent that such spillage has been caused solely by the negligence of the Physical Supplier or failure of or defect in the Physical Supplier's equipment. Where both parties are found to be at fault, the Buyer shall only indemnify the Seller in accordance with its respective degree of fault.
- H. The Buyer shall promptly provide the Seller with any requested documents and information regarding a spill including the Vessel's spill contingency plan or any other applicable program for the prevention or mitigation of pollution as required by any applicable laws or regulations.
- I. The Seller shall not be obliged to deliver the Marine Fuels (and is entitled to immediately stop any commenced delivery) if the Seller, in its sole discretion, determines that: (i) the Buyer and/or Vessel is not in compliance with any applicable health, safety and environmental requirements or the Buyer's related obligations under the Contract; (ii) the delivery of the Marine Fuels would breach any applicable laws, regulations and/or guidelines; (iii) the delivery will or may entail of personal injury or damage to any person or property; or (iv) the Buyer and/or Vessel lacks any required equipment, permit or certificate required for the delivery of the Marine Fuels. In such event, the Seller shall be entitled to terminate the Contract (without liability to the Buyer) and clause 7(b) shall apply.
- J. The Buyer shall indemnify and keep indemnified the Seller against any liability, claim or proceedings whatsoever arising out of or in connection with any failure by the Buyer and/or Vessel to comply with its obligations under this clause 11.



12. LIABILITY

- A. Where the Contract provides for a single delivery of Marine Fuels, the Seller's liability under or in connection with the Contract shall not exceed the invoice value of the Marine Fuels delivered pursuant to that Contract. Where the Contract provides for more than one delivery of Marine Fuels, the Seller's liability under or in connection with each delivery shall not exceed the invoice value of the Marine Fuels delivered.
- B. The Buyer shall indemnify the Seller and hold it harmless in respect of any losses, claims, liabilities, damage, penalties, fines, expenses and costs (inclusive of interest) arising from the delivery of the Marine Fuels (including but not limited to the Buyer and/or the Vessel's failure to comply with MARPOL Annex VI), except where such losses, claims, liabilities, damage, penalties, fines, expenses and costs are caused by the Seller's negligence or breach of the Contract.
- C. If the Marine Fuels delivered do not meet the specification set out in the Contract the Buyer shall take all reasonable actions to mitigate potential losses, including but not limited to the blending of the Marine Fuels in accordance with the Seller's instructions.
- D. Where, following completion of any actions pursuant to clause 12(c), the Marine Fuels continue not to meet the specification set out in the relevant Contract, subject always to clause 12(a), the Buyer's remedies shall be limited to:
 - i. The de-bunkering of the Marine Fuels to be arranged by the Seller at a mutually agreed location;
 - ii. Reimbursement for or replacement of such Marine Fuels by the Seller at its option; and
 - iii. The reasonable and verifiable repair or replacement costs (accounting for depreciation) of any components of the Vessel that are physically damaged as a direct result of using such Marine Fuels, subject to such components being available for inspection by the Seller. The Seller shall have no liability to the Buyer for the replacement of components disposed of prior to inspection by the Seller.
- E. In no circumstances shall the Seller:
 - i. Have any obligation to make any payment to the Buyer under this clause 12 until the Seller has received full payment from the Buyer of all sums due to the Seller (howsoever arising);
 - ii. Be liable for any claim where the Marine Fuels delivered have been commingled with any other substance;
 - iii. Have any liability, whether as a result of a breach of the Contract, tort (including negligence), breach of statutory duty or otherwise, and whether as a result of the acts or omissions of the Seller, its servants, agents, subcontractors or any fraudulent acts or omissions of the Physical Supplier (where the Physical Supplier is a third party), for any loss of actual, projected, prospective or anticipated profit, loss of time or hire, cost of overheads thrown away, fuel consumption, demurrage, detention or loss of schedule, cost of deviation, cost of substitute vessel(s), loss related to the loss of operational use of the Vessel, physical loss, damage to cargo, cost of any tank or any equipment cleaning, plant shut-down or reduced production, loss of power generation, blackouts or electrical shut-down or reduction, loss of contract(s) or economic loss, in each instance whether such losses are direct, consequential or otherwise, nor, without prejudice to the foregoing, shall the Seller be liable for any consequential, indirect, punitive, exemplary, incidental or special losses, damages or expenses suffered by the Buyer; or
 - iv. Be responsible in any respect whatsoever for any loss, damage or injury resulting from the hazards inherent in the nature of the Marine Fuels delivered under the Contract.

