



## General Terms & Conditions of Sales

Unless, it is otherwise agreed in writing between the seller and the Buyer, these General Terms and Conditions of Marine Fuel Contract ("General T & Cs") shall apply to any contract of sale of Marine Fuel between the Seller and the Buyer of such Marine Fuel, Where the Seller agrees expressly with the Buyer in writing for particular term to be included in their contract, which are Inconsistent with these General T & Cs, such particular term or terms shall prevail over these General T & Cs only to the extent of such inconsistency.

### 1. DEFINITIONS

In these General T & Cs, the following terms shall, unless the context otherwise requires, have the following meanings:

- 1.1. "Buyer" means the vessel supplies and jointly and severally her Master, Owners, Managers/Operators, Disponent Owners, Time Charterers, Bareboat 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 agreement or contracts have been made. All such parties falling within this definitions "Buyer" shall be jointly and severally liable for and guarantees the proper performance of all the obligations of the buyer set out in these General T&C's.
- 1.2. "Seller" shall mean Tumpuan Megah Development Sdn Bhd, employees and designated representatives.
- 1.3. "Marine Fuel" shall mean the different grades of Bunker Fuel Oil. Intermediate Bunker Fuel Oil, Thin Fuel Oil, Marine Diesel Oil, Light Marine Diesel Fuel and Gas Oil or any order type and grade oil contracted to be delivered or arranged to be delivered by the Seller.
- 1.4. "Contract" shall mean an agreement by the Buyer to buy and corresponding agreement by the Seller to sell and deliver or to arrange for the sale and delivery of Marine Fuel of a specified quantity at a specified price.
- 1.5. "Delivery Port" shall mean a port at which the seller delivers or arranges for the delivery of Marine Fuel under a Contract.
- 1.6. Company shall include a natural person, an unincorporated body, a governmental-agency or statutory corporation.
- 1.7. Vessel shall mean the ship or vessel(s) nominated to take delivery, or taking delivery or having taken delivery of the Marine Fuel under a contract on behalf of the buyer and to which Marine Fuel is to be, has been or arranged to be delivered by the Seller.

### 2. AGREED PRICE

- 2.1 The Price of Marine Fuel shall be the price quoted by the Seller and accepted by the Buyer as confirmed in the Contract for the relevant type of Marine Fuel delivered or to be delivered. The Buyer shall also pay the Seller for all and any taxes, levies, duties, expenses, delivery charges, barging fees, road trucks, jetty fees and other costs (including without limitation, those imposed by governments and authorities) arising out of or incurred by the delivery of such Marine Fuel under the contract which shall be included in the Seller's invoice to the Buyer. The Buyer shall furthermore pay any extra costs connected with deliveries made on



Saturdays, Sundays and Public Holidays and outside of normal working hours at the place of delivery/work.  
Payments according to the present provision shall be made pursuant to the ruler stipulate under point 3.

### **3. PAYMENT**

- 3.1 Payment shall be made at Seller's place, by means of cable bank transfer according to the payment instructions in the invoice. If the purchase price has been agreed in another currency than United States Dollars ("USD"), the Buyer shall run the risk that this other currency may have a lower selling rate in relation to be Ringgit Malaysia ("RM") on the date of payment than on the last correct date of payment (invoice date plus fifteen (15) days) and he shall consequently indemnify the Seller in RM for any difference. Any profit as the result of an improvement of the rate shall go to the Seller.
- 3.2 The purchase price shall be payable upon delivery of the bunker oil. In the case that Seller's Terms and Conditions are not meet, interests shall be charge on the amount due at a rate of 2.0% per month. Interest will be added each calendar month.
- 3.3 The Buyer shall not be entitled, without the Seller's consent, in writing, to offset any claims against the Seller, whether or not those claims are connected, and whether or not they arise out the consignment concerned. Should the Buyer, nevertheless, offset an amount, the Seller's claim shall be increased by twenty (20) percent as penalty.
- 3.4 If the Buyer has not effected payment within thirty (30) days from the date of delivery, the Buyer shall within one (1) week upon request forward an Admission of Debt worded in such a way that the document may be used as basis for execution in the homeland of the Buyer. This shall take place without prejudice for any counterclaims the Buyer may have. If the Buyer holds that he has a counterclaim, the Seller can only request the mentioned basis for execution. If a bank guarantee is established.  
  
