



GENERAL TERMS OF SALE OF BUNKER FUEL FOR OLEO ENERGY TRADING PTE LTD, OLEO ENERGY DMCC & OLEO ENERGY PVT LTD

Feb 2021



1. APPLICATION

- 1.1 These General Terms of Sale of Bunker Fuel in conjunction with the Bunker Confirmation shall collectively form this Bunker Contract and shall contain all agreements, arrangements and stipulations in respect of the sale of bunker fuel contemplated herein. Each sale shall constitute a separate contract. Unless the sellers have expressly agreed in the Bunker confirmation to any additional requirement of the buyers other than the ones in the general terms of sale, then it shall be deemed that the buyers requirements have been rejected by the sellers and the sellers terms of sales will prevail. Unless a challenge to the these general terms of sale is made by the Buyer to the Seller within 24 hrs of the Sales Confirmation being sent to the Buyer, then it shall deemed that the Buyer has accepted the Sales Agreement in its entirety.
- 1.2 In the event of any conflict between the Bunker Confirmation and these General Terms of Sale of Bunker Fuel, including any amendments thereto, the Bunker Confirmation shall be given priority over these General Terms of Sale of Bunker Fuel.
- 1.3 The Bunker Contract shall supersede any conflicting terms of other contracts which the Buyer may seek to enforce against the Seller.

2. DEFINITIONS

- 2.1 Except where the context otherwise requires, the following definitions shall be applied throughout this Bunker Contract:
- (a) **"Affiliates"** "Affiliates" means any legal entity which controls, is controlled by, or is under common control with, another legal entity, and **"control"** means legal or beneficial ownership of fifty percent (50%) or more of the shares in a legal entity entitled to appoint directors or the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity.
- (b) **"Banking Day"** shall mean a day on which banks are open in the places of business of the Seller and the Buyer and, where a remittance is in US dollars, in New York or, if other than US dollars, in the country of the price currency.
- (c) **"BDN"** means Bunker Delivery Note or Bunker Delivery Receipt or equivalent delivery document.
- (d) **"Bunker Confirmation"** means a written confirmation as issued and sent by the Seller to the Buyer
- (e) **"Bunker Contract"** means this contract of sale and delivery of Bunker Fuel on the terms hereof as agreed by and between the Parties.
- (f) **"Bunker Fuel"** means marine bunker fuel and related products of whatever type or grade delivered by the Seller under and pursuant to the terms of this Bunker Contract.
- (g) **"Buyer"** means jointly and severally the party taking delivery and paying for the Bunker Fuel and, the owners, disponent owners, managers, operators, time charterers, bareboat charterers and charterers of the Vessel or any party requesting offers or quotations for or ordering Bunker Fuel and any party on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made.
- (h) **"Delivery Date Range"** means the date range designated in the Bunker Confirmation during which the Bunker Fuel is to be delivered to the Vessel.



- (i) **"General Terms"** means these set of General Terms of Sale of Bunker Fuel in force as of Feb 2021 and any amendments thereto.
- (j) **"Party"** means the Seller or the Buyer and **"Parties"** means the Seller and the Buyer collectively.
- (k) **"Seller"** means Oleo Energy DMCC , a company with registration no. as **DMCC189317** and its registered office at Unit No: 2507 JBC5 Plot No: JLT-PH2-W1A Jumeirah Lakes Towers acting through any of its agents and suppliers, wherever applicable.
- (l) **"Seller's Invoice"** shall have the meaning attributed to it in Clause 9.2.
- (m) **"Supplier"** means the party supplying the Bunkers for and on behalf of the Seller, which Seller shall not be responsible for Supplier's actions.
- (n) **"Vessel"** means the vessel nominated by the Buyer, including any on-shore tank, rig, or other unit or installation supplied by the Seller, to which the delivery of Bunker Fuel is made.
- (o) **"Bare Boat Charter"** means a charter in which the charterer is given control and possession with legal, technical and financial responsibility during the agreement period and incurs cost in relation to crew, operating expenses, insurance, port expenses and/or other expenses, on its own account, required for plying the vessel during the relevant period.
- (p) **"Prohibition of Lien Clause"** means the protection given by the charterers to the owner of the vessel wherein the charterers have provided indemnity (under charter party) to the owners that they will not suffer nor permit continuance of any lien or encumbrance incurred by them or their agents in relation to the vessel, which might have priority over the title and interest of the owners in the vessel.
- (q) **"Accepted Delivery Date"** The delivery date range nominated by the Buyer for the delivery of the Bunker fuel to the Vessel that is accepted and confirmed in writing by the Seller to the Buyer in the Seller's Confirmation Note
- (r) **"Accepted Delivery Time"** The time shall be confirmed by the sellers when the buyers provide a firm 24 hrs ETA notice.
- (s) **"Accepted Delivery Period"** The period of 6 hours commencing with the Accepted Delivery Time during which the Seller's Bunker Tanker shall remain on standby ready to deliver the Bunker fuel to the Vessel. The exact arrival of the vessel has to be confirmed by the Buyer 24 hours ahead of the Estimated Time of Arrival
- (t) **"GTC"** means these General Terms and Conditions between the Seller and the Buyer.

3. PRICE AND OTHER CHARGES

- 3.1 The price of the Bunker Fuel shall be the amount expressed (in US dollars) per unit in the Bunker Confirmation for each grade of Bunker Fuel delivered to the Vessel.
- 3.2 In addition to the price payable for the Bunker Fuel, the Buyer shall be liable for and pay any and all additional applicable charges associated with the delivery, including but not limited to:
 - 3.2.1 wharfage charges, barging charges including demurrage or other similar charges;
 - 3.2.2 mooring and unmooring charges and port duties;
 - 3.2.3 duties, taxes, charges, freights or other costs in the country where delivery takes place.



- 3.3 Unless otherwise stated in the Bunker Confirmation, the price is exclusive of duties and taxes (which shall include, without limitation, customs duty, excise duty, GST, VAT and sales tax). The Seller is entitled, at any time, to charge and the Buyer undertakes to pay additional GST and/or other taxes in respect of sale and delivery under a Bunker Contract if such GST and/or other taxes is imposed by local authorities.
- 3.4 Unless confirmed otherwise by the Seller in the Bunker Confirmation, the price stipulated in accordance with this clause, and additional applicable charges associated with delivery, are only valid for delivery performed to the Vessel during the Delivery Date Range. The Seller is entitled to revise the price for sale and delivery of Bunker Fuel where (i) the Delivery Date Range as agreed upon and stated in the Bunker Confirmation changes for any reason, or (ii) if the Vessel's actual arrival time is more than forty-eight (48) hours after the arrival time specified in the Buyer's notice pursuant to Clause 4.2.

