



## Standard Terms and Conditions for the Sale of Marine Bunker Fuels, Lubricants and Other Products

Version 1.4 – August 2016

### 1.00 INTRODUCTION

---

**1.01** Except as may otherwise be agreed by the parties hereto in writing, these Terms and Conditions are the general, standard Terms and Conditions under which "F.T Maritime Services LTD", also referred to as "Fuel Trade", of 48, Inomenon Ethnon str, CY-6042, Larnaca, Cyprus (the "Seller") is prepared to enter into agreement (the "Agreement") with another party (the "Buyer") to supply to the Buyer Marine Bunker Fuels and/or Marine Lubricants and/or other products (the "Product"). These terms and conditions may be referred to as "F.T Maritime Services LTD's Standard Terms and Conditions."

**1.02** The order for Product shall be considered firm and binding upon Buyer's acceptance of price quoted by F.T Maritime Services LTD and confirmation in writing from the Seller to the Buyer. Confirmation in writing by Seller may be provided to the Buyer, but the absence of such confirmation shall not avoid the agreement of sale. Under no circumstances will Buyer's Terms and Conditions be considered part of the Agreement.

**1.03** These Terms and Conditions apply to all offers, quotations, orders, agreements, services and all subsequent contracts of whatever nature, except where otherwise is expressly agreed in writing by F.T Maritime Services LTD.

### 2.00 DEFINITIONS

---

In these Standard Terms and Conditions the following terms shall have the following meaning:

**2.01 Agreement:** The agreement between the Seller and the Buyer evidenced by the Standard Terms and Conditions and the Confirmation. In the event of any conflict between F.T Maritime Services LTD Standard Terms and Conditions and the terms of the Confirmation, the terms of the latter shall prevail except as provided for in Clauses 16.01 and 16.02.

**2.02 Basic Cost:** The basic cost is defined as the unit price of the Product multiplied by the number of units of the Product delivered to the Vessel.

**2.03 Seller:** The Seller is defined as F.T Maritime Services LTD (Fuel Trade) of 48, Inomenon Ethnon str, CY-6042, Larnaca, Cyprus with VAT No. : CY 10268438 X, acting through any of its servants, agents, assigns, subcontractors and any and all other persons acting under the Seller's written instructions in fulfilment, compliance or observance of the Agreement unless the context otherwise requires or permits.

**2.04 Confirmation:** A confirmation in writing from the Seller to the Buyer setting forth the particular terms of each sale of Product.

**2.05 Buyer:** The person, party or entity so identified in the Confirmation as the Buyer, and/or any agent, principal, associate, manager, partner, servant, parent, subsidiary, owner, or shareholder thereof and jointly and severally the Vessel (as defined in clause 2.15) and/or Vessel's owner and/or disponent owner and/or master and/or operator and/or charterer and/or sub-charterer, and/or bareboat charterer, and/or any party benefitting from consuming the Product delivered, and/or any other party ordering the Product, all of whom shall be jointly and severally liable as Buyer under each Agreement.

**2.06 Delivery:** as defined in Clause 8.00.

**2.07 Due date:** The date specified in the Confirmation for payment of the Price and any and all other fees, Further Costs, charges and like items.

**2.08 Gender, Singular and Plural:** Unless the context otherwise requires, all references in the Agreement to one gender shall be deemed to include all others and references to the singular shall be deemed to include the plural and vice versa

**2.09 Physical Supplier:** The party and/or person who has been instructed by the Seller to physically supply the Product to the Vessel together with that party's or person's servants, agents, successors, subcontractors and assigns. The Physical Supplier may be the Seller or any other party and/or person.

**2.10 Place of Supply:** The port or other readily identifiable geographical location specified in the Confirmation wherein or adjacent to which is the Point of Delivery.

**2.11 Point of Delivery:** The precise place at which Delivery is to be effected as provided in the Confirmation or as thereafter confirmed, advised or revised by the Seller or the Physical Supplier being a berth, mooring, anchorage or other point within, adjacent to or associated with the Place of Supply.

**2.12 Price:** The Price shall be the aggregate of the unit price and further cost as defined in Clause 11.00.

**2.13 Product:** The marine fuels, oils, lubricants, goods, items, equipment and materials of whatever type and description as specified in the Confirmation, being the subject of the Agreement.

**2.14 Unit Price:** The rate of the cost in United States Dollars (or such other currency specified in the confirmation) per Metric tonne (or such other unit of measurement specified in the confirmation) of Product as specified in the Confirmation

**2.15 Vessel:** The Vessel, ship, barge, yacht, craft, tank, container, facility or any other unit nominated to receive Product as specified in the Confirmation.

**2.16 Written, in Writing and Notice:** Any requirement for written communication, including the giving of any notice, may be fulfilled by the use of electronic mail, letter post, courier, telex, facsimile transmission or any other medium that produces a tangible result for the intended recipient. The communication shall be deemed to have been given and received upon completion of transmission for any electrical or electronic medium, within three working days of dispatch for inland letter post and on the expiry of the declared or guaranteed time of delivery of any courier or monitored service.

**2.17 Further Costs:** As defined in Clause 11.02

**2.18 Notice of Claim:** Written notice of any claim or potential claim by the Buyer.

### 3.00 HEADINGS

---

The use of headings and explanatory notes is for convenience and elucidation only. They are not part of the Agreement.

### 4.00 ENTIRETY AND VALIDITY

---

**4.01** These Terms and Conditions together with the Confirmation constitute the entire Agreement. No derogation, addition or amendment to the Agreement shall be of any force or effect unless and until expressly confirmed in writing by the Seller. If any provision of the Agreement shall to any extent be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby.