If said document is not forwarded by one (1) week after Buyer has received an undertaking from the bank concerning coverage of the counterclaim, if it is justified, the claim against the Buyers shall likewise be increased by twenty (20) percent as penalty.
- 3.5 If at any time the Seller is of the opinion before delivery in the Buyer that adequate assurance of the Buyer's ability to perform its obligations under these General T & Cs is lacking, or that the financial ability of the Buyers is impaired or unsatisfactory, the Seller may, in its absolute discretion, request the Buyers to pay each in advance or to put up security acceptable to the Seller, and the Seller may withhold delivery until the Buyer complies with such requests, or failing the Buyer's compliance with such request within 3 working days from the date of request, the seller shall be entitled to terminate the Contract but without prejudice to the Seller's right to claim damages from the Buyer.
- 3.6 In addition to the above, if at any time of Seller is of the opinion after delivery to the Buyer that adequate assurance of the Buyer's ability to perform its obligations under these General T & Cs is lacking, or that the financial ability of the Buyer is impaired or unsatisfactory, the Seller may, in its absolute discretion, request the Buyer for immediate payment or to put up security acceptable to the Seller.
- 3.7 All overdue payments may be applied, at the discretion of the seller, first towards the settlement of interest outstanding before application to the principal payment sum under the Contract.



- 3.8 If the Seller is compelled to resort to any legal action or proceedings to recover any amount that is Terms and Conditions, the Buyer shall in addition be responsible for all legal fees and any extra expenses incurred by the Seller on an indemnity basis.

#### **4. SUPPLY**

- 4.1 Where the Seller accepts delivery nominations at Malaysia port, all such deliveries shall be within the port limits of Malaysia, unless delivery outside of such port limits is agreed in writing by the Seller.
- 4.2 Where the Seller accepts delivery nominations at other parts, all such deliveries shall also be within the port limits of such other parts, unless delivery outside of such port limits of such other ports is agreed in writing by the Seller.
- 4.3 All deliveries under a Contract shall be made ex-light/barge in accordance with the instructions given by the Buyers or the Master of the Vessel, subject to the Seller's agreement to such instructions, which agreement shall be reached before commencement of the time for delivery by the Seller under the Contract. The Seller is entitled to suspend delivery to the Marine Fuel under the Contract until such agreement is reached, and if no such agreement is reached within fourteen (14) days from the time of the delivery under the Contract, the Seller shall be entitled to terminate the contract but without prejudice to the seller's right to claim damages from the Buyer.
- 4.4 The buyer shall alone bear the responsibility and risk for the choice of bunker oil and the Seller shall not be obliged to check whether said choice is suitable for the vessel in questions. If the oil lives up to its specifications and is generally of the same quality as the oil marketed in the geographical area concerned, the Seller shall have performed correctly in this respect. Any information provided by the seller as to the characteristics of Marine Fuel shall not be construed as specifications of Marine Fuel to be delivered under a Contract to the Buyer and shall be regarded as ex-gratia only.
- 4.5 The Buyer shall give the Seller, unless otherwise agreed in or requested by the Seller, at least five (5) days advance notice of requirements (excluding Saturdays, Sundays and Public Holidays and during normal workdays between 09:00 to 17:00 hours by email, telex or telefax, unless waived by the Seller) prior to the time of requested delivery. Such notice shall identify the Buyer and Contract and shall specify all delivery details, including but not limited to, the port, name of vessel, the agent of Vessel its estimated time of arrival, approximate date of delivery, location of vessel, method of delivery and confirmation of the grade and quantity of Marine Fuel ordered. The Buyer or the agent of the Vessel shall give the Seller at least Forty-Eight (48) hours confirmation notice (excluding Saturdays, Sundays and Public Holidays and during normal workdays between 09:00 to 17:00 hours by email, telex or telefax, unless waived by the Seller of the exact quantity of Marine Fuel required and the exact location and exact time at which delivery is required. If the Buyer makes any changes after the confirmations notice, bunker delivery will be subject to point 4.7

Notwithstanding the foregoing, the Buyer shall be liable for any costs or expenses incurred by the Seller resulting from the failure by the Buyer to take delivery of or rejecting in part in full the quantity of Marine Fuel ordered under the Contract.