4. DELIVERY

- 4.1 The Bunker fuels shall be delivered to the Vessel at the port or place stated in the Confirmation Note and such delivery shall be subject to the regulations of such port or place. The Seller shall not be liable for any inability to deliver on Public Holidays of port of loading and/or delivery.
- 4.2 Notwithstanding that the Accepted Delivery Date and the Accepted Delivery Time having been confirmed by the Seller in its Confirmation Note, the Buyer, or their agents at the port or place of delivery, shall give the Sellers or their representatives at the port or place of delivery, 72 and 48 hours approximate and 24 hours definite notice of the Vessel's arrival and the location and time at which deliveries are required. Such notice shall be given on Seller's e-mail address and/or fax numbers provided in the Confirmation Note.
- 4.3 The Buyer warrants that the Vessel can safely receive Bunker fuels and shall at the port or place of delivery be in possession of all certificates and/or permits required to comply with all relevant regulations pertaining to delivery and/or receipt of Bunker fuels to enable the Vessel to enter, remain and accept delivery of Bunker fuels at the port or place of delivery.
- 4.4 Not less than 72 hours prior to the Accepted Delivery Date (except – non working days including but not limited to Saturday, Sunday and Holidays) whether in port or not, the Master of the Vessel shall inform the Seller in writing of:
- 4.4.1 maximum allowable pumping rate and pressure and agree on communication and emergency shut-down procedures;
- 4.4.2 manifold Size, distance from stern, height above sea level, free board while taking bunkers, summer draft, LOA, dwt,
- 4.4.3 any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Bunker fuels.



- Should the buyers or their Vessel or her agents fails or decline to comply requirements as referred in clause 4.4.1, 4.4.2 & 4.4.3, the supplier and/or seller is having its sole discretion to supply on availability of next reasonable opportunity.
- 4.5 a) Following receipt of 24 hours definite notice of the Vessel's arrival, Seller's Bunker Tanker shall proceed to the place of delivery where the Bunker fuel is to be delivered to the Vessel. The Seller and the Master of the Bunker Tanker shall exercise reasonable endeavors to reach the place of delivery on or before the Accepted Delivery Time. All movements of the Bunker Tanker and/or delivery of the Bunker fuel(s) shall at all times be subject to prevailing weather conditions and the safety of the Bunker Tanker and her crew.
- b) If vessel arrives at place of supply and tenders' readiness for bunkering before the first day (0001 Hrs local time of place of supply) of the Accepted Delivery Date, the running hours shall commence at 0600 hours (local time) on the first day of the Actual Delivery Date.
- c) By no later than 2359 hrs local time of place of supply on the last day of the Accepted Date of Delivery, the vessel must have arrived at the place of supply in question, and be in all respects ready to receive the bunker fuels and If vessel tenders readiness for bunkering after last day (2359 hrs local time of place of supply) of the Accepted Delivery Date due to whatsoever reason, Seller in its sole and absolute discretion, then, without prejudice to any of the Seller's other rights, running hours shall endeavor to supply as per their operational convenience.
- The conditions as stated in 4.5 (a) & (b) shall be irrespective of vessel confirming the ETA in its ETA notices as defined under clause no. 4.2 of this GTC.
- 4.6 Upon the Seller's Bunker Tanker reaching the Place of Delivery nominated by the Buyer, the Master of the Seller's Bunker Tanker, or the Seller on his behalf, shall give Notice of Readiness to the Master of the Vessel or the Buyer's agent at the port and/or place of delivery that the Bunker Tanker is ready to deliver the Bunker fuel to the Vessel. The Bunker Tanker shall remain at such Place of Delivery for a period of two (2) hours commencing from the time of issuing Notice of Readiness to deliver the Bunker fuel has been issued.
- 4.7 Following the provision of Notice of Readiness as set out in Clause 4.6 above, the Bunker Tanker shall make a single attempt to deliver the Bunker fuel to the Vessel at the Place of Delivery in accordance with the provisions of these Terms and Condition and the Confirmation Note.
- 4.8 Upon Seller's Bunker Tanker arriving alongside Buyer's vessel for the purpose of supplying the Bunker fuel(s), the Vessel and/or her Master and crew shall:
- 4.8.1 Provide a free, safe and always afloat and accessible side of the Vessel for the delivery of Bunker fuel and render all necessary assistance to enable the Seller to deliver the Bunker fuel.
- 4.8.2 Ensure that all equipment, operations, procedures, and practices are in full compliance with all the requirements laid down in the Relevant Instruments with especial consideration being given to the requirements contained in the OCIMF "Ship to Ship Transfer Guide" and to such provisions as the Authority may prescribe from time to time.
- 4.8.3 Whenever required by the Seller or the Seller's representative and at no cost whatsoever to the Seller, moor and unmoor the Bunker Tanker, hoist, and lower such supply hose(s) from and to the Bunker Tanker and assist the Seller in any way requested to enable the smooth delivery of the Bunker fuel to the Vessel.
- 4.8.4 Connect and disconnect the Bunker Tanker's delivery hose(s) to the Vessel's bunker fuel intake manifold/pipe. The Master of the Vessel and her crew shall ensure that the hose(s) are properly secured to the Vessel's bunker fuel manifold prior to commencement of delivery of the Bunker fuel and shall monitor the entire chain of operation to ensure safe receipt.



- 4.8.5 Ensure that before and during delivery of the Bunker fuel to the Vessel, the Vessel's scrubbers (if any) are safely blocked.
- 4.8.6 Ensure that all pipes and manifolds and receiving tanks on the Vessel are completely checked and ready to receive the Bunker fuel. The Buyer's responsibilities include but are not limited to ensuring proper opening/closing of relevant valves to avoid risk of any spillage during delivery.
- 4.8.7 Master of both receiving vessel and bunker barge to exercise due diligence of the operation considering the prevailing circumstances and seller will not be liable for any damages arising due to the operation.
- 4.09** The Buyer shall strictly follow and adhere to all local and international procedures, practices and any special requirements utilized or adopted for the purpose of receiving bunker fuel, whether advised to or not by the Seller or the Seller's representative. The Master of the Vessel and the Buyer shall be solely responsible for ensuring that such procedures, practices, and special requirements are strictly adhered to.
- 4.10 In the event Seller's capacity to perform becomes impracticable for any reason, including but not limited to a request, suggestion or direction by any official body in charge of supplies, priorities, rationing or allocations of bunker fuels, the Seller may, without liability, reduce or stop deliveries in such manner as it may in its sole discretion determine.
- 4.11 If possible, the Vessel shall provide segregated tankage to receive the contracted quantity of Bunker fuel and the Vessel shall always be able to perform its own blending on board.
- 4.12 If delivery is required on Public Holidays at the place of delivery of the product, the extra expenses incidental to such delivery shall be reimbursed by the Buyer as additional costs.
- 4.13 If the quantity of Bunker fuel ordered by the Buyer and confirmed by the Seller exceeds the quantity that can be carried by the Seller's Bunker Tanker(s), the Seller shall be entitled, having given 24 hours prior notice of its intention to the Buyer, to deliver the Bunker fuel in part deliveries and the Buyer shall accept delivery of the special part deliveries in which case each part delivery shall be construed as a separate delivery. Any breach by the Seller in respect of any part delivery will be a severable breach and the Buyer will not have the right to treat the whole contract as repudiated, except at the discretion of the Seller.
- 4.14 In the event Buyer's Vessel is not present at the Place of Delivery at the Accepted Delivery Time the Seller may, at its discretion:
 - 4.14.1 Without any liability whatsoever to the Buyer or any third party and without prejudice to its rights under Clause 4.14, treat the contract between the Buyer and the Seller as terminated and withdraw the Bunker Tanker; or
 - 4.14.2 Continue to hold the Bunker Tanker at the place and Place of Delivery nominated by the Buyer for delivery of the Bunker fuel to the Vessel subject to the Buyer paying demurrage at the rate of US Dollars 1,000 per hour without any interruption whatsoever from the expiration of the Accepted Delivery Period until such time as the Bunker fuel is delivered to the Vessel and the Bunker Tanker's hoses are disconnected from the flange of the Vessel's bunker fuel/bunker manifold (howsoever called).