13. FORCE MAJEURE

- A. A party shall not be deemed to be in breach of the Contract or to be liable to the other party for any failure, omission or delay in its performance in whole or in part under the Contract (except in relation to any obligation to make payment) if such failure, omission or delay was not reasonably foreseeable by that party at the time each applicable Confirmation is issued and arises or results from any cause not reasonably within the control of that party, including but not limited to such causes as:
 - i. Government intervention, compliance with any law, regulation or ordinance, or with any order, demand or request of any international, national, port, transportation, local or other authority or person purporting to act with such authority, or agency or any other corporation directly or indirectly controlled by any of them; or
 - ii. Natural disaster, earthquake, flood, storm, epidemic or pandemic, fire, explosion, damage to any terminal or port, or any act of God; or
 - iii. Labor or trade disputes, strikes, industrial action or lockouts; or
 - iv. War, threat of or preparation for war, armed conflict, military operations, terrorism actions, civil war, embargo, blockade, riot or civil commotion;

Any such event being hereinafter referred to as a "**Force Majeure Event**". Prompt written notice of the Force Majeure Event shall be given by the party so affected.



Notwithstanding the foregoing, a Force Majeure Event shall not include:

- a. The ability of the Buyer to obtain better economic terms for the purchase of the Marine Fuels from an alternative seller and any change in the schedule or route of the Vessel due to commercial reasons.
 - b. Any changes in Tax or VAT and/or Other Indirect Taxes related to the sale or purchase of the Marine Fuels, even if such changes make the sale and purchase of the Marine Fuels uneconomic to the Seller or the Buyer.
 - c. Any change in law or a change in the interpretation of existing law that does not prevent performance but merely renders such performance more costly or less profitable to the Seller or the Buyer;
 - d. Financial hardship or the inability to make a profit or achieve a satisfactory rate of return from the sale or consumption of the Marine Fuels.
 - e. The existence or occurrence of any adverse market commercial conditions including, without limitation, loss of customers, loss of market share or reduction in demand for Marine Fuels
- B.** In addition to clause 13(a), the Seller shall not be in breach of the Contract or be liable to the Buyer for the unavailability of supplies of Marine Fuels from any of the Seller's sources of supply (including but not limited to the Physical Supplier) insofar as such unavailability is related to a circumstance which is outside the reasonable control of the Seller.
- C.** If any Force Majeure Event, or any event described in clause 13(b) occurs, then the Seller shall be at liberty to withhold, reduce, suspend or cancel delivery of Marine Fuels under the Contract to such extent as the Seller may in its absolute discretion determine and the Seller shall not be bound to acquire any additional or alternative Marine Fuels.
- D.** The Seller and the Buyer shall continue to perform their respective obligations under the Contract to the extent that such obligations are not prevented by a Force Majeure Event.
- E.** Where the Force Majeure Event continues for a period of five (5) consecutive days following the written notice of the Force Majeure Event (the "**Force Majeure Period**"), either party may then cancel any affected delivery by further written notice to the other. Such termination shall not give rise to any liability, compensation or indemnity of any kind, other than any liabilities arising prior to the Force Majeure Event.