- 4.6 Delivery of Marine Fuel by the Seller to the Buyer shall be carried out, inter alia, subject to any regulations, requirements and procedures (including any amendments and revisions thereof) as may be prescribed from time to time by any government authority at the port at which the Seller accepts delivery nominations. The Buyer shall, in any event, be solely responsible for ascertaining, acquainting,



itself and complying with inter alia, such regulations, requirements and procedures which are applicable at the Delivery Port and in complying with all relevant berth restrictions and requirements.

- 4.7 Vessels, including tankers, shall be supplied as promptly as circumstances permit, but Seller shall in no event be liable for any losses or demurrage, whatsoever and howsoever incurred by the Buyer due to or arising in connection with any delay or congestion at the shore terminal, or to any other commitment(s) of available barges in the delivery of the Marine Fuel under the Contract to the Buyer. This condition will also apply where bunker delivery does not take place during the major holidays and practices of that port or country.
- 4.8 The Buyer shall be responsible for all connections and disconnections of delivery hose to the Vessel. The Buyer shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly the delivery under the Contract. Where delivery is undertaken ex-wharf, the buyer shall promptly receive the delivery and withdraw the Vessel from shore terminal or wharf once delivery is completed.
- 4.9 The risk for the bunker oil shall be transferred successively, as it passes through the fixed receiving connector in the Buyer's vessel.
- 4.10 In addition to the Buyer being responsible for payment of the purchase price and any cost pursuant to point 2.1, the Seller reserves the right to look to the owner of the vessel to the extent the ship owner is responsible pursuant to the legislation of his homeland, and the Seller furthermore reserves the right to safeguard himself by Maritime Lien or the like in the vessel to the extent that this is authorized in a jurisdiction where the vessel can be found.

It is noted that the rule concerning venue and choice of law mentioned under clause 15.1 (Dispute Resolution Clause) shall be considered unwritten in relation to the rights conferred on the Seller according to the present point.

## **5. SAMPLING**

- 5.1 The Sellers shall invite the Buyers or their representatives to witness the sampling of Marine Fuels. During bunkering a primary sample, other than the MARPOL sample, shall be drawn at a point, to be determined solely by the Sellers, closest to the Bunker Tanker's manifold and otherwise in accordance with the procedures set out in IMO Resolution MEPC.182(59) Guidelines for the Sampling of Fuel Oil for Determination of Compliance with MARPOL 73/78 Annex VI or any subsequent amendments thereto. Each sample shall be thoroughly mixed and carefully divided into a minimum of four (4) identical samples and one sample of each grade of Marine Fuels shall be retained on board the Vessel for MARPOL purposes. The absence of the Buyers or their representatives shall not prejudice the validity of the samples taken. In the event that local bunkering rules and regulations apply mandatorily, these shall take precedence over the provisions of this Sub-clause 5.1.
- 5.2 The samples referred to in Sub-clause 5.1 Sampling shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, product name, delivery date and place and point of sampling and seal number, authenticated with the Vessel's stamp and signed by the Sellers' representative and the Master of the Vessel or the Master's authorised representative. Only the samples taken, sealed and distributed as per this Sub-clause 5.2 and stated in the BDN are valid in respect of the Marine Fuels' quality determination. No other samples, however and whensoever taken, shall be allowed as additional evidence or deemed to have any value as evidence in respect of the Marine Fuels' quality determination whatsoever.



5.3 Two (2) samples shall be retained by the Sellers for forty-five (45) Days after delivery of the Marine Fuels to the Vessel. The other two (2) samples shall be retained on board the Vessel (one of which shall be for MARPOL purposes).

## **6. CLAIMS**

### **6.1 Quantity**

6.1.1 Any dispute as to the quantity delivered must be notified at the time of delivery, and quantity claims must be presented to the Sellers by the Buyers in writing within seven (7) Days from the date of delivery. In the event of failure to comply with either or both of the aforementioned, any such claim shall be deemed to be waived and barred.