**4.02** If the supply of the order is effected through another trader who is not the physical supplier, then the Terms and Conditions of the physical supplier will be deemed to apply in the supply of the products, irrespective of the wording of the Standard Terms and Conditions of the intermediary trader. In that respect, no payment will be made by the Seller in the relevant Invoice date unless confirmation that the Physical Supplier is paid is provided. In that case, if the physical supplier is not paid by the time the Invoice of the intermediate trader is due, the Seller has the right to elect to pay the invoice of the physical supplier directly and then to settle the trader's commissions under separate payment directly to the latter.

**4.03** In cases where the supply of the order is effected through another trader (whether such trader is also a physical supplier or not) and before the Seller pays the Invoice of such trader it becomes transparent that the said trader is bankrupt or under the status of liquidation or receivership or other similar status, then a) the Seller may elect to pay

directly the physical supplier bypassing the said trader, in instances where the said trader is not also the physical supplier and b) the Seller is absolved from his contractual liability to pay to the trader the relevant invoice for the supply, or to the trade's liquidator, trustee in bankruptcy or other responsible entity which is entrusted or entitled to collect or receive all the "receivables" by the trader. This is a term that binds all these entities and the trader hereby warrants that will draw this term to the attention to all such relevant entities or persons. This provision is considered fair and reasonable and is based on the understanding that the Seller enters into a contract of supply with a trader in good faith believing that the trader is in good financial shape, otherwise the Seller would not have entered into any contract of supply with him.

## **5.00 FORCE MAJEURE**

---

**5.01** Neither the Seller nor the Physical Supplier shall be liable for any loss, claim, damage, demurrage, costs or expenses of whatever nature arising from the failure to fulfil or comply with any term or condition of the Agreement if fulfilment or compliance has been delayed, hindered or prevented by any circumstances whatsoever which are not within the immediate and reasonable control of the Seller, including, but without limiting the generality of the foregoing, any act of God, fires, floods, perils or sea, earthquake, storm, swell, ice, any act of war (declared or undeclared), hostilities, embargoes, Sanctions accidents, act of third party, congestion, changed market conditions, unavailability of barges, failure of equipment, fault or failure of Vessel, master or crew, act or omission of Buyer, strike, lockout or labour dispute or reasonable apprehension thereof, any government order, request or restriction, or acts in compliance with requests of persons purporting to act on behalf of a government authority, or any other similar causes, any limitation restriction or interruption to existing or contemplated sources of supply of Product or the means of supply thereof and/or the means of delivery. Neither the Seller nor the Physical Supplier shall be required to make any deliveries which fail in whole or in part as a result of the causes set out in this Article at any later time.

**5.02** If the Buyer exercises reasonable diligence, the Buyer shall not be liable for failure to receive any particular delivery if prevented therefrom by force majeure. The Buyer shall indemnify the Seller or the Seller's Physical Supplier for any damage caused by the Buyer, the Buyer's agent or employees in connection with deliveries hereunder.

**5.03** Declaration of Force Majeure shall be given without undue delay once such event has come to the knowledge of the respective party declaring same.

## 6.00 BROKERS AND AGENTS

---

**6.01** Unless the party, person or entity with whom the Seller is corresponding specifically declares to the Seller prior to dispatch by the Seller of the Confirmation that the party with whom the Seller is corresponding is not the Buyer and at the same time provides to the Seller the full name, billing and postal address of the Buyer who will confirm being the Buyer, then the party with whom the Seller is Corresponding shall be deemed to be the Buyer.

**6.02** Without prejudice to the provisions of Clause 6.01, in the event that the party with whom the Seller is corresponding is an agent of the Buyer then the party with whom the Seller is corresponding shall be jointly and severally liable with the Buyer to perform the Buyer's obligations under the Agreement, notwithstanding that the party with whom the Seller is corresponding purports to contract as a mere agent.

## 7.00 ASSIGNMENT

---

The Buyer shall not assign its interest in the Agreement without the prior written approval of the Seller. The Seller may assign alternatively, novate the agreement and shall thereafter give notice thereof to the Buyer.

## 8.00 DELIVERY

---

**8.01 Allocation.** If the Seller or Physical Supplier at any time and for any reason believes that there may be a shortage of Product at the Place of Supply, it may allocate its available and anticipated supply of Product among its Buyers in such a manner as it may, in its absolute discretion, determine.

**8.02 Restrictions.** The Seller or Physical Supplier shall not be required to deliver Product into any of the Vessel's tanks or other places that are not regularly used for storage of bunkers or lubricants or other products as the case may be and shall not be required to deliver any Product for the export or delivery of which a Government or any other type of permit is required and has not been obtained.

**8.03 Means of Delivery.** Delivery shall be effected in one or more consignments at the Point of Delivery by such means as the Seller or Physical Supplier shall deem appropriate in the circumstances.

**8.04 Barging.** In the event of delivery by barge, the Buyer shall at its own expense provide a clear and safe berth for the barge alongside the Vessel's receiving lines and

shall provide all necessary facilities and assistance required to effect delivery. The Buyer agrees to pay and indemnify the Seller against all claims, costs, losses and expenses in respect to any loss, damage or delay caused by the Vessel and/or Vessel's personnel to any barges and/or its equipment and injury and/or death caused by the Vessel and/or the Vessel's personnel to any of the personnel effecting delivery in the course of or in connection with delivery of Product. 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 barge contractor. Deliveries of Products on two or more barges will be subject to separate charges.