14. PAYMENT TERMS

- A.** Payment by the Buyer for any sums due to the Seller under the Contract shall be made in full (without any deduction, set-off or counterclaim whatsoever, free of bank charges and in cleared funds) by telegraphic transfer, automated credit transfer or electronic transfer of same day funds quoting the Seller's invoice number and the Buyer's name.
- B.** Unless otherwise stated in the Confirmation, payment shall be due by the Buyer to the Seller on the date of Completion. If a credit period has been granted by the Seller to the Buyer in the Confirmation (the "**Credit Period**"), the transfer of the funds shall be made and value dated by the Buyer, no later than the expiry date of that Credit Period. If, however, the Buyer's or the Seller's bank is closed for business on the last day of the applicable Credit Period the Buyer shall make its payment by the last day within such Credit Period when such banks are open for business. All bank charges in respect of such payments shall be for the Buyer's account.
- C.** The Buyer shall notify (or shall instruct its bank to notify) the Seller as soon as a payment has been made quoting the date on which such payment was made, the amount, the name of the bank effecting payment and details of each invoice to which the payment relates. The Buyer's payment obligations under the Contract shall be discharged only when the Seller has received payment in full for any amounts due and payable to the Seller pursuant to the Contract (including any interest).
- D.** If, at any time following the entry into the Contract: (i) the Buyer's financial position and/or creditworthiness is deemed by the Seller (in its opinion) to be impaired or unsatisfactory; or (ii) the Seller Group's aggregate financial exposure under any contracts with the Buyer and its affiliates ("**Buyer Group**") exceeds the credit limit set by the Seller Group at the time; or (iii) the Seller becomes aware of any factor which (in its opinion) could prejudice the Seller's rights under clause 10, the Seller may, without prejudice to its other rights, require the Buyer to:
- a. Pay cash before the delivery of Marine Fuels for any future deliveries; and/or
 - b. Provide security satisfactory to the Seller which can cover both future deliveries and deliveries made but not yet paid for; and/or
 - c. Effect immediate payment of any outstanding amounts due from the Buyer Group to the Seller in respect of the Contract or any other contract between any of the Seller Group and the Buyer Group (notwithstanding any credit period set out in such contract).
- E.** If the Buyer fails to comply with this clause 14 in respect of the Contract, the Seller shall have no obligation to make any delivery of Marine Fuels to the Buyer and/or Buyer Group under any other contract, and:
- i. May terminate all other contracts between the Seller and the Buyer and/or Buyer Group immediately on giving notice to that effect to the Buyer; or
 - ii. May cancel any credit period under any other contract between the Seller and the Buyer and/or Buyer Group and require that the Buyer make immediate payment of any amounts due under any other contract.



- F. Without prejudice to any other rights or remedies of the Seller, for any payments not made by the Buyer when due, the Buyer shall be liable to pay the Seller interest at two (2) per cent per thirty (30) day period, and pro rata for any part thereof. Interest shall be calculated from the payment due date until the date payment is received in full by the Seller.
- G. Payments made by the Buyer shall always be credited by the Seller to meet outstanding amounts due from the Buyer in the following order:
 - i. Costs;
 - ii. Interest; and
 - iii. Invoices in order of their age.
- H. Where relevant, the Seller may issue, at its sole discretion, and the Buyer shall make payment against a provisional invoice based on the pricing, quantity and/or specification information available to the Seller at the time of issue of such provisional invoice. If a provisional invoice is issued, a final invoice shall be prepared as soon as reasonably practicable after all the relevant information becomes available to the Seller and the Buyer shall make payment in accordance with the provisions of this clause 14. No interest shall be due on the difference between the amounts set out in the provisional invoice and the final invoice.
- I. The Buyer shall be liable for, and shall pay immediately on demand, all costs, fees and expenses incurred by the Seller in connection with any late payment or failure to pay by the Buyer, whether or not any legal proceedings are commenced, including but not limited to court costs, admiralty, harbour or port authority costs or deposits, and/or lawyers' fees, costs and disbursements. All such costs, fees and expenses, together with interest incurred under clause 14(f), shall constitute a part of the Seller's maritime lien, attachment or claim under clause 10(c).
- J. In relation to any dispute between the parties, including but not limited to any steps taken by the Seller in connection with late payment or failure to pay by the Buyer, the Buyer hereby irrevocably waives any right to any attachment, lien or claim (whether before or after judgment) over any of the Seller Group's assets and/or to demand or obtain any countersecurity.