6.1.2 The Sellers shall have the right to charge the Buyers for all proven additional expenses incurred by the Sellers in connection with the Buyers' failure to take delivery of the full quantity of the Marine Fuels ordered by the Buyers (with an operational tolerance of +/- five (5) per cent).

### **6.2 Quality**

6.2.1 Any dispute as to the quality of the bunker delivered, Buyer must notify Seller within fifteen (15) Days from the date when the bunker was delivered. If Buyer does not lodge a claim in writing together with full details of the claim arising there from and supporting documents thereof within the stipulated time frame, from the date of delivered date as per Sub clause 6.2.1, any claim for damages against the Seller shall have lapsed.

6.2.2 In the event a claim is raised pursuant to Sub-clause 6.2. the Parties hereto shall have the quality of the Marine Fuels analysed by a mutually agreed qualified and independent laboratory and, failing such agreement, by an independent laboratory solely chosen by the Sellers. The test shall analyse the relevant parameter(s) of the Marine Fuels claimed to be outside agreed specifications, but only with respect to the characteristics (physical specifications) specified by ISO and not otherwise. The Buyers may at their own cost request analysis of other specific parameters contained in the ISO specification. The Sellers shall provide the laboratory with one of the samples retained by them as per Sub-clause 5.3 (Sampling) and the test methods used by the laboratory shall be in accordance with those set out in ISO 8217. Unless otherwise agreed, the cost of the analysis shall be for the account of the Party whose claim/case is found unproven by the analysis. In the event that the laboratory's results of the analysis fall within the reproducibility and/or repeatability of the test method as set out in ISO 4259, then such results shall not be considered as constituting the Marine Fuels being off-specification. The test results shall be final and binding save for manifest error.

6.2.3 In the event that the Buyers were to consider a potential de-bunkering of the Marine Fuels based on full and undisputable written evidence that the Marine Fuels are unsuitable for use by the Vessel, the advice of the Sellers must first be sought and obtained, and the Buyers must comply with reasonable mitigation proposals from the Sellers. The Buyers are further obliged to closely work and cooperate with the Sellers in relation to every single specific action to be taken in respect of the de-bunkering operation. Unless the Buyers prove that it is operationally impossible, the Buyers shall accept that fuel intended for de-bunkering is carried on board the Vessel until the Vessel calls a port with reasonable de-bunkering facilities and in which a reasonable price for the de-bunkered fuel can be obtained. All damages, losses, costs, and expenses which may result from any unilateral decision taken by the Buyers shall be solely and exclusively born by the Buyers. In case de-bunkering takes place, the Sellers shall





have the right but not the obligation to perform a replacement supply at the originally agreed price, quality and quantity.

- 6.2.4 The Buyers shall always be obliged to mitigate their losses and minimise the consequences of having received off-specification or suspected off-specification Marine Fuel by treating the Marine Fuels, e.g., by using additives, extra heating or by diluting the Marine Fuels for the purposes of enhancing combustion or complying with regulatory requirements. For the avoidance of doubt, mitigation shall include dilution of fuel to comply with requirements concerning the sulphur content, unless it is proven by the Buyers that such dilution would be technically impossible or constitute a violation of the law of the flag state or coastal state to be called by the Vessel. The Sellers shall be liable towards the Buyers for the costs of such mitigation, subject to all other defences, limitations and exclusions contained in these General Terms and Conditions and otherwise, provided and to the extent that the mitigation costs exceed USD 1,000. Sellers shall not be liable for such costs in excess of USD 10,000.
- 6.2.5 In case any claims are presented by the Buyers, the Buyers shall permit the Sellers unrestricted access to inspect the Vessel, its engines, records and to interview the crew concerning such claim(s). The Sellers shall be permitted to appoint a third-party inspection company to board the Vessel and the Buyers shall provide the Sellers with copies of any Documents reasonably requested by the Sellers including, but not limited to, any technical documentation or records from the Vessel as well as communication to and from the Vessel regarding the claim(s) and all Documents relating to substitute supplies, yard stays, communication with local agents and other Documents concerning port calls related to the claim(s).

