

NYK TRADING CORPORATION

Terms and Conditions of sale for Marine Bunkers

(Reference Number: NYKTTC201507)

1. GENERAL

- 1.1 This is a statement of the terms and conditions according to NYK Trading Corporation (hereinafter called "NYKT") will sell marine bunkers.
- 1.2 These terms and conditions (NYKTTC201507) shall be valid and binding for all offers, quotations, prices and deliveries made by NYKT, and supersede all previous Terms and Conditions of sale for Marine Bunkers issued by the Seller.

2. DEFINITIONS

- 2.1 Throughout this document the following definitions shall apply:

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| "Seller" | means NYKT; head office and any branch office whose name is included in the Order Confirmation, sent to the Buyer; |
| "Buyer" | means the vessel supplied and jointly and severally her Master, Owners, Managers/Operators, Time Charterers, and Charterers or any party requesting offers or quotations for or ordering Bunkers and/or Services and any party on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made and/or any agent, principal, broker, designated representative, subsidiary, affiliate, servant, (sub) contractor or employee of the Buyer and/or the officers, crew and other personnel of the Buyer whether or not onboard the Vessel(s); |
| "Bunkers" | means the commercial grades of bunker oils as use at the time and place of delivery and/or services connected thereto; |
| "Joint Testing" | shall have the meaning prescribed to it in Article 6.5; |
| "Vessel" | means the Buyer's Vessel, Ship, Barge or Off-Shore Unit that receives the supply/bunkers; either as end-user or as transfer unit to a third party; |
| "Nomination" | means the written request/requirement by the Buyer to the Seller, for the supply of the Bunkers; |
| "Order Confirmation" | means the written confirmation as issued by the Seller and forwarded to the Buyer to confirm the conclusion of the negotiated sale/purchase of the Bunkers. Unless the Seller otherwise agrees in writing, the wording and content of the Order Confirmation is deemed to contain the prevailing terms of the Agreement; |
| "Agreement" | means the concluded terms for the sale/purchase of the Bunkers; |

- "Supplier" means any party instructed by or on behalf of the Seller to supply or deliver the Bunkers;
- "GTC" means these General Terms and Conditions which shall govern the contractual regulations between the Seller and the Buyer.

3. OFFERS, QUOTATIONS AND PRICES

- 3.1 An Agreement shall only be concluded and binding on the Seller when the Seller sends the Order Confirmation to the Buyer. Each Order Confirmation shall incorporate these GTC by reference so that the GTC are considered a part of the Order Confirmation.
- 3.2 Agreements entered into via brokers, or any other authorized representative on behalf of the Seller, shall only bind the Seller upon the Seller's broker or other authorized representative sending the Order Confirmation to the Buyer or the Buyer's broker as the case may be.
- 3.3 The Seller's offer is based on the applicable taxes, duties, costs, charges and price level of components for Bunkers existing at the time of the conclusion of the Agreement. Any later or additional tax, assessment, duty or other charge of whatever nature and however named, or any increase of components for Bunkers or any additional costs borne by the Seller whatsoever caused by any change in the Seller's contemplated source of supply or otherwise, coming into existence after the Agreement has been concluded, shall be added to the agreed purchase price, provided that the Seller shall give the Buyer prior notice of this effect within a reasonable time after the Seller becoming aware of the relevant circumstances.
- 3.4 All prices and/or tariffs are exclusive of VAT, unless specifically stated otherwise.
- 3.5 If the party requesting Bunkers is not the Owner of the Vessel, the Seller shall have the right to insist as a precondition of sale that a payment guarantee is provided by the Owner. The Seller shall have the right to cancel any agreement with the Buyer at any time, if such payment guarantee is not received upon request thereof from the Seller to the Owner.
- 3.6 Prior to any Agreement being entered into, the Seller shall have the right to request details of the Buyers' sources of credit. The Buyer shall provide this information to the Seller in writing within 7 (seven) days of the Seller's request. The Seller may require from the Buyers as a precondition of sale a parent company guarantee, letter of credit or other form of credit acceptable to the Seller.