**8.05 Connection.** The Buyer shall be responsible for making all connections and disconnections between the pipelines or delivery hoses and the Vessel's intake line and shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly each and every consignment of the Delivery. The Buyer is responsible for ensuring that Product is delivered at a safe rate and pressure and that all equipment utilized therefore is in a safe and satisfactory condition.

**8.06 Completion of delivery.** Delivery shall be deemed completed when the Product has passed the flange connecting the Physical Supplier's delivery facilities with the receiving facilities provided by the Buyer, and/or, where appropriate, has passed the Vessel's rail and/or Point of Delivery whether product is delivered ex-wharf or by barge. At either location, pumping shall be performed under the direction and responsibility of Buyer or Buyer's Vessel personnel.

**8.07 Title.** Title in and to the Product delivered and/or property rights in and to such Product shall remain vested in the Seller, and shall pass to the Buyer only after the Price has been received by the Seller as provided in Clause 12. Until such time as the Price is received by the Seller the person or entity in possession of the Product delivered shall hold the Product as a mere bailee and shall hold the Product on behalf of the Seller and to the Seller's order. For the avoidance of doubt, where a mortgagee bank enforces any rights against the Vessel and becomes a mortgagee in possession of the Product then as bailee the mortgagee bank is liable to the Seller for fulfilment of the Agreement.

**8.08 Risk.** The Seller's responsibility for Product shall cease and the Buyer shall assume all the risks and liabilities relating thereto, including loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage of Product and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties at the time Product leaves the Physical Supplier's fixed depot or wharf facilities. The Buyer agrees to indemnify without limit the Seller in respect of any liability, claim or demand for which the Buyer is liable.

**8.09 Measurement.** The quantity of Product delivered hereunder shall be determined at the Physical Supplier's option by one of such generally recognized methods of measurement as is appropriate in the circumstances.

**8.10 Specification.** The Product to be delivered shall be as specified in the Confirmation and, other than as more precisely specified therein, shall be one of the Seller or Physical Supplier's commercial grades of Product as currently offered generally to its Buyers at the time and Point of Delivery for marine Products. No other warranties, express or implied as to quality or fitness for any purpose, are given or form part of the Agreement. Buyer shall also assume sole responsibility for the selection and fitness of its choice of Product for any particular use or purpose, and the Seller shall assume no responsibility whatsoever for the compliance or fitness of the Product for a specific type of engine or equipment which the Buyer may or may not have agreed upon in any term or otherwise. This includes but is not limited to the quality, sulphur content and any other specific characteristics of the Products whatsoever. Any and all warranties 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 Confirmation, and conversely where minimum values are provided in a specification, no maximum values are guaranteed unless expressly stated in the Confirmation.

**8.11 Compatibility and Segregation.** Responsibility for establishing compatibility of Product delivered with any other product or products and for segregating or co-mingling the same rests solely with the Buyer.

**8.12 Substitution.** The Seller may discharge its obligation to deliver Product as specified in the Confirmation by supplying in substitution thereof product of a different grade and/or brand name provided always that such substitute product is of an equivalent or superior specification to that specified in the Confirmation.

**8.13 Availability.** Subject to the availability of Product, the availability of facilities at the Place of Supply and Point of Delivery, and the customary priority and to the Buyer giving notice in accordance with Clause 8.16, the Seller or Physical Supplier will use its best endeavors to ensure that Product is delivered promptly upon the Vessel's arrival but the Seller or Physical Supplier shall not be responsible for any loss, expense, damage or increased costs incurred in consequence of the Vessel not being supplied promptly or otherwise being delayed or restrained for any reason whatsoever.

**8.14 Time.** The Buyer is responsible for ensuring that the Vessel is ready to receive Product at the Point of Delivery on the expiry of the notice given in accordance with Clause 8.16.

**8.15 Delay.** In the event that the Vessel's arrival at the Point of Delivery is delayed or likely to be delayed, the Buyer must so advise the Seller. The Buyer should also ensure that the Vessel's agent at the Place of Supply is similarly informed and that the agent advises the Physical Supplier accordingly. At the Buyer's request the Seller or Physical Supplier will use its best endeavors to supply a delayed Vessel on the terms originally agreed but reserves the right to pass on to the Buyer all additional costs, including increased Basic Cost arising from the Vessel's delayed arrival

**8.16 Notice and Other Delivery Requirements.** The Buyer must give not less than 72 hours notice (excluding Sabbaths, holidays and other non-working days at the Place of Supply) of the Vessel's readiness to receive Product to the Seller and to the Physical Supplier. Notice must be given during the Seller's normal business hours:

(Monday to Friday inclusive, 0900-1800 London, Athens, New York or Seoul time as the case may be). Notice given outside these hours will be deemed to have been given at 0900 on the first business day thereafter. Furthermore, it is in all circumstances and on all occasions the responsibility and duty of the Buyer to ascertain and, where appropriate, to comply with:

- a. The precise requirements of the Physical Supplier and any other person, body or authority in respect of the giving of notice of the Vessel's time of arrival at the Point of Delivery.
- b. The exact location of the Point of Delivery.
- c. Any particular requirements to enable Delivery to be effected as efficaciously as possible.

The Buyer is advised to instruct its agent at the Place of Supply to liaise with the Physical Supplier so as to ensure compliance with these provisions.