- 4.15 If Buyer or the Vessel fails to take delivery, in whole or in part, of the agreed quantities of Bunker Fuel in accordance with the Buyer's notice under Clause 4.2, whether pursuant to a cancellation of nomination by the Buyer or for any other reason, the Buyer shall be responsible for any costs, losses and expenses incurred by the Seller in connection with the Buyer's failure to take delivery, including (a) US \$ 2,000 (Two Thousand United State Dollars) and/or amount equivalent to currency of transaction mentioned in Nomination and/or Confirmation Agreement, as liquidated damages and (b) all losses and liabilities incurred by Sellers as a result of such cancellation or failure to take full delivery, including without limitation (i) the difference in price as per the Confirmation and Seller's reasonable estimate of market price for the delivery port as per the customary market marker on the date of such cancellation or failure to take full delivery, (ii) losses, costs and damages associated with terminating, liquidating, obtaining or re-establishing any hedging arrangement or related trading position, (iii) costs to sell, (iv) storage (v) pump back fees (vi) port dues (v) and/or any other expenses associated in relation with cancellation.
- 4.16 All deliveries to Seller's customers will be made on a first come first served basis.
- 4.17 Seller shall not be liable for demurrage or for loss, damage or expense of any nature whatsoever incurred by Buyer due to any delay in delivery, or failure to make delivery, of Bunker, occasioned by the fuel barge contractor. Seller further shall not be liable for such demurrage, loss, damage or expense incurred by Buyer due to delays in furnishing a berth. In any situation not included above, Seller shall not be liable for delay in delivery, or failure to make delivery, of Bunker unless Buyer proves that the delay or failure was solely caused by gross negligence on the part of the Seller. In any case, damages recoverable from Seller for delay in delivery or failure to make delivery shall be limited to direct damages for additional time in port and shall not include any consequential damages whatsoever, including, without limitation thereto, detention, demurrage, charter hire, crew wages, towage, pilotage, lost profits, barge delivery charges and increased costs or expenses in obtaining replacement fuel. Should Seller fail to deliver Bunker on the Accepted Delivery time or the Revised Delivery time, any claim involving additional port cost incurred by the Buyer's Vessel must be submitted by Buyer to Seller in writing within five (05) days of the date of delivery. If Buyer fails to submit a demurrage claim within [24 hrs](#) after the date of delivery, any such claim shall be deemed to be waived and absolutely barred. (date of delivery = day 1).
- 4.18 Seller shall not be responsible for demurrage on the Vessel if Seller is prepared to commence delivery at any time on the Accepted Delivery Date or the Revised Delivery Date. Seller shall exercise reasonable efforts to adjust to changes in Buyer's schedule. The Seller shall not be in breach of its obligations under any Transaction in the event that performance is prevented, delayed, or made substantially more expensive as a result of any one or more of the below contingencies, whether or not such contingency may have been foreseen or foreseeable at the time of contracting and regardless of whether such contingency is direct or indirect. The Seller and/or Seller's supplier shall also not be liable for demurrage paid or incurred by Buyer due to any delay in delivery of Bunker if:



- (i) the delivery date, which is defined as the date on which hoses are disconnected, was not within the Accepted and/or Revised Delivery Date.
- (ii) Seventy-two (72), forty-eight (48), twenty-four (24), twelve (12) and six (06) hours advance notice, any one or all were not served;
- (iii) Seller's Delivery Vessel arrived in a timely fashion and performed according to accepted practice.
- (iv) Congestion affecting the Seller's suppliers' delivery facilities
- (v) Seller was ready and able to perform.
- (vi) Conditions onboard the Vessel resulted in failure to receive Bunker.
- (vii) Conditions beyond control of Seller, their barge, terminal, vehicle, machinery, plants, equipment's etc. resulted in failure to received and/or deliver the bunker.
- (viii) Buyers and/or his Vessel/agent fail to provide exact arrival, berthing, un-berthing, sailing and/or any other detail, information, document as required by sellers to perform delivery; or
- (ix) Seller have informed Buyers and/or their vessel/agent about anticipated delays (if any), twenty-four (24) hrs prior to delivery period.
- (x) Any cause beyond the reasonable control of the Seller, whether or not foreseeable.
- (xi) Any determination, at Seller's sole discretion, that proceeding with a delivery would be a violation of the sanctions laws or regulations of the United States or any other jurisdiction to which Seller may be subject.
- (xii) Compliance with applicable law or a change, request or order of any governmental authority or agent;
- (xiii) Labor disturbance, whether involving the employees of the Seller, Supplier or otherwise, and regardless of whether the disturbance could be settled by acceding to the demands of the labor group;



- 4.19 Where lighterage is employed, lighterage charges shall be for the account of Buyer. Lighterage will be charged on the quantity delivered to the Buyer's vessel in accordance with the rates and charges of the fuel barge contractor. Deliveries of light diesel, gas oil and other grade of Bunker on two or more barges will be subject to separate charges.

5. QUALITY

- 5.1 The Buyer shall be solely responsible for nominating to the Seller the grade of Bunker Fuel for each delivery from the range of Bunker Fuel supplied by the Seller at the location in question. The Bunker Fuel supplied by the Seller shall conform to the specifications contained in the Bunker Confirmation. The quality of the Bunker Fuel shall be determined in accordance with Clause 7.
- 5.2 EXCEPT FOR CLAUSE NO. 5.1, BUNKER IS SOLD "AS IS", AND SELLER OTHERWISE MAKES NO REPRESENTATIONS, GUARANTEE, CONDITIONS OR WARRANTIES OF QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES OR CONDITIONS AS TO QUALITY, MERCHANTABILITY OR FITNESS WHATSOEVER, WHETHER STATUTORY OR THE ABSENCE OF BIO-COMPONENTS IN THE BUNKER FUELS ARE EXPRESSLY EXCLUDED.
- 5.3 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 judgement as to the fitness for its purpose of the Bunker Fuel nominated. The Buyer shall have the right to inspect at its cost the Bunker delivered to the Vessel by itself or through its agent before the pumping of Bunker on the Vessel.