4. SPECIFICATIONS (QUALITY - QUANTITY)

- 4.1 The Buyer assumes the sole responsibility for the choice of nominating the quantity and quality Bunkers and determine (if applicable) potential compatibility with any Bunkers already on board the Vessel. Buyer shall also assume sole responsibility for the selection and fitness of its choice of Bunkers for any particular use or purpose, and the Seller shall assume no responsibility whatsoever for the compliance or fitness of the Bunkers for a specific type of engine or equipment which the Buyer may or may not have agreed upon in any

charterparty term or otherwise. This includes but is not limited to the quality, sulphur content and any other specific characteristics of the Bunkers whatsoever. Any and all warranties, terms, guarantees or conditions, whether express or implied, regarding the satisfactory quality, merchantability, fitness for purpose, description or otherwise, are hereby excluded and disclaimed. Where specifications designate a maximum value, no minimum value is guaranteed unless expressly stated in the Order Confirmation, and conversely where minimum values are provided in a specification, no maximum values are guaranteed unless expressly stated in the Order Confirmation.

- 4.2 Where standard specifications are being given or referred to, tolerances in accordance with ISO 4259 in respect of Reproducibility/Repeatability in quality are to be accepted by the Buyer without compensation or other consequences whatsoever.
- 4.3 In respect of the quantity agreed upon the Seller shall be at liberty to provide, and the Buyer shall accept a variation of $\pm 5\%$ from the agreed quantity, with no other consequence than a similar variation to the corresponding invoice from the Seller.
- 4.4 Information regarding the typical characteristics of the Bunkers at any delivery location shall only be indicative of the Bunkers that have been made available at that location and shall not form a part of the specification of the Bunkers to be delivered. All grades of produce may contain petroleum industry allowed bio-derived components.

5. **MEASUREMENTS**

- 5.1 The quantities of Bunkers shall be determined from the official gauge or meter of the bunkering barge, tank truck or of the shore tank in case of delivery ex wharf.
- 5.2 The Buyer's representative shall together with Supplier's representative measure and verify the quantities of Bunkers delivered from the tank(s) from which the delivery is made. When supplied by bunkering barge/tanker the particular barge/tanker will present its tank calibration and ullage sounding records, which are considered to be the sole valid and binding document(s) to determine the quantity or quantities supplied. Quantities calculated from the Receiving Vessel's soundings shall not be considered.
- 5.3 Should the Buyer fail or decline to verify the quantities, the measurements of quantities made by the Supplier shall be final, conclusive and binding and the Buyer shall be deemed to have waived any and all claims in regard to any variance.
- 5.4 The Buyer expressly undertakes not to make any endorsement, complaint/comment on the Bunker Delivery Receipt when presented for signature. In the event of complaint/comment on the quantity of Bunkers delivered, the Buyer or the Master of the Vessel shall give to the Supplier a letter of protest separately, followed by a complaint in detail to the Seller, with full supporting vouches, in writing within 7 (seven) days thereof, failing which, and/or making of any endorsement whatsoever on the Bunker Delivery Receipt, shall extinguish any claim by the Buyer, and the Buyer shall be deemed to have the Supplier's weight and measurements which shall be conclusive evidence of the quantity of Bunkers delivered.

6. SAMPLING

- 6.1 The Supplier shall arrange for four (4) representative samples of each grade of Bunkers to be drawn throughout the entire bunkering operation.
- 6.2 In case that dripsampling is not available onboard the barge, tanktruck or shore tank, samples shall be taken as a composite of each tank from which supplies are made, onboard the barge (respectively at the shore tank or tanktruck), divided with 1/3 from each the top, mid and bottom of the tanks.
- 6.3 The samples shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, product name, delivery date and place and seal number, authenticated with the Vessel's stamp and signed by the Seller's representative and the Master of the Vessel or his representative. The seal numbers shall be inserted into the Bunker Delivery Receipts, and by signing the Bunker Delivery Receipts both parties agrees to the fact that the samples referred to therein are deemed valid and taken in accordance with the requirements as specified in this clause.
- 6.4 Two (2) samples shall be retained by the Supplier, or if requested by the Buyer in writing, for as long as the Buyer reasonably requires. The other two (2) samples shall be retained by the receiving Vessel, one of which being dedicated as the MARPOL sample.
- 6.5 In the event of a dispute in regard to the quality of the Bunkers delivered, the samples drawn pursuant to the Articles above, shall be deemed to be conclusive and final evidence of the quality of the product delivered. One, and only one, of the samples retained by Supplier shall be forwarded to an independent laboratory to perform a set of Joint Testing, the results of which are to be made available to both parties. The Joint Testing results shall be final and binding upon both Buyer and Seller as to the parameters tested. The parties are to use their best endeavours to agree the independent laboratory to perform the Joint Testing. If, however, no agreement can be reached on the choice of laboratory within 3 (three) days of the Buyer being advised of such failure to agree, the Seller/Supplier is at liberty to send the sample to a reputable and independent laboratory of its choice for the Joint Testing to be conducted, and those test results will be final and binding upon the Buyer and Seller/Supplier as set out above.
- 6.6 The seal of the sample to be subjected to the Joint Testing must be breached only in the presence of both parties unless one/both in writing have declared that they will not be present; and both parties shall have the right to appoint independent person(s) or institute(s) to witness the seal breaking. No samples subsequently taken shall be allowed as (additional) evidence. If any of the seals have been removed or tampered with by an unauthorized person, such sample(s) shall be deemed to have no value as evidence.
- 6.7 Any samples drawn by the Buyer's personnel either during bunkering or at any later date after bunkering shall not be valid as an indicator of the quality supplied. The fact that such samples may bear the signature of personnel on board the barge or tank truck or other delivery conveyance shall have no legal significance.