15. TAX

- A. All amounts are exclusive of any applicable VAT and/or Other Indirect Taxes which will be payable by the Buyer in addition to the price of the Marine Fuels (as stated in the Confirmation in accordance with clause 4) upon the provision of an appropriate tax invoice issued by the Seller.
- B. To the extent that a claim is made by any Governmental Authority against the Physical Supplier, the Seller or any Seller Affiliate on the basis that the sale was subject to any VAT and/or Other Indirect Taxes and such claim arose partly or wholly due to the action, omission or fault of the Buyer or by any third party on behalf of the Buyer, then the Buyer shall indemnify and hold the Seller harmless from any claims, losses, damages, liabilities and expenses, including penalties and (legal) expenses, attributable to such action, omission or fault of the Buyer or by any third party on behalf of the Buyer.
- C. In order for the Seller to invoice correctly the Buyer for VAT and/or Other Indirect Taxes, the Buyer shall, by no later than two (2) Business Days prior to each delivery, confirm which Buyer's VAT registration number shall apply for the Marine Fuels to be delivered.
- D. The Buyer shall pay, and shall indemnify and hold the Seller harmless from, all Taxes levied and imposed by any Governmental Authority of the country in which the delivery port is situated in respect of the purchase, import, inspection, storage or use of the Marine Fuels under a Contract or in respect of the Vessel. If any such Governmental Authority obliges the Physical Supplier and/or the Seller and/or any Seller Affiliate to pay any such Taxes, Buyer shall reimburse the Seller for such payment, including those Taxes imposed on the Physical Supplier, the Seller or any Seller Affiliate as a result of obtaining such reimbursement.
- E. All payments to be made under the Contract shall be made without any deduction or withholdings for any Taxes. If the Buyer is required by any Governmental Authority to withhold Tax in any jurisdiction in respect of any payment made under the Contract, then the Buyer shall pay such Taxes to the relevant Governmental Authority and shall pay the additional amount necessary to the Seller to ensure receipt by the Seller of the full amount due without such deduction or withholding.
- F. Where any payment has been made under this clause 15 and the Seller receives or is entitled to a refund in respect of the Taxes which gave rise to the right to that payment (whether by way of actual receipt, credit, set-off or otherwise), the Seller shall repay, or cause to be repaid, to the Buyer a part of that payment equal to the amount of the refund effectively received or enjoyed, less any reasonable costs incurred in obtaining the refund, and less any Taxes levied or leviable in respect of that refund.
- G. If the Buyer is seeking to purchase any Marine Fuels free of Taxes, the Buyer shall provide the Seller with all valid documentation required by any Governmental Authority in conjunction with any applicable tax exemption (including but not limited to an exemption certificate or a re-sale certificate for such purchase) as soon as they are available or immediately after the date of Completion and in any case, no later than by the Seller's invoicing time (unless otherwise agreed by the Seller in writing). If the Buyer: (i) fails to comply with its obligations under this clause 15(g); and/or (ii) consumes any of the Marine Fuels in territorial waters, it shall indemnify and hold the Seller harmless from all amounts (including any Taxes) incurred by the Seller or any Seller Affiliate to any Governmental Authority as a result of such actions.



16. TERMINATION IN THE EVENT OF INSOLVENCY OR MATERIAL BREACH

- A. Notwithstanding anything to the contrary express or implied, the Seller (without prejudice to its other rights) may at its sole discretion immediately suspend delivery under and/or terminate the Contract and any and all other contracts between the Seller and the Buyer and/or Buyer Group by notice to the Buyer if the Buyer:
- i. Is in material breach of its obligations pursuant to the Contract;
 - ii. Is dissolved;
 - iii. Becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
 - iv. Makes a general assignment, arrangement or composition with or for the benefit of its creditors;
 - v. Institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and is not withdrawn, dismissed, discharged, stayed or restrained within the time period required by the Seller in its absolute discretion;
 - vi. Has a resolution passed for its winding-up, official management or liquidation;
 - vii. Seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
 - viii. Has a secured party taken possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;
 - ix. Causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in this clause 16; or
 - x. Take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this clause 16.
- B. The termination of the Contract by the Seller under this clause 16 shall not affect in any way any of the Seller's rights and the Buyer's obligations under the Contract or any other contracts between the parties which were created, incurred or contracted prior to such termination by the Seller.