### **6.3 Delay**

In the event of any delay resulting from:

- 6.3.1 The Buyers' failure to give proper notices and/or the Vessel's failure to be in Actual Readiness within six (6) hours of the Confirmed Delivery Time and/or the Vessel failing to receive the Marine Fuels at the pumping rate and pressure referred to in clause 4. Supply.
- 6.3.2 the Seller's failure to commence delivery of the Marine Fuels within the Required Supply Time, then the Party suffering such delay shall be entitled to compensation from the other Party for any actual loss suffered as a result of that delay unless such delay is caused by local customs requiring vessels to be supplied on a first-come first-served basis or otherwise caused by congestion at the port or any events and/or conditions outlined in Clause 13 .

Any claims by Buyers in respect of delays shall be submitted with full supporting documentation within thirty (30) Days of the date of delivery, failing which such claim(s) shall be deemed waived and barred. The Sellers shall not be liable to the Buyers for any demurrage.

## **7. TIME BAR**

In each and every case, any and all claims, including those under Sub-clauses 6.1.1 6.2.1. and 6.3.(Claims) by the Buyers shall be time barred unless arbitration proceedings have been commenced in accordance with Clause 15 (Dispute Resolution Clause) within twelve (12) months of the date of



delivery of the Marine Fuels or the Day that delivery should have commenced as per the Confirmation Note.

## **8. SANCTIONS COMPLIANCE CLAUSE**

- 8.1. "Sanctions Laws" means any sanction, prohibition or restriction imposed by the United Nations, the European Union, the United Kingdom or the United States of America, including but not limited to the US Department of the Treasury Office of Foreign Asset Control ("OFAC") including the OFAC Specially Designated Nationals or Blocked Persons List (SDN) and the US Department of State.
- 8.2. The Buyers and the Sellers each warrant that at the date of entering into the Contract and continuing until delivery of the Marine Fuels and payment by the Buyers to the Sellers in full:
- 8.2.1 Neither Party is subject to any of the Sanctions Laws referred to in Sub-clause 8.1 (Sanctions Compliance Clause), which prohibit or render unlawful any performance under the Contract;
- 8.2.2 The Sellers are selling and the Buyers are purchasing the Marine Fuels as principals and not as agent, trustee or nominee of any person with whom transactions are prohibited or restricted under Sub-clause 8.1 (Sanctions Compliance Clause);
- 8.2.3 The Buyers further warrant that the Vessel is not a designated vessel and is not and will not be chartered to any entity or transport any cargo contrary to the restrictions or prohibitions in Sub-clause 8.1. (Sanctions Compliance Clause) above; and
- 8.2.4 The Sellers further warrant that the Marine Fuels are not of an origin or have been exported as a product from a place that is subject to any of the Sanctions Laws referred to in Sub-clause 8.1 (Sanctions Compliance Clause) above.
- 8.3 If at any time during the performance of the Contract either Party becomes aware that the other Party is in breach of warranty as aforesaid, the Party not in breach shall comply with the laws and regulations of any Government to which that Party or the Vessel is subject and follow any orders or directions which may be given by any regulatory or administrative body, acting with powers to compel compliance. In the absence of any such orders, directions, laws or regulations, the Party not in breach may terminate the Contract forthwith.
- 8.4 Notwithstanding anything to the contrary in this Clause 8 (Sanctions Compliance Clause), the Buyers and the Sellers shall not be required to do anything which constitutes a violation of the laws and regulations of any State to which either of them is subject.
- 8.5 The Buyers and the Sellers shall be liable to indemnify the other Party against any and all claims, including return of any payment, losses, damage, costs and fines whatsoever suffered by the other Party resulting from any breach of warranty as aforesaid and in accordance with the Contract.

## **9. ANTI-CORRUPTION CLAUSE**

- 9.1 The Parties agree that in connection with the performance of the Contract each Party shall:
- 9.1.1 Comply at all times with all applicable anti-corruption legislation and have procedures in place that are, to the best of its knowledge and belief, designed to prevent the commission of any offence under such legislation by any member of its organisation or by any person providing services for it or on its behalf; and