7. DELIVERY

- 7.1 The time of delivery, as given by the Seller, has been given as an approximate time, unless it has been otherwise specifically agreed in writing between the parties.
- 7.2 The time of delivery will only be binding upon the Seller when all information necessary for the Seller to comply with its obligations hereunder, have been properly delivered to the Seller in reasonable time before the delivery. In the event the Nomination addresses a spread of dates for delivery, the Seller has the sole discretion to commence the delivery within any time, day/night of these dates, always subject to the circumstances set out below in Clause 7.3.
- 7.3 The Vessel shall under all circumstances be bunkered as promptly as the prevailing circumstances permit, having regard to congestion affecting the delivery facilities of the Supplier, its suppliers or agents and to prior commitments of barges. The Seller shall not be liable for any consequences or any time lost due to the Vessel having to wait for berth for bunkering or for completion of bunkering, and unless otherwise agreed in writing, the Seller shall not be obligated to deliver prior to the nominated date or spread of dates.
- 7.4 In any case the Buyer, unless otherwise agreed in writing, must give not less than 72 (seventy two) hours approximate notice of delivery, which is to be followed by 48 (forty eight) hours and 24 (twenty four) hours notice, where the last notice must specify the exact place of delivery.
- The notices of delivery must be given to the Seller and the Seller's representatives/agents.
- 7.5 The Seller shall be entitled in its sole discretion to deliver the Bunkers in part deliveries, in which case each partial delivery shall be construed as a separate delivery.
- 7.6 The Seller shall not be required to deliver any Bunkers for export if any government permit required has not been obtained in due time before the delivery.
- 7.7 If the Seller at any time for any reason believes that there may be a shortage of supply at any place and that it, as a result thereof, may be unable to meet the demands of all of its customers, the Seller may allocate its available and anticipated supply among its customers in such a manner as it may determine most reasonable in its sole discretion.
- 7.8 The Seller shall not be liable for any demurrage paid or incurred by the Buyer for any loss, damage or delay of the Vessel of any nature whatsoever due to congestion at the loading terminal, prior commitments of available barges or tank trucks or any other reason. Under no circumstances shall the Seller be liable for the costs of the Vessel's demurrage, off-hire or for indirect, special, incidental or other consequential damages.
- 7.9 The Buyer shall ensure that the Vessel provides a free, safe and always afloat and accessible side for the delivery of Bunkers and that all necessary assistance as required by the Seller or the Seller's representative is rendered in connection with the delivery. If in a Supplier's

opinion clear and safe berth is unavailable, delivery might be delayed or, in the Seller's option, cancelled and all costs related to above will be on account of the Buyer.