17. NON-PHYSICAL SUPPLY

- A. In circumstances where the Seller is not the Physical Supplier, and where the Seller (or any Seller Affiliate) is purchasing the Marine Fuels from a third party (the "**Third Party**"), the terms and conditions of the sale and purchase contract between the Seller (or Seller Affiliate) and the Third Party (the "**Third Party Terms**") shall be deemed to be incorporated into the Contract only to the extent expressly set out in this clause 17 and the Buyer shall be deemed to have read, accepted and be bound by the applicable provisions within the Third Party Terms as if it were the buyer, and the Seller was the seller, under such Third Party Terms, whether or not the Third Party is the Physical Supplier.
- B. Subject to clause 17(c), if the Third-Party Terms contain:
- i. A shorter time limit for the doing of any act (other than termination of the Contract), or the notification of any claim, then such shorter time limit shall be deemed incorporated mutatis mutandis into these Terms and Conditions;
 - ii. Different measurements, sampling, sample retention or testing procedures in relation to the Marine Fuels being delivered pursuant to the Contract, then such measurement, sampling or testing procedures shall be incorporated into these Terms and Conditions;
 - iii. Any additional limitation or exclusion of liability provision, then such provision shall be deemed incorporated mutatis mutandis into these Terms and Conditions, providing it only applies to further limit or exclude the liability of the Seller;
 - iv. Any additional event or circumstance that constitutes a Force Majeure Event, any wider definition of what constitutes a Force Majeure Event, or any more restrictive Force Majeure Period (or analogous definition), then such event, circumstance or definition shall be incorporated mutatis mutandis into these Terms and Conditions;
 - v. Any greater tolerance relating to quantity of Marine Fuels to be delivered, then such tolerance shall be incorporated mutatis mutandis into these Terms and Conditions; and
 - vi. Any additional termination or suspension rights which would apply to the Seller, then such rights shall be incorporated mutatis mutandis into these Terms and Conditions.
- C. Notwithstanding the above, any express or implied right, condition or obligation in the Third Party Terms that would afford the Buyer any additional rights against the Seller than those set out in these Terms and Conditions shall not be deemed incorporated under any circumstances.
- D. A copy of the relevant provisions from the Third Party Terms that are deemed to be incorporated into the Contract shall be made available to the Buyer by the Seller upon request.



18. NOTICE

Any notice from either party to the other must, unless otherwise agreed, be made in writing, and can be sent by courier, registered post, email or fax. Any requisite address and/or contact details of the Buyer should be specified in the Nomination. Any notice received after 18:00 hour on a Business Day shall be deemed not to have been given until the next Business Day.

19. SANCTIONS COMPLIANCE

- A. The Buyer warrants and represents that the Vessel is employed at all times in full compliance with all trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism and similar laws, regulations, decrees, ordinances, orders, demands, requests, rules or requirements issued or enacted by the United States of America, the United Nations, the European Union, the United Kingdom and/or Singapore (“**Trade Sanctions**”).
- B. In particular, the Buyer warrants and represents that:
 - i. Neither the Buyer nor the Vessel are included on the Specially Designated Nationals and Blocked Persons List published and amended from time to time by OFAC or the equivalent lists published by the European Union, the United Kingdom and Singapore (collectively, “**Sanctions List(s)**”);
 - ii. Neither the Buyer nor the Vessel are owned or controlled or acting for or on behalf of any individual or entity which is included on any Sanctions List;
 - iii. No individual or entity with any interest in any cargo on board the Vessel is included on any Sanctions List; and
 - iv. every cargo carried on board the Vessel can be loaded, carried and discharged without infringing any Trade Sanctions.
- C. The warranties in clauses 19(a) and 19(b) are deemed repeated every day from the date of entry into the Contract until thirty (30) days after Completion.
- D. The Buyer shall, as soon as possible, at the request of the Seller, provide bills of lading, seaway bills or other applicable documentation evidencing carriage of any cargo on board the Vessel.
- E. e) If in the reasonable opinion of the Seller the Buyer’s warranties under clause 19(a) or (b) are inaccurate, the Buyer fails to provide relevant documentation under clause 19(d), or there is a risk that payment by the Buyer for any invoiced amount under the Contract may be delayed and/or confiscated by any bank, financial institution, regulator or governmental entity, the Seller shall be entitled to:
 - i. Terminate the Contract without liability; or
 - ii. Change the currency of the Contract to a currency other than United States Dollars, with the applicable currency conversion rate to be set by the Seller in its sole discretion.
- F. The Seller shall not be obliged to perform any obligation otherwise required by the Contract including any obligation to perform, deliver, accept, sell, purchase, pay or receive monies to, from, or through a person or entity, or engage in any other acts if this would be in violation of, inconsistent with, or expose the Seller to punitive measures under, any Trade Sanctions.
- G. The Buyer shall indemnify and hold the Seller harmless for non-compliance by the Buyer or the Vessel of this clause 19.