- 9.1.2 make and keep books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions in connection with the Contract.
- 9.2 If a demand for payment, goods or any other thing of value (“Demand”) is made to either Party by any official, any contractor or sub-contractor engaged by or acting on behalf of either Party or any other person not employed by either Party, and it appears that meeting such Demand would breach any applicable anti-corruption legislation, then the Party receiving the Demand shall notify the other Party as soon as practicable and the Parties shall cooperate in taking reasonable steps to resist the Demand.
- 9.3 If either Party fails to comply with any applicable anti-corruption legislation, it shall defend and indemnify the other Party against any fine, penalty, liability, loss or damage and for any related costs (including, without limitation, court costs and legal fees) arising from such breach.
- 9.4 Without prejudice to any of its other rights under the Contract, either party may terminate the Contract without incurring any liability to the other Party if:
- 9.4.1 at any time, the other Party or any member of its organisation has committed a breach of any applicable anti-corruption legislation in connection with the Contract; and
- 9.4.2 such breach causes the non-breaching Party to be in breach of any applicable anti-corruption legislation.
- Any such right to terminate must be exercised without undue delay.
- 9.5 Each Party represents and warrants that, in connection with the negotiation of the Contract, neither it nor any member of its organisation has committed any breach of applicable anti-corruption legislation. Breach of this Sub-clause 9.5 (Anti-Corruption Clause) shall entitle the non-breaching Party to terminate the Contract without incurring any liability to the other Party.

## **10. INDEMNITY**

- 10.1 Without prejudice to any other claims arising hereunder or in connection herewith and notwithstanding the provisions of Sub-clause 6.4 (Claims), if a loss is suffered or liability is incurred by either Party hereto as a direct result of compliance with directions given by the other Party, during or for the purposes of the Parties' obligations hereunder, then the injured party is to be indemnified by the other in respect of such loss or liability; unless such loss or liability arises due to a negligent act or omission by the Party incurring the loss or liability.
- 10.2 Where claims arise under Sub-clause 6.3 (Claims) and Sub-clause 10.1 (Indemnity), compensation payable in accordance with Sub-clause 6.3 (Claims) shall be taken into account in assessing sums payable under Sub-clause 10.1 Indemnity.

## **11. LIABILITY**

- 11.1 Neither the Buyers nor the Sellers shall be liable to the other Party for:
- 11.1.1 any loss of profit, increased costs or expenses in obtaining replacement fuel, usage of fuel, deviation costs including but not limited to for repairs or replacement fuel or otherwise, crew overtime payment, port fees, agency costs, costs for external consultants, loss of time, (except for claims for delay raised in accordance with Sub-





clause 6.3 (Claims)), loss of production whatsoever and whether arising directly or indirectly from the performance or non-performance of the Contract, and whether or not the same is due to negligence or any other fault on the part of either Party, their servants or agents, and

- 11.1.2 any indirect or consequential loss arising out of or in connection with the performance or non-performance of the Contract, whether such loss is due to any breach of contract, negligence or any other fault on the part of either Party, their servants or agents.
- 11.2 Notwithstanding any other provision in these General Terms and Conditions, the liability of either Party, whatsoever or howsoever caused, shall (exclusive of interest and legal and enforcement costs) not exceed the lower amount of either USD 500,000 or the invoice value of the Marine Fuels giving rise to the claim on which the Party's liability is based. In case the Contract concerns the supply of two grades of Marine Fuels and liability arises from one grade being off-specification, only the invoice value for the off-specification grade shall be taken into account in calculating the limit of the Sellers' liability.
- 11.3 The Buyers undertake to indemnify and hold the Sellers harmless against any claims pursued by any third party of whatever kind against the Sellers whether directly or indirectly related to the supply of Marine Fuels governed by this Contract and whether in contract or in tort. In case any such claim is being pursued against the Sellers, the Buyers undertake to ensure that the Sellers shall be in the same position *vis-à-vis* the third party and its claim as if such claim had been pursued against the Sellers by the Buyers pursuant to the terms of the Contract, including the limitations set out in this Clause 11 (Liability).

## **12. SAFETY**

- 12.1 In case of spillage when bunker is taken onboard the vessel, the Buyer and the Seller shall be jointly obliged to coordinate their efforts to limit the damage as much as possible, whether or not one (1) party maintains that the other party is responsible for the accident. Positive disbursements for combating the pollution shall be borne equally by the parties, until the degree of guilt on both sides has been established through an agreement or a judgment. Half reimbursement of amounts disbursed shall be payable on demand.
- 12.2 If a third (3<sup>rd</sup>) party, including public authorities, should look to one (1) party or the other, or to both of them jointly, in connection with a pollution claim, the internal settlement shall take place following an evaluation of the degree of guilt. If the liability can be imposed on the parties on an objective basis, the loss shall be borne fully by the Buyer.