- 7.10 The Vessel shall moor, unmoor, hoist and lower bunkering hose(s) from the barge(s) whenever required by the Supplier, free of expenses, and in any way requested to assist barge equipment to a smooth supply. The Buyer shall make and be responsible for all connections and disconnections between the delivery hose(s) that are properly secured to the Vessel's manifold prior to commencement of delivery. During bunkering the Vessel's scuppers must be safely blocked, which blocking must be made by the Vessel's own crew. Furthermore the Vessel must ensure that all pipes and manifolds and receiving tanks are completely checked and being ready to receive the bunkers, including but not limited to ensuring proper opening/closing of relevant valves, without any risk for spillages, etc., during the bunkering. Local further special requirements for receiving bunkers must be followed strictly by the receiving Vessel, whether advised or not by the Seller or the Seller's representative, as it is always the Buyer who remains solely responsible for the awareness of such eventual additional requirements for safety reasons.
- 7.11 In the event that the Vessel is not able to receive the delivery promptly, the Buyer is thereby in breach of Clause 7.8 above and shall pay damages and/or any reasonable demurrage claim to the barging/supplying facilities and shall indemnify the Seller in each and every respect as a result thereof.
- 7.12 Delivery shall be deemed completed and all risk, including loss damage, deterioration, depreciation, evaporation or shrinkage to the Bunkers delivered shall pass to the Buyer from the time the Bunkers reach the flange/connecting pipe line(s)/delivery hoses provided by the Supplier on the barge / tank truck / shore tank.
- 7.13 If the Buyer for whatever reason is unable or refuses to receive the full quantity ordered, the Seller shall have the right to invoice the Buyer for the loss incurred by having to transport the undelivered Bunkers back to the storage or by having to sell the Bunkers in a degraded form at a lower price than that applicable to the grade originally nominated by the Buyer. The Seller may rely upon this right without prejudice to the Seller's other rights for damages or otherwise pursuant to these terms.
- 7.14 The Buyer's Vessel shall provide and have appropriate and segregated tanks to receive the contracted quantity of bunkers; and the Vessel shall always be able to perform its own blending on board if any blending is deemed to be required by Buyer. The Vessel shall upon delivery test the Bunkers supplied by running her engines or auxiliaries or equipment, for which the Bunkers are supplied, for a minimum of 1 (one) hour to determine that the Bunkers are satisfactory. In the event the Bunkers are not considered satisfactory, the Seller and Supplier are to be notified immediately after such test period has expired.
- 7.15 If delivery is required outside normal business hours or on local weekends, Saturday, Sunday, national religious or public holidays the extra expenses incidental to such delivery shall be reimbursed to the Seller by the Buyer as additional costs.

7.16 In the event the Bunkers' delivery is made by vessel or barge as a ship-to-ship transfer, any damage caused by contact and/or collision and/or swell and/or other weather or sea related condition or incident, such damage is to be dealt with by the Owners/Buyer directly with the parties involved in the said contact and/or collision and/or swell and/or other weather or sea related condition or incident and Seller/Supplier shall not be held responsible for any such damages. If, however, any of the involved units choose to pursue Seller and/or Supplier, the Buyer will fully indemnify and hold Seller harmless in relation thereto.

8. **TITLE**

8.1 Until full payment of any amount due to the Seller has been made and subject to Article 7.14 hereof, the Buyer shall not be entitled to use the Bunkers other than for the propulsion of the Vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the Bunkers to any third party or other vessel, and title to and property in the Bunkers shall remain vested in the Seller, save insofar as any part thereof is used for the propulsion of the Vessel or is mixed, blended, sold, encumbered, pledged, alienated, or surrendered to any third party or other vessel the Buyer will immediately pay the apportioned price of those Bunkers.

8.2 In the event that the Bunkers have been mixed with other bunkers onboard the Vessel, the Seller shall have been entitled to exercise a lien over such part of the mixed Bunkers as corresponds to the quantity or net value of Bunkers delivered.

8.3 In case the Bunkers, in part or full, are no longer present or can no longer be identified or distinct from other Bunkers, the Seller has the right to arrest/attach the Vessel and/or sister ship and/or any other assets of the Buyer (or the Owner of the Vessel), (cf. Article 3.5) wherever situated in the world without prior notice.

9. **PAYMENT**

9.1 Unless otherwise provided in the Order Confirmation, all sales should be on a cash in advance or irrevocable letter of credit basis. All letters of credit procured by the Buyer in favour of the Seller shall be in a form and substance acceptable to the Seller and issued only by a bank acceptable to the Seller.

9.2 Payment shall be made by the Buyer as directed by the Seller within the period agreed in writing as set out in the Order Confirmation.

9.3 Payment shall be made in full, without set-off, counterclaim, deduction and/or discount free of bank charges to the bank account indicated by the Seller on the respective invoice(s). Notwithstanding any disputes regarding quality, quantity, or other matter, the Buyer must initially pay the full amount due, and any disputes shall be resolved between the Buyer and the Seller after such payment has been made. Failure by the Buyer to pay the full amount when due shall constitute a waiver of any claim by the Buyer.