**8.17 Information.** In response to a specific request for information from the Buyer in respect of the Point of Delivery, the Seller will use its best endeavors to obtain or provide the information requested. While every care will be taken to ensure that such information is accurate and up-to-date, it is furnished on the strict understanding that it is not a contractual representation and that no responsibility whatsoever will attach to the Seller for its accuracy and veracity.

**8.18 Environmental Protection.** Without prejudice to Clause 8.08 the Seller or Physical Supplier may at any time and without notice take any steps which it considers necessary to protect the environment from damage arising from spillage or transport of Product. Any action so taken shall be on behalf of and at the expense of the Buyer.

**8.19 Cancellation by Buyer Prior to Delivery.** On Buyer's cancellation of a delivery or portion thereof, within 48 hours prior to the scheduled delivery time and date, the Seller shall be entitled to a fee of USD 5.00 per metric ton by way of liquidated damages and as compensation for Seller's relinquishing its rights under the Agreement. The Parties agree that determining the amount of damages to Seller arising from cancellation would be impracticable and extremely difficult and for that reason the above rate of compensation is considered fair and equitable.

## 9.00 CANCELLATION AND BREACH

---

In the event of the Buyer, at any time, cancelling a request for Product or the Vessel failing to take delivery of part or the entire requested Product, the Seller shall have the right to pursue a claim against both the Buyer and the Vessel for all loss and damage thereby suffered, including loss of profit. The Seller may treat any other breach by the Buyer of any express term of the Agreement as a breach of a condition and it may, at its discretion, treat the Agreement as repudiated or terminated and seek such remedies, as it considers appropriate. Nevertheless, the provisions of Clauses 15.01, 16.01, 16.02, and 17.00 shall survive the termination of the Agreement in any event.

**9.01** Without prejudice to any other remedies and rights, 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 in these GTC, whether this failure relates to past supplies and sales or relates to the sale and supply in question;
- 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.

**9.02** 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 or in the event that the Buyer fails to make or suspends payment, ceases to carry on business, makes an arrangement with its creditors or undergoes any form of bankruptcy, administration, re-organisation or asset rearrangement.

## 10.00 LIENS

---

**10.01** In addition to any other security that may be provided by Buyer, Product supplied to a Vessel pursuant to the Agreement is sold and effected on the credit of the Vessel, as well as the promise of the Buyer to pay for the Product.. It is agreed and acknowledged that Seller shall have a maritime lien against the Vessel for the Price of Product supplied and that the Seller's agreement to deliver Product to the Vessel is in reliance on the credit of the Vessel. Seller's maritime lien shall extend to the vessel's freight payments for that particular voyage during which the Product was supplied and to freights on all subsequent voyages. Seller may enforce any maritime lien against the Vessel arising under this Agreement in any court of competent jurisdiction. The Buyer represents that it is the Vessel's Owner, or Charterer, or a Person authorized by the Vessel's Owner or Charterer to order the Product.. The Buyer, if not the owner of the Vessel, hereby expressly warrants that Buyer has the authority of the Owner to pledge the Vessel's credit as aforesaid and that Owner has given notice of the provisions of this Clause to the Owner. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit Seller's maritime lien against the Vessel unless notice in writing of the same is given to the Seller before it sends its Confirmation to the Buyer.

**10.02** Any notice by Buyer that a maritime lien on the Vessel may not be created because of the existence in Buyer's charter of a Prohibition of Lien Clause, or for any other reason, must be given to Seller in the initial order for Product, in which case no credit can be granted to Buyer and the Product shall be paid for in cash or equivalent prior to delivery. Any notice of such restriction given by Buyer, its agents, ship's personnel or other person after Seller's Confirmation shall not effect a modification of the terms and conditions of sale, including Seller's maritime lien against the Vessel, except that any granting of credit by Seller is rescinded on receipt of the notice, with full payment then due.

**10.03 Notice of the Lien Clause to Master Owner.** Where Product is ordered by a charterer of a vessel and not by the owner/master/manager of the vessel, the ordering party has a duty prior to receipt of Seller's Confirmation to notify the owner/master/manager of the Vessel of Seller's Standard Terms and Conditions. The Seller will consider that such notification has taken place and that Seller's Standard Terms and Conditions are accepted by the owner/master/manager of the Vessel upon Seller's Confirmation of the order. Any attempt by the owner/master/manager of the Vessel, or any other crew member of the Vessel or the Owners or managers of the Vessel to revoke or otherwise prejudice Seller's maritime lien against the Vessel by imposition of a "no lien stamp" on the delivery note shall be null and void if affixed after supply of the Product is commenced. Any such unilateral conduct will give Seller the right to treat the invoice for the supply of the Product as being immediately due and owing and will entitle the Seller to enforce all its rights against the Buyer, as well as Seller's maritime lien against the Vessel..

## 11.00 THE PRICE

---

**11.01 Unit Price.** Wherein the Confirmation of the Unit Price is stated to be not subject to variation, the Unit Price will, subject to Clause 8.15, not be varied. In all other cases having agreed to the Unit Price of the Product, the Seller will endeavor to refrain from making any increase. However, the cost of marine Products is volatile and the Seller therefore reserves the right to increase the Unit Price at any time before delivery.

Notice of the increase will be given during the Seller's normal business hours

(Monday to Friday inclusive, 0900-1800 London, Athens, New York or Seoul time as the case may be). Notice given outside these hours will be deemed to have been given at 0900 on the first business day thereafter. In such event, the Buyer may forthwith give written notice to the Seller of cancellation of the Agreement. If no such notice is received within one (1) hour of the Seller advising the Buyer of the increase of the Unit Cost, the Buyer shall be deemed to have agreed to the revised Unit Price and the Agreement so revised shall remain in full, force and effect.