6. QUANTITY

- 6.1 The quantity of Bunker Fuel to be sold and delivered by the Seller shall be specified in the Bunker Confirmation. The Buyer undertakes to purchase and receive the quantity specified in the Bunker Confirmation in the manner agreed to between the Parties and in accordance with the terms hereunder.
- 6.2 The determination of quantity shall be made solely by the Seller (or its representative). The Seller (or its representative) shall measure the quantity of the Bunker Fuel delivered and the Buyer (or its representative including approved independent petroleum inspector or surveyor) shall witness such measurement at its own expense and without delaying or hindering the delivery operations. If the Master of the Vessel, the Chief Engineer or a member of the Crew or any representative of the vessel and/or Buyer fails or declines to verify the quantities of Bunker fuel delivered to the Vessel, the measurements made by or on behalf of the Seller shall be final, conclusive and binding on the parties and shall not be called in question by the Buyer, the Owner and/or any person claiming on their behalf..



- 6.3 The quantity of Bunker Fuel delivered shall solely be determined by following measurement shall be considered final, conclusive and binding to both parties.
- a) measurement of shore tank for deliveries through pipe line.
 - b) gauge or meter or ullage or sounding for deliveries through barge.
 - c) Weightment or dip/gauge for deliveries through tank lorries. Method to ascertain quantity shall be to the discretion of the sellers and/or practice being followed by the loading terminals and/or physical suppliers at the location of supply.

The Seller (or its representative) shall record the quantity of fuel delivered on the BDN. The Buyer accepts that the Seller's measurements in accordance with this Clause 6 shall be final, conclusive, and binding save for manifest error or fraud and shall be the only measurements that will be referred to in the event of a dispute in relation to quantity. The Bunker Fuel to be delivered under this Bunker Contract shall be measured and calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.

- 6.4 The maximum time allowed for gauging the tanks and ascertaining the quantity delivered corresponding with BDN figures is 02 hours, any time used by buyers vessel beyond said 02 hours after completion of the bunker delivery as per the bunker barge shall be considered on buyers account and buyers shall be liable to pay demurrage as per the daily charter hire along with other losses, expenses and/or its consequences, if any.

7. SAMPLING

- 7.1 The Seller (or its representative) shall arrange for samples to be drawn at the time of delivery of the Bunker Fuel. The Buyer (or its representative) shall witness such sampling process at its own expense and without delaying or hindering the delivery operations but the absence of the Buyer (or its representative) during all or any part of the sampling process shall not prejudice the validity of the samples.
- 7.2 Unless otherwise agreed between the Parties prior to entering into this Bunker Contract, samples shall be drawn from a point and in a manner chosen by the Seller (or its representative) in accordance with the MARPOL sampling procedures at the port or place of delivery of the Bunker Fuel.
- 7.3 The Seller shall take a minimum of five (5) representative samples of each grade of Bunker Fuel delivered. On completion of sampling, all samples drawn by the Seller or its representatives are to be securely sealed and labelled by the Seller (or its representative) as well as signed by the Seller (or its representative) and, if present, the Buyer (or its representative). At least two (2) of these representative samples shall be given to the Buyer, one (1) of which is for MARPOL compliance purposes. (1) One Sample out of Three (3) samples shall be retained by the Seller for a period of fourteen (14) days from date of delivery to the buyer's vessel (date of delivery = day 1), rest 02 samples retained by seller shall be for the purpose of its internal consumption and Maropl compliance. Any samples drawn by Buyer's personal either at the time of bunkering or at any date after bunkering shall not be valid as indicator of the quality supplied. The fact that such samples



bear the signature of personal aboard the delivery conveyance shall have no legal significance as these local personnel have no authority to bind Seller to different contractual terms.

- 7.4 If the Buyer submits a claim in accordance with Clause 10.4(a) & (b), the results of analysis of the Seller's or its representative's drawn samples performed by an independent laboratory mutually appointed by the Buyer and Seller shall be conclusive to determine the quality of the Bunker Fuel supplied and shall be the sole binding evidence for the quality of the Bunker Fuel supplied to the Vessel. Should the independent laboratory determination of quality fall within the established test precision range (repeatability and reproducibility) for said parameter, no claim to the Seller shall be made by the Buyer.
- 7.5 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 (seven) days from receipt of such notice, the Seller can at its sole discretion decide which laboratory to perform the analysis, which shall be final, conclusive and binding for all parties involved.

8. RISK AND TITLE

- 8.1 Risk in the Bunker Fuel, including loss, damage, deterioration, evaporation, or any other condition or incidents related thereto shall pass to the Buyer as the Bunker Fuel passes through the flange of the Vessel's manifold.
- 8.2 Title in the Bunker Fuel shall remain with the Seller until the Buyer has paid for the Bunker Fuel in full. Until that time, the Buyer shall hold the Bunker Fuel as bailee, store it in such a way that it can be identified as the Seller's property and keep it separate from Buyer's own property and the property of any other person. In the event that the Buyer fails to make payment in accordance with Clause 9, the Seller has the right to demand immediate return of the Bunker Fuel along with all losses and liabilities incurred by Sellers as such failure to make payment including without limitation (i) the difference in price as per the Confirmation and Seller's reasonable estimate of market price for the delivery port as per the customary market marker on the date of such action (ii) losses, costs and damages associated with terminating, liquidating, obtaining or re-establishing any hedging arrangement or related to trading position (iii) cost to sell (iv) storage (v) pump back fees (v) port dues (v) and/or any other expenses associated with such action. The Buyer shall remain liable to the Seller in conversion even if the Bunker Fuel is consumed by a third party.
- 8.3 The Buyer shall be responsible to keep the delivered Bunker Fuel segregated from any bunker fuel(s) onboard the Vessel or from a different delivery to the Vessel. In no event shall the Seller be responsible for the quality of the Bunker Fuel delivered if the Bunker Fuel delivered is mixed or comingled with any other product(s) onboard the receiving Vessel. The Buyer shall be solely responsible for any losses caused by mixing or comingling the Bunker Fuel with any other oil, including any damage the Bunker Fuel may cause on other products on board the receiving Vessel.