9.4 Without prejudice to Article 9.3 and Article 10.3, the Seller in its sole discretion may allow the Buyer to set-off sums owed by the Seller to the Buyer before making payment. For the

avoidance of doubt, such set-off shall only be permitted with the Seller's prior written agreement.

- 9.5 Notwithstanding any agreement to the contrary, payment will be due immediately in case of bankruptcy, liquidation or suspension of payment or comparable situation of the Buyer, or arrest of assets and/or claims of the Buyer, or in case of any other situation, which in the sole discretion of the Seller, is considered to adversely affect the financial position of the Buyer.
- 9.6 Payment shall be deemed to have been made on the date of which the Seller has received the full payment in cleared funds and such is available to the Seller. If payment falls due on a non-business day in Japan or the United States of America, the payment shall be made on or before the business day nearest to the due date. If the preceding and the succeeding business days are equally near to the due date, then payment shall be made on or before the preceding business day.
- 9.7 Any delay in payment of the full sum due shall entitle the Seller to interest at, the rate of 3 (three) per cent per month (compounded monthly for each month [or part thereof] of non payment) without prejudice to any rights or remedies available to the Seller. Furthermore the Seller is entitled to charge a delayed payment administration fee of USD 1.00 per mton supplied, or the equivalent thereof in local currency, with a minimum administration fee of USD 250.00 for each delivery made, and Seller holds the full right to involve internal and external legal assistance and to charge costs for same against the Buyer. Any waiver by Seller of interest charges or administrative fees on a particular invoice shall not be construed as a waiver by the Seller of its right to impose such charges on subsequent deliveries.
- 9.8 Payments made by the Buyer shall at all times be credited in the following order: (1) costs, (2) interest and administrative fee, and (3) invoices in their order of age, also if not yet due, or in Seller's sole discretion to specify a payment to any such invoice the Seller considers relevant.
- 9.9 All costs incurred by the Seller in connection with the collection of overdue payments, whether incurred in relation to any arbitration or other legal proceedings commenced by the Seller or otherwise, and in general all costs in connection with any breach of the Agreement by the Buyer, shall be for the sole account of the Buyer. The Buyer agrees to pay, in addition to other charges contained herein, internal and external attorneys' fees on a full indemnity basis for the Seller's collection of any non-payment or under payment as well as any other charges incurred by the Seller in such collection including, but not limited to the cost of bonds, fees, internal and external attorneys' fees associated with enforcing a maritime lien, attachment or other available right, whether in law, equity or otherwise.
- 9.10 The Seller shall at all times, in its absolute discretion, be entitled to require the Buyer to provide the Seller with what the Seller deems to be proper security for the performance of all of Buyer's obligations under the Agreement. Failing immediate provision of such security upon the Seller's demand, the Seller shall be entitled to stop any further execution of any

agreement(s) between the parties until such time as the Buyer has provided the required security.

- 9.11 Until full payment has been received in Seller's bank account of any sums due to the Seller at any time, the Buyer accepts and agrees that the Seller is entitled to exercise a lien over the Bunkers and over the Vessel itself. For the avoidance of doubt, Bunkers are sold and effected on the credit of the Vessel as well as on the promise of the Buyer to pay, and it is agreed and the Buyer warrants that the Seller will have and may assert a maritime lien against the Vessel for the amount due to the Seller. Disclaimer of lien stamps placed on a Bunker Delivery Receipt shall have no effect upon the said maritime lien.