## **13. EXEMPTIONS AND FORCE MAJEURE**

- 13.1 The Seller shall not be liable for any loss, damage or demurrage howsoever arising and/or from any breach, delay or non-performance of the Contract and/or these general T & Cs due to any of the following force majeure events and/or conditions at the port of delivery which could not reasonably be foreseen at the time of the conclusion of the Contract, causing the Seller to be prevented from performing contractual obligation. The term force majeure shall include but is not limited to the following events/conditions:



- (i) any governmental act or compliance by that party with any order, request, or control of any governmental authority or person purporting to act thereof whether or not such order or request is later determined to be invalid (including compliance with or implementation of any order, request, plan or program of any authority created by governments);
  - (ii) the interruption, unavailability, or inadequacy of Marine Fuel, or any constituent thereof, or any facility of production, manufacture, storage, transportation, distribution or delivery, because of wars, hostilities, public disorders, acts of enemies, sabotage, strike, lockouts, labor or employment difficulties, fires, acts of God, accident, breakdowns, weather conditions, or any other cause whatsoever but not limited to, the failure, cessation, termination or curtailment in whole or in part of any of the existing or contemplated sources of supply of the Seller of Marine Fuel, or the crude oil or petroleum products from which such Marine Fuel is derived;
  - (iii) any types of breakdowns or damage to, or unavailability of, the facilities or equipment used for the production, transportation, handling or delivery of the Marine Fuels;
  - (iv) labour disputes, strikes, stoppages, lock-out, government intervention, wars, civil riot, accident, storm, adverse weather and any other acts of God;
  - (v) any acts of piracy/capture/seizure/confiscation;
  - (vii) plague, epidemic and pandemic;
- 13.2** The seller shall not be required to remove any such cause or replace the affected source of supply or facility, and, in the event of an actual or anticipated shortage of supply that directly or indirectly prevent the Seller from fulfilling its own requirements as well as those of its customers including its affiliated companies and the Buyer, the Seller may allocate available quantities of Marine Fuel to it, its customers and the buyer in its absolute discretion.
- 13.3** In the event that any governmental authority imposes any form of price control, rationing, allocation, or other emergency measure on the Seller's sales of Marine Fuel at the port where the Buyer desires to purchase Marine Fuel and has contracted with the Seller for the same, then the Seller has the right to:
- (i) suspend the delivery of any Marine Fuel under the Contract for such period as the Seller may determine are required to resolve uncertainties raised by such governmental actions or alternatively, to cancel such delivery and/or terminate the Contract if the Seller is of the opinion that the period of time required for such uncertainties to be resolved may be indeterminate or unforeseeable. In the event of such termination of Contract, the Seller shall be relieved of its obligations to perform hereunder; or
  - (ii) allocate such quantities of Marine Fuel to the Buyer as the Seller may determine to be appropriate in its absolute discretion and in respect of any shortfall of the Contractual quantity, the Seller shall be entitled to suspend delivery of such shortfall for such period as the Seller may determine are required to resolve uncertainties raised by such governmental actions or alternatively to cancel any further delivery of such shortfall if the Seller is of the opinion that the period of time required for such uncertainties to be resolved may be indeterminate or unforeseeable. In the event the Seller shall be relieved of any further obligations to perform under the contract in respect of this shortfall. Where the Seller exercises the right to cancel any further delivery of such shortfall, the Buyer shall only be liable to pay for the quantity delivered and if full payment has already been made by the Buyer in



respect of the Contractual quantity, the Seller shall refund the Buyer the value of such shortfall from the Contractual price which has been paid.

- 13.4** Declaration of Force Majeure is considered communicated once such event(s) have come to the knowledge of the Buyer.
- 13.5** Under no circumstances and by any reasons whatsoever, can Force Majeure entitle the Buyer not to pay promptly any invoice of the Seller.