9. PAYMENT



- 9.1 Unless otherwise agreed between the Parties at the time of the issuing of the Bunker Confirmation Payment for the delivery and all other charges shall be made in US dollars in full and without any set-off, counterclaim, abatement, deduction and/or discount and free of bank charges.
- 9.2 Payment shall be in accordance with the Seller's Invoice which may be sent by facsimile, transmission, email, mail or courier. A copy of BDN shall be provided to Buyer alongwith the Seller's Invoice but payment shall not be conditioned upon Buyer's receipt of the original BDN. The Seller's Invoice shall be based on the quantity of Bunker Fuel delivered, as determined in accordance with Clause 6, and shall contain other applicable charges associated with the delivery. The volume stated in BDN is to be considered final in respect of the quantity to be invoiced.
- 9.3 Subject always to Clause 9.4, payment shall be due with effect from the date of delivery and the Buyer shall make the payment no later thirty (30) days (or such other credit period as is agreed in between the Parties and confirmed in writing in the Bunker Confirmation) from the completion of delivery of the Bunker Fuel in question.
- 9.4 Credit granted to the Seller shall always be subject to the following terms:
- (i) Credit (including for the 30 days payment period or any period otherwise agreed referred to in Clause 9.3) will only be granted on the basis that it is secured by a maritime lien on the Vessel in accordance with Clause 9.9.
 - (ii) Any notice by the Buyer that a maritime lien on the Vessel may not be created for any reason must be given to Seller in the initial order for Bunker Fuel, in which case no credit can be granted to Buyer and the Buyer shall, at the option of the Seller, make payment in accordance with Clause 9.5 or any other payment terms determined by the Seller. Any notice of such restriction given by Buyer, its agents, ship's personnel or other person later than in the initial order shall not effect a modification of the terms of sale of Bunker Fuel, except that any granting of credit by the Seller shall be rescinded on receipt of the notice, with full payment due forthwith. Any cancellation thereafter shall make the Buyer liable for cash payment before delivery of the bunkers otherwise cancellation charge hereunder. For avoidance of doubt, it is stated that prohibition of lien stamp in the BDN and/or similar document/stamp including but not limited hand written contents, because of the existence in Buyer's charter party of a Prohibition of Lien clause or due to whatsoever reason, cannot adversely affect the Seller's maritime lien on the Vessel.
 - (iii) If credit is granted to the Buyer, the Seller may withdraw such credit at any time, for any reason, and require full payment upon delivery or at any time after delivery. If credit is withdrawn and payment is not made upon demand, interest shall be payable from date of delivery at the rate set forth in Clause 9.7.
 - (iv) If payment is not made within thirty (30) days or any number of days otherwise agreed, or if credit is withdrawn and payment not made upon demand, the Buyer shall be liable for all costs (whether or not suit is filed) incurred by the Seller to recover such amounts including but not limited to attorneys' fees, court costs and collection expenses. If suit is filed, the Buyer shall be liable for all



court costs in addition to attorneys' fees and expenses. All such charges, together with interest, shall be secured under the Seller's maritime lien on the Vessel under Clause 9.9.

- (v) If the party requesting Bunker Fuel is not the owner of the Vessel, Buyer shall provide the full contact details of owners, managers and the Master of the Vessel (the "Vessel Interests"), to which Bunkers are to be supplied before the issuance of a Confirmation Agreement and/or Nomination by Seller. Buyer authorizes Seller to contact Vessel Interests at Seller's sole option, in advance of delivery of Bunkers to put the Vessel on notice that the sale and delivery is made on the basis of the financial credit of the Vessel as well as Buyer and on the terms and conditions of the Contract and these Conditions. The Seller shall have the right to insist as a precondition of sale that a payment guarantee is provided by the owner of the Vessel. The Seller shall have the right to cancel the Bunker Contract with the Buyer at any time, if the owner's payment guarantee is not received upon request thereof from the Seller to the Buyer and/or owner. The Seller's decision to forego obtaining a payment guarantee shall have no effect on the Seller's right to a lien on the Vessel for any Bunker Fuel sold and delivered under the Bunker Contract.
- 9.5 Notwithstanding Cause [9.3], the Seller is entitled to require the Buyer to make payment in advance of the delivery and where the Buyer has made payment in advance of the delivery, such payment shall be adjusted on the basis of actual quantities of Bunker Fuel delivered and confirmed in the BDN and additional payment, if any, shall be made by the Buyer within seven (7) after completion of delivery.
- 9.6 Unless otherwise stated in the Bunker Confirmation, payment in every instance shall be made by telegraphic transfer of funds to the bank account designated by the Seller in the Seller's Invoice and the date of payment shall be deemed to be the date on which payment is credited to such designated bank account. If payment falls due on a non-Banking Day, then payment shall be made on or before the last Banking Day before the due date. All bank charges in respect of payments shall be for the Buyer's account.
- 9.7 Delay in payment period by the Buyer beyond the due date or the expiration of the applicable credit period shall entitle the Seller to interest at the rate of two (2) per cent per month or any part thereof or as otherwise agreed as per the Bunker Confirmation. Moreover, where the currency of payment is other than US dollars, the Buyer shall indemnify the Seller against any loss which is caused by adverse currency fluctuations between the invoice currency as against the value of the USD for the period between the due date and the date of payment.
- 9.8 In the event of non-payment by the Buyer of the amounts due, including any interest thereon, the Seller reserves the right to pursue such legal remedies as may be available to them to recover the amount owed.
- 9.9 The Buyer accept that Bunker Fuel are delivered under this Bunker Contract are on credit of the Buyer as well as the credit of the Vessel, and it is agreed and Buyer warrants that, in addition to any rights against the Buyer, the Seller will have and may assert a maritime lien against the Vessel for the amount of the purchase price of such Bunker Fuel together with all other applicable charges payable under this Bunker Contract.



- 9.10 Notwithstanding any agreement to the contrary, payment will be due immediately and the Seller shall be entitled to cancel all outstanding stems and/or withhold future deliveries in case of:
- (i) bankruptcy, liquidation or suspension of payment or comparable situation of the Buyer, or
 - (ii) arrest of assets of the Buyer including, but not limited to, the Vessel, or
 - (iii) liquidation/bankruptcy or any other changed financial or legal position of the parent company, sister companies or affiliated companies to the Buyer which in the sole discretion of the Seller is deemed to adversely affect the financial position of the Buyer, or
 - (iv) if the Buyer fails to pay any Seller's Invoice at the time of maturity set forth in such invoice, or
 - (v) if the Buyer fails to comply with any other obligation pursuant to this Bunker Contract, including, but not limited to, the Buyer's failure to take delivery of Bunker Fuels in full or in part, or
 - (vi) in case of any other situation which in the sole discretion of the Seller is deemed to adversely affect the financial position of the Buyer.

In any of the foregoing situations the Seller shall have the option to either (a) cancel this Bunker Contract, (b) to store the Bunker Fuel in full or in part for the Buyer's account and risk, (c) to demand that the Buyer complies with its obligations pursuant to this Bunker Contract or (d) to make use of any other remedy available under the law.