**11.02 Further Cost.** In addition to the Basic Cost of the Product, the Buyer agrees to pay for any charges raised in respect of taxes, wharfage, freight, barge, vehicle, wagon or cleanup costs including overtime or other like payments; insurance pilotage; port dues and any and all other like costs and expenses incurred by or charged to the Seller. Such charges, costs and expenses will be passed on to the Buyer as and when they are advised to the Seller and together with the Basic Cost shall for all purposes constitute the Price due from the Buyer to the Seller for the Product supplied.

**11.03 Notice of the Price.** The Seller will give notice of the Price to the Buyer as soon as reasonably practicable after Delivery. In certain circumstances the Seller will give notice of the Price in instalments. Where notification of the Price is given in instalments, each element of the Price so notified shall, when due, constitute an enforceable debt due from the Buyer to the Seller.

Notice of the Price may, at the Seller's option, be provided by invoice and sent by post or telex or facsimile or via internet or as otherwise provided herein or as agreed.

**11.04 Proof of Delivery.** The Buyer or his representative should attend Delivery and obtain at that time all outstanding information relating to Delivery, including the exact quantities and precise specification of Product delivered. Unless otherwise requested by the Buyer prior to dispatch by the Seller of the Confirmation, the Seller shall be under no obligation at any time to produce to the Buyer any evidence of Delivery to the Vessel. It is expressly agreed that the furnishing by the Seller of proof of Delivery is not a prerequisite to payment of the Price.

## 12.00 PAYMENT

---

In most cases, special payment terms will have been agreed and will be set out in the Confirmation. Each of the following terms apply unless the Confirmation otherwise provides:

**12.01** Payment of the Price will be made in United States dollars, or any other currency as agreed in the Confirmation, to the bank and account specified by the Seller in full without deduction for any reason whatsoever so as to ensure that the Seller receives value for the payment in cleared funds on or before the Due Date.

**12.02** Due date is as provided in the Confirmation or, in default, the date of Delivery.

**12.03** Timely payment is of the essence of the Agreement.

**12.04** Late payment will incur a financial charge to Buyer of 2% per calendar month on the outstanding sum calculated on a daily basis from Due Date until receipt or payment by the Seller. Accrued financial charges will be added to and become part of the outstanding sum at monthly intervals. In the event that the contractually agreed rate of financial charge specified in the Agreement is in excess of that permitted by relevant law, there shall be substituted the maximum so permitted.

**12.05** Payment will be made by way of telegraphic, telex, swift or rapid electronic transfer to the bank and account specified by the Seller. All bank and other charges, if any, incurred in effecting remittance will be for the account of the Buyer. Advice of remittance, including identifying references, should always be given to the Seller.

**12.06** Payments received by the Seller from or on behalf of the Buyer, notwithstanding any specific request to the contrary, will be applied in the following order in diminution or extinction of:

- a. Accrued financial (E.G. Interest) and other charges in respect of transactions for which the principal sum has been previously paid.
- b. Accrued financial and other charges arising from all other transactions.
- c. Any principal sum or sums due and outstanding commencing with the oldest and proceeding chronologically thereafter to the most recent.
- d. Any principal sum which the Seller knows or reasonably expects will fall due at a future date.

**12.07** The Seller may in good faith vary, amend, withdraw, substitute or add to the terms relating to payment at any time in the course of a transaction in such a manner as it shall in its absolute discretion consider necessary to protect its interests.

**12.08** If at any time the reputation, standing, creditworthiness, liquidity or solvency of the Buyer or any subsidiary, parent, associate or affiliate thereof should give the Seller reasonable cause for concern, the Seller may, without prejudice to all other rights and remedies which it may have, give notice to the Buyer that credit facilities from the Seller to the Buyer are withdrawn or suspended as the case may be and all sums outstanding shall thereupon fall due for immediate payment.

**12.09** In the event that the Buyer or any subsidiary or parent thereof shall commit an act of bankruptcy or shall be the subject of proceedings, judicial or otherwise commenced for debt, bankruptcy, insolvency, liquidation or winding up, the Seller may forthwith terminate the Agreement. In case of bankruptcy, and to the extent permitted by law, Buyer agrees that Seller possesses priority over all other contract claims against Buyer.

**12.10** The full legal and other costs and expenses incurred by the Seller including those of the Seller own legal department and of other lawyers in connection with any breach by the Buyer of any term of the Agreement including but not limited to actions for debt shall be for the Buyer's account and shall for all purpose form part of the Price due from the Buyer to the Seller for Product supplied.

**12.11** Should Product be ordered by an agent, then such agent, as well as the principal, shall be bound by, and liable for all obligations as fully and as completely as if he were himself the principal, whether such principal be disclosed, partially disclosed, or undisclosed, and whether or not such agent purports to contract as agent only.

## **13.00 CLAIMS, DISPUTES AND PRECAUTIONS**

---

**13.01 Time Limits.** Because the Seller is frequently placed under strict limits by its suppliers for the presentation of claims, it is necessary that it too impose rigid time limits on receiving notice of claims from its Buyers. In consequence of the Seller's strict time limits, Buyers should ensure that they maintain their own equally strict internal checking and reporting procedures. It must be clearly understood that the Seller will not relax its time limits in any circumstances.