10. **CLAIMS**

- 10.1 In addition to the obligations referred to in Article 5.4 above, any claim in connection with the quantity of Bunkers delivered must be notified by the Buyer, or the Master of the Vessel, to the Seller or Supplier immediately after completion of delivery in the form of a letter of protest. If the Buyer or Vessel Master fails to present such immediate notice of protest to the Seller or Supplier, such claim shall be deemed to have been waived and shall be absolutely barred for all purposes. Furthermore, any eventual changes or remarks made by Buyer or Buyer's Vessel, including a "No Lien" stamp or remark on the Bunker Delivery Receipt shall have no effect or value whatsoever and shall suffer the consequences set out in Article 5.4 above.
- 10.2 Any and all claims concerning the quality of the bunkers delivered shall be submitted to the Seller in writing within 15 (fifteen) days after delivery with a clear statement as to the nature or the claim(s) along with supporting documentation in support, failing which any rights to complain or claim compensation of whatever nature shall be deemed to have been waived and absolutely barred for all purposes.
- 10.3 The Buyer shall be obliged to make payment in full (ref Article 9.3 above) and fulfil all other obligations in accordance with the terms hereof, whether or not they have any claims or complaints. If Buyer submits a claim against Seller with respect to the quality or quantity of the Bunkers supplied, the Seller or the Seller's nominated representative shall be entitled to board the Vessel and investigate the Vessel's records, log books, engine logs, etc., and to make copies of any such document the Seller or the Seller's nominated representative may consider necessary for its investigations connected to the case. The Buyer shall allow this, or where Buyer has chartered the Vessel then the Buyer shall obtain authorization from the Owner to allow the herein stated steps and to provide full assistance and support by the Vessel's officers and crew in any such manner the Seller or Seller's nominated representative may require. Failure to allow boarding and/or produce required copies of documents and/or lack of full cooperation by the Vessel's officers and crew shall constitute a waiver of the Buyer's claim.
- 10.4 In each and every case, any and all claims of the Buyer shall be time barred unless arbitration/legal proceedings have been commenced/issued by the Buyer at the competent

tribunal/court set out in Article 16 hereof and served within 12 (twelve) months from the date of delivery of the Bunkers, or the date that delivery should have commenced pursuant to the written Order Confirmation from the Seller whichever is the earlier.

11. LIABILITY

- 11.1 The Seller and/or Supplier shall not be liable for physical injury, nor for delay of delivery of Bunkers or services, no matter whether such damages or delay have been caused by fault or negligence on the side of the Seller. The Seller shall furthermore not be liable for damages or delay as described above when such damages or delay have been caused by the fault or negligence of its personnel, representatives, agents, employees, officers, Supplier or (sub)contractors.
- 11.2 Any and all liability of the Seller for consequential and/or liquidated damages including but not limited to loss of time, loss of cargo or charter cancelling date, loss of income or profit/earnings, are excluded. In any event and notwithstanding anything to the contrary herein, any and all liability of the Seller shall under no circumstances exceed the invoice value of the Bunkers supplied under the relevant agreement to the relevant Vessel.
- 11.3 The Buyer shall be liable towards the Seller and herewith undertakes to indemnify the Seller for any and all damages and/or costs suffered or otherwise incurred on the Seller due to a breach of contract and/or fault or neglect of the Buyer, the Supplier, agents, servants, (sub)contractors, representatives, employees and the officers, crews and/or other people whether or not onboard of the respective vessel(s). The Buyer furthermore undertakes to hold the Seller harmless in case of any third party institutes a claim of whatever kind against the Seller whether direct or indirect relation to any agreement regulated by these terms and conditions. Third party shall mean any other (physical or legal) person/company than the Buyer.
- 11.4 No servant, Supplier or agent of the Seller/Supplier (including independent (sub)contractors from time to time employed by the Seller/Supplier) shall be liable to the Buyer for loss, damage or delay, while acting in the course of or in connection with its employment and/or agency for the Seller. Without prejudice to the above every exemption, limitation, condition and liberty herein contained, and every right, exemption from liability, defence or immunity of whatever nature applicable to the Seller or to which it is entitled hereunder shall also be available and shall extend to protect every such servant, representative or agent of the Seller acting as aforesaid.

12. EXEMPTIONS AND FORCE MAJEURE

- 12.1 Neither Buyer nor Seller shall be responsible for damages caused by delays, failure to perform in whole or in part any obligation hereunder (other than the payment of money), or non-compliance with any of the terms hereof when such delay, failure or non-compliance is due to or results from causes beyond the reasonable control of the affected party, including without limitation acts of God, fires, flood, adverse weather, perils of the sea, war (declared or undeclared), terrorist actions (threatened or actual), embargoes, accidents, strikes, labor

disputes, failure of, or shortage of vessels, or barge services normally available to Seller, breakdown of or damage to, or shortage in facilities used for production, refining or transportation of Bunkers, acts in compliance with requests of any government authority or person purporting to act on behalf thereof, or any similar causes. Notwithstanding the provisions of this clause, the Buyer shall not be relieved of any obligation to make payments for all sums due hereunder.