- 9.11 Should the Bunker Fuel be purchased by an intermediary such as a manager, broker, trader or agent then such manager, broker, trader or agent shall (in addition to the Buyer) be bound by and liable for all obligations as fully and completely as if they were themselves the Buyer whether such principal be disclosed or undisclosed and whether or not such manager, broker, trader or agent purports to contract as manager, broker, trader or agent only. Furthermore, delivery shall always take place for the account of the registered owners and for the account of the current charterers all of whom shall, together with any intermediary, remain jointly and severally liable for the payment of the delivery as Buyer until payment has been received by the Seller in full. The Buyer warrants that it is authorized as agent to order the Bunker Fuel for delivery to the Vessel, and that the Seller has a lien on the Vessel for its claim. The Buyer agrees to keep all persons covered in Clause 2(g) informed of the warranty given by the Buyer pursuant to these presents.
- 9.12 Where sales are concluded through a broker or an agent, commissions may be paid by Seller to such broker or agent. Any brokers' commission payable by Seller shall not be considered as making that agent or broker Seller's agent or broker and shall only be paid after confirmation of receipt of full outstanding invoice amounts without offset

10. CLAIMS

Quantity claim:

- 10.1 A claim regarding the quantity of the Bunker Fuel delivered shall be notified verbally as well as in writing by the Buyer (or its representative) or the master of the Vessel to the Seller (or its representative) as soon as practicable at the conclusion of the delivery of the Bunker Fuels while



the delivery hoses are still connected. Where notification of quantity claim is received by the Seller (or its representative) after completion of the delivery, such claim shall be deemed to be waived and barred. no notification/remark to be inserted in the BDN . Any quantity claims to be raised by buyers in a separate protest handed to the physical supplier of the Bunker Fuel along with the signed clean BDN within two hours of the completion of bunker delviery. Any other protest letter/notification of quantity claim shall not qualify as notice under this section and the Seller shall under no circumstances be deemed to have accepted such notice or protest handed to the physical supplier of the Seller. Any time taken buyers in providing the signed clean BDN and the protest letter after two hours of the completion of the bunker delivery as per the barge will on buyers account.

- 10.2 In making a claim under Clause 10.1, the Buyer shall furnish all necessary information, including any analysis of the Bunker Fuel made by the Buyer and/or Vessel interests, as shall be required by the Seller to satisfactorily evaluate the claim. The Buyer shall immediately give the Seller all reasonable opportunity to inspect the Vessel, including, without limitation, its engines, fuel tanks, equipment, logs, records and copies of communications, including communications between the Vessel and the Buyer (and/or between the Vessel and its owner or operator) as well as communications to and from fuel testing organizations consulted by the Buyer or Vessel interests.
- 10.3 Quantity claims can be avoided by ensuring proper pre-delivery and post-delivery checking by the duty officer of the Vessel or any other senior representative of the Buyer and/or their appointed independent petroleum inspectors (“the Procedures”). The delivery must be supervised at all times, and documentations be checked to ensure completeness and accuracy, with signings and stampings. Failure in proper documentations and/or the Procedures will not substantiate a claim. The Seller will not hesitate to reject claims whereby these Procedures are not followed. For the avoidance of doubt, the Seller will not accept a claim for short delivery based on figures obtained by measuring Bunker Fuel in the Vessel’s tanks.

Quality claim:

- 10.4(a) If the buyer issues a claim regarding the quality of the Bunker fuel in accordance with this contract and provide the claim is legitimate in accordance with ISO and/or agreed specification, one (1) of the two (2) Seller’s retained samples shall be submitted by the Seller for analysis to a mutually agreed, ISO 17025 accredited, independent laboratory at nearest location of the bunkers delivered. The independent laboratory’s analysis shall be conclusive and binding on agreement, and the fees of independent laboratory shall be shared equally by the Buyers and Sellers. In the event that Seller proposes an independent, ISO 17025 accredited and Buyer takes no action to either accept this proposal or to suggest an alternative laboratory, then Seller’s choice of laboratory shall be binding and any tests performed by such ISO 17025 accredited laboratory shall be similarly binding, regardless of whether or not Buyer chooses to send a representative to such testing.
- 10.4(b) Any claim regarding the quality of the Bunker Fuel delivered shall be presented in writing to the Seller along with test report and other supporting documents no later than 14 (fourteen) days from the date of delivery to the Vessel (delivery date = day 1), failing which such claim shall be deemed waived and barred.
- 10.5 The Seller shall not be responsible for any claim arising from the commingling of Bunker Fuel delivered by the Seller with other fuel or substances aboard the Vessel or aboard the fuel barge.



- 10.6 In the event of any claim presented in accordance with Clauses 10.1 and 10.4(a) & (b), the Buyer shall:
- (i) Cooperate with the Seller and make all necessary arrangements for the Seller (or its representative) to investigate such claim, including but not limited to boarding and inspecting the Vessel, interviewing the crew and others in charge of delivery and reviewing and copying the Vessel documents (including but not limited to records and copies of communication between vessel and its owners, charterers, technical managers, OEM & P&I clubs). Failure to meet this condition within 14 days from demand raised by the seller's shall constitute a waiver of the Buyer's claim.
 - (i) Take all reasonable steps and actions to mitigate any damages, losses, costs, expenses and any other consequences related to any claim of alleged off-specification or defective Bunker Fuel.
 - (ii) In the event that the Product is off-specification and cannot be consumed by the vessel, Buyer's remedies shall be limited exclusively and solely to replacement of the nonconforming products. If Buyer removes Product (i) without the express written consent of Seller and/or (ii) at the location where seller is not agreeable; then all such removal and related costs shall be solely for Buyer's account. IN ANY EVENT, SELLER'S LIABILITY HEREUNDER FOR ANY CLAIMS, WHETHER ARISING FROM QUALITY, QUANTITY, ACCIDENT, DELAY, SPILL OR OTHER CAUSE, SHALL NOT EXCEED US \$ 50,000 (USD FIFTY THOUSAND ONLY.) OR INVOICE VALUE, WHICH EVER IS LOWER. FURTHERMORE, NO LIABILITY WILL BORNE BY SELLER FOR (1) ANY DEMURRAGE OR OTHER VESSEL DELAY OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM THE EXERCISE OF SELLER'S RIGHT TO SUSPEND AND/OR TERMINATE DELIVERY OF PRODUCT, OR (2) ANY ACTS OR OMISSIONS OF AGENTS AND/OR SUBCONTRACTORS OF SELLER, INCLUDING, WITHOUT LIMITATION, FUEL TRANSPORTERS OR FUELING AGENTS.
 - (iii) Take all reasonable steps to preserve the Seller's recourse against the physical supplier of the Bunker Fuel or any culpable third party.
- 10.7 A breach by the Buyer of any part of Clause 10 will entitle the Seller to set off losses caused by the breach against any liability by the Seller to the Buyer.
- 10.8 Subject to Clauses 10.1 and 10.4(a) & (b), any claims against the Seller in respect of this Bunker Contract shall be brought before the relevant arbitral tribunal in accordance with Clause 19, within 6 (six) months of the date of delivery of the Bunker Fuel, failing which such claims shall be deemed waived and barred.
- 10.9 Claims of any nature shall not relieve the Buyer of the responsibility to make full and timely payment of all amounts payable to the Seller pursuant to Clause 9.
- 10.10 Notwithstanding the foregoing, if the Bunker supplied to Buyer from Seller was done on a back-to-back basis such that that the physical supplier of the Bunker was a third party, Buyer's recovery



from Seller for claims against Seller shall be limited to the funds received by Seller from the third party supplier, in the event there is no recovery from the third party supplier, then sellers at their own discretion without providing any evidence of non-recovery from third party supplier may settle the buyers claim, but in no case the settlement will exceed USD 5,000/-

- 10.11 In certain locations, Seller utilizes third-party independent operators to provide barging and towage services in connection with the delivery of the Bunker. Seller is not liable for the acts or omission of such operators but, to the extent that Buyer has a claim against such operator, Seller (at the request of Buyer) shall provide the contact information of such operator so that Buyer can pursue a claim directly against such operator, provided buyers written confirmation on compliance of clause 9.