**13.02 Notification.** Written notice of any claim or potential claim must be given to the Seller within the time limit specified. It is the Buyer's responsibility to ensure that notice is received by the Seller, whose confirmation of receipt should always be sought. Regardless of whether a claim or dispute has arisen or is anticipated, the Buyer must always give prompt notice to the Seller of any discrepancy, error or omission present in any form or document tendered, submitted or produced by the Physical Supplier and of any unusual occurrence relating to the Delivery.

**13.03 Sufficiency of Information.** To enable the Seller to investigate and pursue a claim the notice must give sufficient information for the Seller to be able to identify the relevant transactions, the nature of the complaint and the loss or damage alleged. Any notice which does not give such sufficient information will not be valid. For the same reasons, the Buyer must provide a full and complete response to any and all questions, enquiries and requests made of it by the Seller concerning the claim and matters relating thereto.

**13.04 Quantity claims and disputes.** These are most easily avoided by ensuring high standards of checking before, during and after Delivery by an Officer of the Vessel's crew or other senior representative of the Buyer.

**13.04.1** The Buyer's representative shall, together with Seller's or Physical Supplier's representative measure and verify the quantities of Product delivered from the tank from which delivery is made. For bulk deliveries, delivery barges, wagons and vehicles must be checked by tank dipping to measure the contents and ensure full turnout.

Flow meters must be checked for seals, correct settings and calibration, and general condition. All of these checks must be carried out before and after delivery of each consignment and each barge, wagon or vehicle tank load. The Delivery must be supervised at all times and care must be taken in ensuring that all documentation is complete and accurate before signing and stamping.

Any discrepancies must be recorded on the Physical Supplier's delivery receipt. Unless these procedures are followed it is nearly always impossible for a claim to be substantiated. The Seller regrets therefore that it will be obliged to reject claims for short delivery where these receiving procedures are not followed.

**13.04.2** The Seller will not accept a claim for short delivery based upon figures obtained by measuring Product in the Vessel's tanks. When Product is supplied by barge, the particular barge will present its tank calibration and ullage sounding records, which are considered to be the sole valid and binding documents to determine the quantity supplied. Quantities calculated from the receiving Vessel's sounding shall not be considered.

**13.04.3** Should the Buyer's representative fail or decline to verify the quantities, the measurements of quantities made by the Seller or Physical 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.

**13.04.4** Buyer expressly undertakes not to make any endorsement, complaint/comment on the Product Delivery Receipt when presented for signature. In the event of complaint/comment on the quantity of Product delivered, the Buyer or the Master of the Vessel shall give to the Seller or Physical Supplier a letter of protest separately, followed by a complaint in detail to the Seller, with full supporting vouchers, in writing within 7 (seven) days thereof, failing which, and/or making of any endorsement whatsoever on the Product Delivery Receipt, shall extinguish any claim by the Buyer, and the Buyer shall be deemed to have expressly waived any such claim against the

Seller or Physical Supplier, and the Seller or Physical Supplier's weight and measurements shall be conclusive evidence of the quantity of Product delivered.

**13.04.5** The quantity agreed upon, the Seller or Physical Supplier shall be at liberty to provide, and the Buyer shall accept a variation of 5% from the agreed quantity, with no other consequence than a similar variation to the corresponding invoice from the Seller.

**13.04.6** The time limit for receipt by the Seller of notice of a quantity dispute is 7 (seven) days from the date of Delivery or such shorter period as specified in the Confirmation.

**13.05 Quality Claims and Disputes.** It is the Buyer's responsibility to ensure that the products tendered for Delivery are those which are required by the Vessel and are delivered into the correct tanks. The Vessel shall provide and have appropriate and segregated tanks to receive the contracted quantity of Product; 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 Products supplied by running her engines or auxiliaries or equipment, for which the Products are supplied, for a minimum of 1 (one) hour to determine that the Products are satisfactory. In the event the Products are not considered satisfactory, the Seller and Physical Supplier are to be notified immediately after such test period has expired.

**13.05.1** It is the duty of the Buyer to instruct Physical Supplier to take four (4) representative samples of every consignment and load of the Product on commencement of delivery in accordance with the custom at Point of Delivery. The four representative samples must be signed, labelled and sealed by a representative of the Physical Supplier and by an officer of the Vessel or other senior representative of the Buyer. Samples have to be provided with labels showing the

Vessel's name, Place of Supply, Point of Delivery, Product name, Delivery Date and seal number. The seal numbers shall be inserted into the Physical Supplier's delivery receipt. By signing and stamping the Physical Supplier's delivery receipt, both parties agree to the fact that the samples referred to therein are deemed valid and taken in accordance with the requirements as specified in this clause.

**13.05.2** In case that drip sampling is not available onboard barge, truck or shore tank, samples shall be taken as a composite of each tank from which supplies are made, divided with 1/4 from each the top, mid and bottom of the tanks.

**13.05.3** Two (2) sets of samples taken shall be retained by the Seller for sixty (60) days after delivery of the Product or, if requested by the Buyer in writing and agreed by the Seller, for as long as the Buyer reasonably required. The other two (2) sets of samples must be retained by the Vessel, one of which may also be used for the purposes of confirming the sulphur content of the marine fuel and such other matters as are specifically set out in Marpol Annex VI, Regulation 18.

**13.05.4** As with quantity claims, it is important for Buyer or the Buyer's representative to check that all documentation is in order and to note any discrepancies on the Physical Supplier's delivery receipt before signing and stamping.