#### **14. TERMINATION BY DEFAULT**

**14.1** Without prejudice to the foregoing, the following shall constitute events of default by the Buyer, entitling the Seller to terminate any Contract for the sale of Marine Fuel and claim any damages against the Buyer:

- (i) Failure by the Buyer to perform any obligations under the Contract; and/or
- (ii) Buyer becomes insolvent or has liquidator, receiver, or judicial manager appointed or enters into any arrangement or composition with its creditors.

#### **15. DISPUTE RESOLUTION CLAUSE**

**15.1** The Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with the Contract shall be referred to arbitration in Singapore.

The arbitration shall be conducted in accordance with the Singapore Arbitration Rules of Singapore International Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The language of the arbitration shall be English.

In cases in which the aggregate amount in dispute is less than USD 250,000, the Expedited Procedure of the Singapore Rules shall apply, and the case shall be referred to a sole arbitrator.

In cases in which the aggregate amount in dispute is more than USD 250,000 but less than USD 1,000,000, the Expedited Procedure of the Singapore Rules shall apply, and the case shall be referred to three arbitrators.

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 the Sellers take legal action. The Sellers shall be entitled to assert their rights of lien or attachment or other rights, whether in law, in equity or otherwise, in any jurisdiction where the Vessel may be found.

**15.2** The Parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with the Contract. In the case of any dispute in respect of which arbitration has been commenced under Sub-clauses 15(a), (c) or (d) (Dispute Resolution Clause), the following shall apply:

**15.2.1** Either Party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other Party of a written notice (the "Mediation Notice") calling on the other Party to agree to mediation.

**15.2.2** The other Party shall thereupon within fourteen (14) Days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the Parties shall thereafter agree on a mediator within a further fourteen (14) Days, failing which on the



- application of either Party a mediator will be appointed promptly by the Arbitration Tribunal (“the Tribunal”) or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the Parties may agree or, in the event of disagreement, as may be set by the mediator.
- 15.2.3 If the other Party does not agree to mediation, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the Parties.
- 15.2.4 The mediation shall not affect the rights of either Party to seek such relief or take such steps as it considers necessary to protect its interests.
- 15.2.5 Either Party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.
- 15.2.6 Unless otherwise agreed or specified in the mediation terms, each Party shall bear its own costs incurred in the mediation and the Parties shall share equally the mediator’s costs and expenses.
- 15.2.7 The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.
- 15.3 For the sole benefit of the Sellers, it is further agreed that the Sellers, without prejudice to any rights hereunder or any claim raised pursuant to Sub-clause 15(a) (Dispute Resolution Clause) above, have the right to proceed against the Buyers, any third party or the Vessel in such jurisdiction as the Sellers at their sole discretion sees fit inter alia for the purpose of securing payment of any amount due to the Sellers from the Buyers or the Owners. In such circumstances the proceedings shall be governed by the substantive and procedural law of such jurisdiction.

## **16. OTHER MATTERS**

- 16.1** In no event shall any claim be made by the Buyer and/or any recovery be had by the Buyer for indirect, special, incidental or consequential damages.
- 16.2** in the event that payment of the price is not received in full by the Seller from and within 30 days, or within the period started in the Seller’s invoice, from and including the date of delivery of Marine Fuel (“due date”) supplied by the Seller to the Buyer, the Buyer agrees to assign and do so assign effective from the due date, all rights, interests and claims, including rights of action rein against any receiving vessel and/or her owners and/or bareboat charterers, arising in connection with their (i.e. the Buyer’s) sale of such Marine Fuel to any receiving vessel(s) and/or her owners / bareboat charterers. For the avoidance of doubt, the Seller may if it so wishes to bring any action (including any action in rem) against the receiving vessel of the Marine Fuel in the Buyer’s name or jointly in the names of Seller and Buyer. The Buyer irrevocably consents to have itself named as the Plaintiff or Co-Plaintiff in such action and hereby authorizes all steps to be taken in connection with the commencement and continuance of such an action. A receiving vessel refers to the vessel to which the Buyer shall deliver or agree to deliver or has delivered, pursuant to any contract of sale or supply of Marine Fuel between him (i.e the Buyer) and any third (3<sup>rd</sup>) party (including the owner or bareboat charterers of such vessel).