Delay claims:

- 10.12 Any delay in the vessel exceeding 06 hours from the designated date and time mentioned in all and/or any one advance ETA notice, as outlined in clause 4.2, whether in port or not.

11. LIABILITY

Seller contracts to supply Bunker only upon the basis of the liabilities as set forth below, unless otherwise negotiated by the parties and agreed to in writing.

- 11.1 Seller is not liable for supplying defective or improper bunker or bunker other than as ordered by buyers unless the same is directly and solely caused by the negligence of seller's own employees, which negligence must be affirmatively proved. In such event, Seller's liability, if any, is strictly to the cost of replacement of the defective or improper or wrong kind of bunkers at the date and port furnished. The Buyer acknowledge that it is the Buyer's responsibility to test the fuel provided and to ensure that it is proper in all respects prior to the use of such fuel in the Vessel. Accordingly, the Seller shall not be responsible for any damage to the Vessel, including but not limited to its machinery or tanks or their contents caused by use of improper Bunker Fuel.
- 11.2 Sellers shall not be liable to the Buyer for any of the following:
- (i) any loss of profit, loss of use or loss of production whatsoever and whether arising directly or indirectly from the performance or non-performance of this Bunker Contract, and whether or not the same is due to negligence or any other fault on the part of the Seller, its servants or agents; and
 - (ii) any consequential loss or damage for any reason whatsoever, whether or not the same is due to any breach of contract, negligence or any other fault on the part of the Seller, its servants or agents, without limitation delay, detention, demurrage, charter hire, crew wages, towage, pilotage, port or



wharf charges, lost profits, barge delivery charges and increased costs or expenses for obtaining replacement fuel; and

- (iii) subject to Clause 11.1, damage to the Vessel or the Buyer's other property or for any other loss sustained by the Vessel, its owners, charterers, underwriters, or other parties in interest, in contract, tort or otherwise, unless such damage or loss is directly and solely caused by the negligence of the Seller's employees. In such event, the Seller's liability including the sellers chartered vessel, its owners, managers, agents shall be strictly limited to repair the damage or loss that was directly and solely caused by the negligence of the Seller's employees provided that where the repair requires replacement, the Seller's liability liability including the sellers chartered vessel, its owners, managers, agents for damage or loss shall be reduced by 20 (twenty) percent of the invoice value of spare parts for each year or fraction thereof in which the replaced part has been in use subject to maximum of US \$ 50,000 (U.S. Dollars Fifty Thousand Only....).

Furthermore, buyer and its Vessel (inclusive her owners, charterers, managers and agents), shall be solely responsible for any loss or damage occurring on board or to the Vessel resulting from any incident arising out of or in connection with bad weather conditions and/or circumstances beyond control of sellers and/or their barge, terminal, plant, vehicle, pumps, equipment(s), machineries etc.

- 11.3 In no event including supply of defective or improper Bunker Fuel shall the Seller's liability for any loss, damage, claim or other expenditure, however arising under this Bunker Contract and whether caused by negligence or not and whether based in tort or contract, exceed the value of the Bunkers Fuel as set out in the Seller's Invoice. The Buyer undertakes to indemnify the Seller against any claims, losses or costs of whatever kind related to this Bunker Contract instituted by third parties against the Seller to the extent such claims exceeds the Seller's liability towards the Buyer according to this clause 11.
- 11.4 The Buyer shall fully indemnify, and keep fully indemnified and hold the Seller harmless against any and all liabilities, claims, losses, damages, fines, expenses, penalties whatsoever and howsoever incurred arising out of or in connection with (but not limited to) the delivery of the Bunker Fuel to the Vessel in accordance with the terms of the Bunker Contract, save to the extent that such liabilities, claims, losses, damages, fines expenses, penalties are incurred as a direct consequence of the negligence or omission of the Seller.
- 11.5 Seller shall be discharged from all liability for defective workmanship, material or Bunker, or for other loss or damage, unless the same is discovered and claim in writing made to Seller within 14 days after the Bunker was delivered to the vessel or the vessel damaged by Seller's employees as above described and litigation is commenced within one year after the Seller delivered the Bunker or Seller's employees otherwise damaged Buyer's vessel or other property. (Date of delivery = day 1)

12. INDEMNITY

- 12.1 The Buyer shall indemnify and hold harmless the Seller, the fuel barge contractor and their agents and employees from and against all claims, damages, losses and expenses, including



attorney's fees, arising out of or resulting from the performance of services or the providing of Bunker Fuel under this Bunker Contract, including claims, damages, losses, penalties or expenses arising under any air, water quality or hazardous waste statute, regulation or ordinance, hereinafter referred to "pollution claims", provided that any such claim, damage, loss or expense:

- (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, or to pollution claims, and
- (ii) is caused in whole or in part by any negligent or intentional act or omission of the Buyers, the Vessel or Vessel interests, their agents or employees or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not such claim, damage, loss, or expense is also caused in part by the Seller, the fuel barge contractor, their agents or employees.

12.2 The Buyer agrees to pay any and all expenses, legal fees and court costs incurred by the Seller:

- (i) to collect and obtain payment of any amount due to the Seller, including but not limited to legal fees and court costs associated with enforcing any maritime lien, attachment, right of arrest, or other available remedy in law, equity or otherwise; and
- (ii) to recover any damages or losses suffered by the Seller as a result of any breach by the Buyer of any provision of this Bunker Contract.

13. FORCE MAJEURE

13.1 The Seller shall not be liable for any loss and/or damage of whatever nature resulting from any delay and/or failure in performance under this Bunker Contract for any of the following events ("**Force Majeure Event**"):

- (i) caused by any circumstance beyond the Seller's direct control, its plant, terminal, vehicle and barge, whether or not foreseeable ~~and/or~~
- (iii) if the supply or source of the Bunker Fuel from any facility of production, distribution, storage, transportation or delivery contemplated or intended by the Seller's supplier is disrupted, unavailable or inadequate due to war or war-like situations, riots, strikes, congestion, governmental order or intervention, unavailability of barges or other means of transport or stem, weather, act of God, changed market conditions, or similar situations; weather officially declared or not, affecting the port or place of delivery or access thereto.
- (iv) the effect of adverse weather (including but not limited to hurricanes, typhoons, gales, storms, snow, sleet, hail, lightning, wind, waves, flooding and landslides), mechanical breakdown and/or equipment failure, breakdown of or damage to facilities, plant, terminal, equipment, machinery, bunkering barge or any other form of vessel or vehicle or, act of God; or
- (v) compliance with a change, request, direction, order, regulation or law of any governmental authority or agent.