20. ANTI-BRIBERY & ANTI-CORRUPTION

- A. The Buyer warrants and undertakes that it shall:
 - i. Comply with all applicable laws, statutes, regulations, rules, codes and official government orders relating to anti-bribery and anti-corruption including requirements of the United Kingdom and the United States of America;
 - ii. Comply with such anti-bribery and anti-corruption policies as the Seller may update from time to time (and which the Seller shall make available to the Buyer upon request);
 - iii. Not, directly or indirectly pay, offer, give or promise to pay or authorise the payment of, any monies or other things of value to:
 - a. Any government official;
 - b. Any director, officer, employee, or agent/representative of an actual or prospective counterparty, supplier or customer of the Seller; or
 - c. Any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities, or engage in other acts or transactions, in each case if this is in violation of or inconsistent with the anti-bribery or anti-money laundering legislation of any government including the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010, Anti-terrorism, Crime and Security Act 2001, the Money Laundering Regulations 1993 and the Proceeds of Crime Act 2002 and the applicable country legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- B. The Seller may terminate the Contract and any and all other contracts between the Buyer and the Seller in its sole discretion if:
 - i. In its reasonable judgment the Buyer is in breach of any of the warranties or undertakings in clause 20(a); or



- ii. The Buyer fails to provide satisfactory evidence (in the form prescribed by the Seller in its absolute discretion) of compliance with this clause 20 upon written request by the Seller.

21. JURISDICTION & GOVERNING LAW

- A. The Contract and any non-contractual obligations arising out of or in connection with the Contract shall be governed by and construed in accordance with English law except that the General Maritime Law of the United States of America and the Commercial Instruments and Maritime Lien Act (“CIMLA”), 46 U.S.C. 31301 et seq. (referred to collectively as the “General Maritime Law of the United States”) shall always apply to any determination of the existence of a maritime lien, attachment or any other maritime claim, regardless of the country in which the Contract is made, where the Marine Fuels are delivered or where the Seller commences any legal action against the Buyer.
- B. Any dispute arising out of or in connection with the Contract shall be referred to arbitration in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force. The seat of the arbitration shall be London, England. The arbitration proceedings shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms at the time when the arbitration proceedings are commenced. Unless the parties agree upon a sole arbitrator, the arbitration reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within fourteen (14) days of that notice, and stating that it will appoint its arbitrator as sole arbitrator unless the other party fails to appoint its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party fails to appoint its arbitrator or give notice that it has done so within the fourteen (14) days specified the party referring the dispute to arbitration may, without any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of the sole arbitrator shall be binding on both parties as if the sole arbitrator had been appointed by agreement.
- C. In cases where neither the claim nor any counterclaim exceeds the sum of one hundred thousand US Dollars (US\$100,000) (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Small Claims Procedure of the London Maritime Arbitrators Association current at the time when arbitration proceedings are commenced.
- D. The arbitration agreement in this clause 21 is wholly without prejudice to the Seller’s rights to:
 - i. Take any action, including commencing any proceedings, against the Buyer, the Vessel or the Vessel’s registered owner in any jurisdiction to obtain, maintain and/or enforce security for any claim under the Contract; or
 - ii. Commence and/or continue proceedings against the Buyer in any jurisdiction in order to determine the substantive merits of any claim under the Contract.
- E. In respect of any legal action or proceedings commenced under clause 21(d), the Buyer hereby irrevocably consents to the service of process by registered post to the Buyer’s registered address. Nothing in this clause 21(e) shall affect the Seller’s right to serve process in any other manner permitted by law.

22. MISCELLANEOUS

- A. No waiver by either party of any provision, right, remedy or breach of the Contract shall be binding unless made expressly and confirmed in writing by both the Buyer and the Seller. Any such waiver shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.
- B. The Buyer shall not assign the Contract or any of its rights and obligations under it without the express consent in writing of the Seller.
- C. If any provision under the Contract is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of the Contract shall be in any way affected or impaired thereby. The parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision which comes as close as possible to the invalid provision as regards to its economic intent.
- D. The parties do not intend that any third party shall have any rights under or be able to enforce the Contract, and the parties exclude to the extent permitted under applicable law any such third party rights that might otherwise be implied.
- E. The Seller and the Buyer shall not disclose information on the existence and the provisions of the Contract and any information obtained in connection with the Contract (“**Confidential Information**”) without the prior written consent of the other party. Notwithstanding the foregoing, each party may disclose Confidential Information without the prior written consent of the other party to its affiliates, advisers, auditors and bankers or if required to do so at law or in connection with any dispute, legal or arbitration proceedings pursuant to the Contract. Where the Seller is not the Physical Supplier, the Seller may disclose Confidential Information to the Physical Supplier, without the prior written consent of the Buyer, to the extent needed to enable the Seller to perform its obligations under the Contract.
- F. On termination of the Contract for any reason whatsoever, the following clauses shall continue in force:
 - i. Clause 3 (Nomination)
 - ii. Clause 7 (delivery, Amendments, Suspensions, Cancellations and Failures)
 - iii. Clause 11 (Health, Safety and the Environment)
 - iv. Clause 12 (Liability)