13. BREACH / CANCELLATION

13.1 The Seller shall have the option immediately to cancel the Agreement in full or in part, or to store or procure the storage of the Bunkers, in whole or in part, for the account and risk of the Buyer and to charge the Buyer the expenses thereby incurred, or to hold the Buyer fully to the Agreement, or take any other measures which the Seller deems appropriate, without prejudice to its rights of indemnification, without any liability on the side of the Seller, in any one of (but not limited to) the following cases:

- (a) When the Buyer, for whatever reason, fails to accept the Bunkers in part or in full at the place and time designated for delivery;
- (b) When the Buyer fails in part or in full to comply with its obligations to pay any amount due to the Seller and/or provide security as set out herein;
- (c) When, before the date of delivery, it is apparent in the opinion of the Seller that the financial position of the Buyer entails a risk to the Seller;
- (d) When, in case of force majeure, the Seller is of the opinion that the execution of the agreement should be cancelled.

13.2 The Seller may terminate any agreement with the Buyer in whole or in part, in its full discretion, upon the breach of any provisions hereof by the Buyer.

13.3 The Seller has the option to immediately cancel the Agreement for the account and risk of the Buyer if at any time the Seller, in its sole discretion, has reasonable grounds to believe that

- (a) The Vessel; or
- (b) The Charterer of the Vessel; or
- (c) The Owner(s) of the Vessel, or any one of them where such be the case; or
- (d) Any officers of the Vessel; or
- (e) The Operator and /or Manager of the Vessel; or
- (f) Any other person or entity in any way related to the Agreement or delivery is/are
 - (i) Iranian(s); or

- (ii) Related in any way to Iran or Iranians; or
- (iii) Listed on the US OFAC Specially Designated Nationals List; or
- (iv) Covered by any US, UN, EU sanctions; or
- (v) Covered by any sanctions of any other jurisdiction and/or administration.

Under no circumstances can the Seller be held liable for any loss, delays, claims or damages of whatever kind suffered by the Buyer due to a cancellation under this clause.

The Buyer must inform the Seller immediately the Buyer becomes aware of or has reasons to believe that any of the above items A) to F) in combination with any of the above sub items i) to x) are fulfilled.

Should the Buyer breach its obligation to inform the Seller, the Buyer shall indemnify and keep the Seller harmless for any damage or loss caused by such breach, including liquidated damages.

14. SPILLAGE, ENVIRONMENTAL PROTECTION

- 14.1 It shall be the sole responsibility of the Buyer to comply, and advise its personnel, agents and/or customers to comply, both during and after delivery, with all health and safety requirements and all environmental regulations and legislation, both national and international, applicable to the Bunkers supplied. The Seller accepts no responsibility for any consequences arising from failure to comply with such health and safety requirements or environmental regulations and legislation. The Buyer acknowledges familiarity with the hazards inherent in the nature of any petroleum products, and shall protect, indemnify and hold Seller harmless against any claims or liability incurred as a result of the Buyer, or any user of the Bunkers, or its customers, failing to comply with the relevant health and safety requirements or environmental regulations and legislation.
- 14.2 Without prejudice to Article 7.10 herein, in the event of any leakage, spillage, overflow of the Bunkers causing or likely to cause pollution occurring at any stage, the Buyer shall, regardless as to whether the Buyer or the Seller is responsible, immediately take such action as is necessary to remove the Bunkers and mitigate the effects of such leakage, spillage or overflow. Failing such prompt action, the Buyer (who hereby warrants that they have been authorized by the Vessel's owners) authorizes the Seller to take whatever measures the Seller deems fit to effect clean-up at the Buyer's expense and on the Buyer's behalf and the Buyer shall cooperate fully with the Seller and lend all assistance required in the cleanup operation. The Buyer shall indemnify and hold the Seller and/or Supplier harmless against any claims or liability, expenses, damages, costs, fines and penalties arising out of or in connection with any leakage, spillage or overflow unless such leakage, spillage or overflow shall be proven to be wholly caused by the Seller's gross negligence. The Buyer shall also give, or cause to be given, to the Seller all such documents and other information concerning any leakage, spillage or overflow, or any programme for the prevention thereof, or which are requested by the

Seller, or required by law or regulation applicable at the time and place where delivery of the Bunkers to be Vessel takes place.