**13.05.5** In the event of the Buyer having grounds to believe that the Product supplied does not accord with the relevant description in the Confirmation or is defective, the Buyer shall immediately:

- a. Take all reasonable steps to mitigate the consequences of having been supplied with possibly defective or incorrect Product.
- b. Give immediate notice with full details of the possibly defective or incorrect product to the Seller together with the Vessel's position, destination and ETA; the quantities and locations of all Products on board the Vessel/stored in the Vessel, the rate and quantity of consumption since delivery and the location immediately prior to consumption of Products consumed; for each of the three preceding deliveries to the Vessel, the quantity, quality and specification of Product supplied, the place and date of supply, and the name of the Physical Supplier.
- c. Inform the Seller of the whereabouts of the Buyer's Set of Samples.

**13.05.6** In the event of a dispute in regard to the quality of the Product delivered, the samples drawn pursuant to clauses related hereto above in this Article, 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 Physical Supplier shall be forwarded to an independent laboratory to perform a set of tests, the result of which are to be made available to both parties. Those test results shall be final and binding upon both Buyer and Seller as to the parameters tested. The parties are to use best endeavours to agree the independent laboratory to perform the tests.

If, however, no agreement can be reached on the choice of laboratory within three (3) days of the Buyer being advised of the Seller opting to have the sample tested, the Seller is at liberty to send the sample to a reputable and independent laboratory of its choice for the tests to be conducted, and those test result will be final and binding upon Buyer and Seller as set out above.

**13.05.7** The seal must be breached only in 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 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 unauthorised person, such sample(s) shall be deemed to have no value as evidence.

**13.05.8** Any eventual samples drawn by Buyer's personnel either during delivery or at any later date after delivery shall not be valid as indicator of the quality supplied. The fact that such samples may eventually bear the signature of personnel on board the barge or tank truck or other delivery conveyance shall have no legal significance as such local personnel have no authority to bind Seller to different contractual terms.

Seller shall have no liability for claims arising in circumstances where Buyer may have commingled the products on board the Vessel with other Products.

**13.05.9** Notwithstanding provisions of clause 16, if it is alleged that any equipment or machinery has been damaged by defective Product, full details must be given to the Seller at the earliest opportunity and the item must be preserved and made available for inspection on demand, at any reasonable time or times, to the Seller or its representative.

**13.05.10** The time limit for receipt by the Seller of notice of a quality claim is 7 (seven) days from the date of Delivery or such shorter period as is specified in the Confirmation.

**13.06 Other Claims and Disputes.** Notice of all other claims, specifically excluding any and all claims relating to or associated with those relating to matters of quantity or quality which are subject to the time limits set out in sub-clause 13.04.1 and 13.04.2 above, should be given to the Seller as soon as reasonably possible and in any event no later than seven (7) days after delivery. If the Confirmation provides for a shorter period, such shorter period shall apply.

**13.07** Summary of Time Limits for Submission of Notice of Claim:

Quantity claims and disputes - Seven (7) days

Quality claims and disputes – Seven (7) days

Other claims and disputes – Seven (7) days

All of the above are subject to the provision of shorter time limits in the Confirmation.

**13.08 Submission of Claim Supporting Documentation and Evidence.** As soon as reasonably possible, after providing notice of a claim relating to quantity or quality issues, Buyer shall furnish to the Seller a sample of the Product delivered to the Buyer's Vessel, and all documentation supporting Buyer's claim, including, but not limited to, all analyses performed on the Product. Buyer shall immediately give 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 Vessel and Buyer (and/or between Vessel and owner or operator), as well as communications to and from fuel testing organisations consulted by Buyer or Vessel interests. If Notice of a Claim is not provided within the periods above or the conditions in this sub-paragraph 13.08 are not met within thirty (30) days of the date the Product was delivered to the Vessel, Buyer shall be time-barred from making a claim. The parties also agree that any such claim is time-barred, if litigation is not commenced within one year of the delivery date.

**13.09** A Claim of any nature by Buyer does not relieve Buyer of the responsibility and obligation to make full and timely payment of all amounts billed by Seller.

## 14.00 WAIVER

---

The failure by any party to the Agreement to enforce any right against any other party shall not be construed as a waiver of that right or in any way affect the validity of the Agreement. In particular, the granting by the Seller of any additional time to make payment or the waiving or reducing of any financial or other charge shall not prevent the Seller at any time thereafter from relying upon its strict contractual rights.

## 15.00 INDEMNITY

---

**15.01** The Buyer shall indemnify the Seller in respect of all damage or injury occurring to any person or to any property and against all actions, suits, claims, demands, costs, charges, or expenses arising in connection therewith to the extent that the same shall have been occasioned by the negligence or default of the Buyer, his servants or agents or any third party in the course of performance of or arising out the Agreement.

**15.02** Buyer shall also indemnify and hold harmless 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 Products under this contract, including claims, damages, losses, penalties or expenses arising under any air, water quality or hazardous waste statute, regulation or ordinance, hereinafter referred to as "pollution claims", providing that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than Buyer's Vessel and its appurtenances) including the loss of use resulting therefrom, or to pollution claims, and (b) is caused in whole or in part by any negligent act or omission of Buyer, 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.

## 16.00 LIABILITY

---

**16.01 Liability.** To the extent permitted by Law, the Seller shall not be liable to the Buyer for any loss or damage of whatsoever nature including physical injury, loss of hire, loss of profit or any other consequential damages or loss whatsoever arising from any cause whatsoever whether in contract, tort or otherwise including the negligence of the Seller, its servants, agents or sub-contractors. Consequential damages or losses include any and all damage claims involving supply chain interruptions, and contracts and/or prospective contracts about which Seller has received no written information at the

inception of the Agreement, detention, demurrage, charter hire, crew wages, towage, pilotage, lost profits, barge delivery charges and increased and increased costs or expenses in obtaining replacement Product.