- v. Clause 18 (Notice)
- vi. Clause 19 (Sanctions Compliance)
- vii. Clause 21 (Jurisdiction and Governing Law) and
- viii. Clause 22 (Miscellaneous)

23. LUBRICANTS

- A. Where the Buyer is buying Lubricants from the Seller, the clauses found in Annex A to these Terms and Conditions (“**Annex A**”) shall also apply and shall supplement and amend these Terms and Conditions. In the event of any inconsistencies between the Terms and Conditions and Annex A, the terms of Annex A shall prevail.
- B. Where a Contract is agreed for Lubricants and Marine Fuels, Annex A shall only apply to the sale of Lubricants.

ANNEX A RELATING TO THE SUPPLY OF LUBRICANTS

1. DEFINITIONS

Delivery by Bulk	Means a delivery of Lubricants to the Vessel by delivery hose under a Contract.
Delivery by Container	Means a delivery of Lubricants to the Vessel or to the Buyer’s other nominated vehicle by pail, drum, barrel, intermediate bulk container (IBC) or other suitable container under a Contract.

2. DELIVERY

A new clause 6(l) shall apply as follows:

- I. In respect of a Delivery by Container, unless otherwise agreed between the parties, the Physical Supplier shall deliver the Lubricants as close to the Vessel as is reasonably possible (in the Physical Supplier’s opinion)

3. MEASUREMENT, QUANTITY & TOLERANCE

Clause 8(a) shall be amended and restated as follows:

- a. For any Delivery by Bulk, the Physical Supplier (or its representative) shall take measurements of the volume and calculate the quantity of each grade of the Marine Fuels delivered (“**Measurements**”). In every case the Measurements shall (in the absence of fraud or manifest error) be final and binding on the parties as to the quantity delivered. The Buyer, the Vessel or their representatives shall be entitled to witness such Measurements. For any Delivery by Container, the Buyer or its representative shall also be entitled to check the packaging, weights and measures of the Marine Fuels at the time of delivery.

4. SAMPLING & QUALITY

Clause 9(a) shall be amended and restated as follows:

- a. The Lubricants shall conform to the specification or description set out in the Confirmation. For any Delivery by Container, this clause constitutes the whole of Seller’s and the Physical Supplier’s obligations with respect to the quality of the Lubricants. No samples shall be taken by the Physical Supplier.

For Delivery by Bulk, the Physical Supplier shall take and retain a representative sample of the Lubricants from the original supply tank (the “**Retained Sample**”), (the “**Sampling Procedure**”).

5. RISK & TITLE

Clause 10(a) shall be amended and restated as follows:

In respect of any Delivery by Bulk, risk in the Lubricants shall pass from the Seller to the Buyer where the Lubricants first pass the presenting outbound flange face of the Vessel connection to the Barge, Road Vehicle or other delivery facility manifold with the Vessel. In respect of any Delivery by Container, risk in the Lubricants shall pass to the Buyer as follows:

- i. If delivering by Road Vehicle on land, when the Lubricants are placed on the ground by the Physical Supplier at the delivery location;



- ii. If delivering to the Buyer's road vehicle using the Physical Supplier's lifting equipment or personnel, when the Lubricants are placed onto the Buyer's road vehicle;
- iii. If delivering by Road Vehicle to the Buyer's road vehicle using the Buyer's lifting equipment or personnel, when the Lubricants are lifted from the Road Vehicle;
- iv. If delivering by a Barge using the Barge's lifting equipment or personnel, when the Lubricants are landed on the deck of the Vessel;
and
- v. If delivering by Barge using the Vessel's lifting equipment or personnel, when the Lubricants are lifted off the deck of the Barge.