- 14.3 The Buyer warrants that the Vessel at all material times will be in compliance with all national and international regulations. The Buyer also warrants that the Vessel, her main engine, her auxiliary engines and all other parts, equipment, and machinery are being operated in accordance with the manufacturer's specifications, instructions and guidelines. The Buyer further warrants that the Bunkers to be supplied to the Vessel is suitable for the Vessel, her parts, her equipment and machinery as set out in the manufacturer's specifications, instructions and guidelines. It shall be the responsibility of the Master of the Vessel to notify Seller of any special conditions, difficulties, peculiarities, deficiencies or defects with respect to the Vessel or any part thereof, which might adversely affect the delivery of the Bunkers. The Seller has the right to refuse to deliver the Bunkers to the Vessel if it is deemed probable in Seller's sole discretion that such delivery will result in adverse consequences of any kind whatsoever.

15. **DELAYS AND CANCELLATIONS**

- 15.1 Notwithstanding anything else to the contrary herein, and without prejudice to any rights or remedies otherwise available to the Seller, the Buyer, by its acceptance of these conditions, expressly agrees that the Seller, in its sole discretion, shall be entitled either to cancel the Agreement or to adjust the prices in the event that the Vessel suffers a delay exceeding 48 (forty eight) hours from the final Nomination date.
- 15.2 If the Buyer for whatever reason (including circumstances entirely outside Buyer's control) cancels the Agreement, where Order Confirmation has been sent by the Seller, the Buyer shall be liable for any and all losses suffered and liabilities incurred by the Seller/Supplier as a result of the cancellation, including, but not limited to, barge costs, re-storing of Bunkers, and hedging costs, and also in Seller's sole option any difference between the contract price of the undelivered product and the amount received by the Seller upon resale to another party or, if another buyer cannot be found, any market diminution in the value of the Bunkers as reasonably determined from available market indexes. These losses and liabilities shall be indemnified in a minimum amount of USD 4,000.00 by way of agreed liquidated damages, and shall be indemnified in full if they in total exceed USD 4,000.00.

16. **LAW AND JURISDICTION**

- 16.1 This agreement shall be governed and construed in accordance with English law.
- 16.2 All disputes arising out of or in connection with this agreement or any agreement relating hereto, save where the Seller decides otherwise in its sole discretion, shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof. The 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 14 calendar days of that notice and stating that it will appoint its arbitrator as sole

arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement. Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

- 16.3 Any eventual national or International Laws or Regulations (CISG) being referred to by the Buyer in any event, shall be deemed not be valid in any respect, in whole or in part, but solely the articles related to Arbitration as stated elsewhere in this Article 16.
- 16.4 For the sole benefit of the Seller it is further agreed that the Seller without prejudice to any rights hereunder of the Seller or any claim raised pursuant to Clause 16.2 above have the right to proceed against the Buyer, any third party or the Vessel in such jurisdiction as the Seller in its sole discretion sees fit inter alia for the purpose of securing payment of any amount due to the Seller from the Buyer or the Owner (pursuant to a payment guarantee). In such circumstances the proceedings shall be governed by the law (substantive and procedural) of such jurisdiction.

17. **Severance**

- 17.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

18. **Notices**

- 18.1 All notices under the Agreement shall be in English.
- 18.2 Any notice, demand, consent, approval, waiver or document required or permitted to be given or served under the Agreement, or in related arbitration or court proceedings, may be given or served personally or by leaving the same or by sending the same by recognised international courier or delivery service or by email to the addresses stated in the Order Confirmation or to such other contact details as shall have been last notified to the other party for that purpose. Any notice or document given or served by courier will be deemed to have been duly given or served on the earlier of actual delivery or the tenth (10) business day in Japan or the United States of America, after delivery to the courier. In proving that any notice or document was so given or served it will be necessary only to prove that the same was properly addressed and delivered to a courier. Any notice or document given or served by email will be deemed to have been duly given or served at the time of despatch provide that a delivery failure message

is not received by the sender. In proving that any notice or document was so given or served it will be necessary only to prove that the same was properly addressed and despatched.

19. **Entire Agreement**

- 19.1 The Agreement contains the entire agreement between the parties relating to its subject matter and supersedes any other agreement, term sheet, discussion or negotiations and there are no representations, warranties, undertakings or agreements, oral or written, which are not included here.