## **16.02 Limitation of Liability**

**16.02.1** Notwithstanding any provisions in this Agreement or any confirmation to the contrary, Seller's liability for any breach of contract or warranty, or commission of any tort is limited in the aggregate to the Agreement's price, or USD 50,000, whichever is less. Under no circumstances is Seller liable should Buyer suffer physical damage to property in which Buyer holds a proprietary interest.

**16.02.2** 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 Product occasioned by the barge contractor. Seller 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 Product unless Buyer proves that the delay or failure was solely caused by gross negligence on the part of the Seller.

**16.02.3** Seller is not liable for supplying defective or improper Product or Product other than as ordered by Buyer, 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 limited to the cost of replacement of the defective or wrong kind of Product at the date and Place of Supply furnished. Buyer acknowledges and warrants that it is Buyer's responsibility to test the Product provided and to insure that it is proper in all respects prior to the use of such fuel on Buyer's Vessel. Accordingly, Seller shall not be responsible for any damage to Buyer's Vessel, including, without limitation thereto, its machinery or tanks or their contents, caused by use of defective, improper, or the wrong kind of Product.

**16.02.4 DISCLAIMER OF WARRANTIES.** ANY IMPLIED WARRANTIES 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 AGREEMENT ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

## **17.00 COMPENSATION**

---

Notwithstanding the foregoing, in the event that the Seller is found to be liable to the Buyer, the total amount payable by way of compensation other than in respect of personal injury or death shall not exceed the price charged to the Buyer for Product supplied under this Agreement. It is a pre-condition to the payment of any compensation by the Seller that all sums standing due to the Seller from the Buyer are first paid and settled.

## **18.00 INSURANCE**

---

The Buyer is responsible for effecting and maintaining insurance which will fully protect the Buyer, the Seller and all third parties from all risks, hazards, and perils associated with or arising from the Agreement and Delivery.

## **19.00 LICENCES, PERMITS AND APPROVALS**

---

The Buyer is responsible for obtaining all necessary permits, licenses, and approvals required to enable both parties to execute all of their obligations under the Agreement.

## **20.00 GOOD PRACTICE**

---

The Buyer shall, in addition to observing and complying with the terms of the Agreement, abide by generally accepted good operating practices.

## **21.00 JURISDICTION**

---

These Standard Terms and Conditions and the Agreement between Seller and Buyer, and with any third party involved in the conclusion of the Agreement, shall be governed by the General Maritime Law of the United States of America, the applicable federal laws of the United States of America, and, in the event that such laws are silent on the disputed issued, the laws of the State of New York, without reference to any conflict of laws rules which may result in the application of the laws of another jurisdiction. The General Maritime Law and other applicable federal laws of the United States of America shall apply with respect to the existence of a maritime lien, regardless of the country in which Seller takes legal action to enforce its maritime lien against the Vessel.

Without in any way effecting Seller's right to enforce its maritime lien against the Vessel as aforesaid, any disputes and/or claims of any nature whatsoever, whether in law, in equity or otherwise, (arising under or in connection with the Agreement shall be referred to Arbitration in New York, with Seller and Buyer each appointing an arbitrator and the two so appointed to select a third and final member of the arbitration panel. The

arbitration shall be conducted pursuant to the Rules for Arbitration of the Society of Maritime Arbitrators, Inc. with the venue of the arbitration to be New York City.

## 22.0 SANCTIONS

---

**22.01** The Buyer represents, warrants and undertakes that:

**22.01.1** it shall at all times comply with Sanctions applicable to the Seller and/or the Buyer that affect the performance of either party's obligations under this Agreement;

**22.01.2** it is not, whether directly or indirectly, the subject of any Sanctions and that it will promptly notify the Seller should it become, or have reasonable cause to suspect it will become, subject to Sanctions during the term of this Agreement; and

**22.01.3** it will not nominate any Vessel to receive Product or perform any of its obligations under this Agreement in violation of any Sanctions or which would put the Seller in breach of any Sanctions.

**22.02** If the Buyer is or becomes subject to Sanctions which affect the ability of either party to perform any obligations under this Agreement or the performance of any aspect of this Agreement becomes prohibited by Sanctions, the Seller may, at its sole discretion, terminate this Agreement by notice to the Buyer.

**22.03** The Seller will have the right to reject any Vessel nomination which violates any Sanctions or puts the Seller in breach of any Sanctions by serving a rejection notice on the Buyer detailing the grounds for the rejection. If the Seller rejects a nomination of a Vessel on these grounds it shall be entitled, at its sole discretion, to (i) require the Buyer to promptly nominate a suitable substitute vessel; or (ii) terminate this Agreement.

**22.04** The service of notice to the Buyer pursuant to Clause 22.02 or 22.03 shall not constitute a breach of this Agreement and the Seller shall not be liable to the Buyer for any losses, claims, costs, expenses, damages or liabilities arising in connection with any such termination or rejection.

**22.05** To the full extent permitted by applicable law, the Buyer shall indemnify the Seller against any and all costs, expenses, losses and liabilities it incurs as a result of the Buyer being in breach of its obligations under this clause 22.

## **23.00 ATTORNEY'S FEES**

---

Seller is entitled to recover attorney's fees and expenses in the event of prosecution of claim for non-payment of Products supplied.