- (vi) shortage in raw material, marine or land transportation, manufacturing, blending or storage facilities or Bunker, whether in whole or in part from the Seller's source of supply;
- (vii) incase of delivery by barge, the weather and the feasibility of the carrying out the STS operation will be at the barge masters discretion irrespective of any weather reports available contrary to the masters decision.

13.2 In the event of a failure of performance as provided in Clause 13.1, the Seller may, but is under no obligation, to source, procure or obtain alternative Bunker Fuel or product, and in such case the Seller shall be entitled to receive from the Buyer payment of any and all additional costs of such performance by the Seller.

13.3 In the event that performance is prevented or delayed Force Majeure, the Seller may cease or reduce deliveries in any manner as it may determine in its sole discretion. Nothing in the provision shall be deemed to excuse Buyer from its obligation to make payments for Bunker delivered, pursuant to Clause 9.

13.4 The Seller reserves the right to increase the price charged for any Bunker fuels if there is any increase in the costs incurred or to be incurred by the Seller in making the relevant supply due to factors which constitute a Force Majeure event.

14 SAFETIES

14.1 It shall be the sole responsibility of the Buyer to ensure that the Vessel, its crew and those responsible for its operation and management observe and comply with all health, safety and environmental laws and regulations with regard to the receipt, handling and use of the Bunker Fuel.

15 ENVIRONMENTAL PROTECTIONS

15.1 In the event of a spill or discharge, before, during or after supplying the Bunker Fuel, the Buyer and the Vessel shall, at their own expense, immediately take whatever action is necessary to give prompt notice to the official bodies and to affect cleanup. Failing prompt action, the Buyer and the Vessel authorize Seller to conduct and/or contract for such cleanup at the expense of the Buyer and the Vessel. The Buyer warrants that the Vessel is in compliance with all national, state and local statutes, regulations and ordinances, including those requiring proof of financial ability in regard to spills or discharges of oil. The Buyer shall hold the Seller harmless as to any delays, claims, losses, expenses or penalties arising from breach by the Buyer of this warranty, including legal fees.

15.2 The Buyer warrants that the Vessel is in compliance with all national, state and local statutes, regulations and ordinances, including those requiring proof of financial ability in regard spills of oil and hazardous materials. The Buyer shall hold the Seller harmless as to any delays, claims,



losses, expenses or penalties arising from breach by the Buyer of this warranty, including attorney fees.

- 15.3 It is the responsibility of the master of the Vessel to notify the Seller of any conditions, difficulties, peculiarities, deficiencies or defects with respect to engines, boilers, fuel tanks, piping, navigation equipment, mooring lines, tackle, gear, and any other types of equipment, which might jeopardize or impose hazards or problems in connection with handling, mooring, unmooring or bunkering of the Vessel. The Vessel will not be moored at wharf or alongside any other marine loading facilities, or a fuel barge brought alongside the Vessel, unless the Vessel is free of the aforesaid conditions, difficulties, peculiarities, deficiencies or defects.

16. DISCLAIMERS OF WARRANTIES AND CONDITIONS

- 16.1 Any implied warranties and conditions whatsoever, whether statutory or otherwise, including the warranties of merchantability and fitness for a particular purpose or of condition and any oral or implied agreements inconsistent with this Bunker Contract are expressly excluded and disclaimed.

17. SECURITIES

- 17.1 Notwithstanding the provisions of Articles 18 and 19, the Seller shall be entitled to avail itself of any and all remedies under law to obtain security for its claims against the Vessel, her owners, its agents, managers, servants, buyers and/or charterers including but not limited to vessel arrest and attachment procedures. Where the Seller elects to take such action, the Seller has the option to submit to the jurisdiction of the Court where security is obtained and to the laws of that jurisdiction.

18. TERMINATION

- 18.1 Notwithstanding anything to the contrary express or implied herein, the Seller (without prejudice to its other rights) may at its sole discretion either terminate this Bunker Contract immediately or immediately suspend delivery under this Bunker Contract until further notice, on notifying the Buyer either orally (confirming such notification in writing) or by notice in writing, if a liquidator, administrator, trustee in bankruptcy, receiver, receiver or manager or equivalent officer is appointed in respect of the assets and/or undertaking of the Buyer, or the Buyer enters into an arrangement or composition with its creditors, or any similar appointment, arrangement or composition is made under any applicable law, or if the Seller has a reason to anticipate any such appointment, arrangement or composition.

19. GOVERNING LAW AND DISPUTE RESOLUTION

- 19.1 Subject to Clause 19.3, this Bunker Contract shall be governed and construed in accordance with the laws of Singapore. The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 19.2 Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which



rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be Singapore. The Tribunal shall consist of three (3) arbitrator(s). The language of the arbitration shall be English.

- 19.3 The General Maritime Law of the United States shall always apply with respect to the existence of a maritime lien, regardless of the country in which Seller takes legal action. Seller shall be entitled to assert its rights of lien or attachment or other rights, whether in law, in equity or otherwise, in any jurisdiction where the Vessel may be found.
- 19.4 If any procedure of any nature whatsoever is instituted under Clause 19, in connection with any dispute arising out of this Bunker Contract or to interpret or enforce any rights under this Bunker Contract, the prevailing party shall have the right to recover from the losing party its reasonable costs and attorneys' fees incurred in such proceeding.

20 MISCELLANEOUS

- 20.1 If any part of this Bunker Contract is declared invalid, it shall not affect the validity of the remainder of the Bunker Contract or any part thereof.
- 20.3 All rights and remedies of Seller hereunder are cumulative, and election of one remedy shall not exclude another.
- 20.4 This writing supersedes all previous general terms of sale of bunker fuel by the Seller and sets forth the final and exclusive expression of the parties' agreement unless it is modified in writing, which modification must be signed by the Seller. It supersedes all oral or implied agreements. Any disclaimer, notice or other writing by Buyer or the Vessel interests or their agents on the BDN or any other document, seeking unilaterally to alter or amend any part of this Bunker Contract shall be ineffective.
- 20.5 Barge rates provided to the Buyer for the Buyer's account are based upon normal barge availability. In the event that these facilities are fully committed, other barges, if available, will be engaged at such rates as are applicable.
- 20.6 Buyer may request modification of the terms of this Bunker Contract no later than when placing its initial order enquiry for Bunker Fuel and the Seller, at its discretion, may raise the prices offered in consideration of such modifications, including any increase in Seller's liabilities thereby.

21. NOTICE

- 21.1 Except where expressly stated otherwise, a notice, demand, request, statement, or other communication under this Bunker Contract shall only be effective if it is in writing.
- 21.2 Notices, demands, requests, statements or other communications under or in connection with this Bunker Contract shall be sent to a party at the addresses or numbers specified from time to time by the party to whom the notice is addressed.



- 21.3 Any notice given under or in connection with this Bunker Contract shall be effective only upon actual receipt at the address specified as per Clause 21.2.

- 21.4 Any notice given under or in connection with this Bunker Contract outside working hours in the place to which it is addressed shall be deemed not to have been given until the start of the next period of working hours in such place.
