

## Conditions for Sale of Bunkers by Bunkernet Ltd

### 1. APPLICATION DEFINITIONS AND INTERPRETATION

- 1.1 Unless otherwise agreed in writing between the Vendor and the Purchaser, these Terms shall apply to all Contracts for the supply of Bunkers entered by Bunkernet Ltd with effect from 1st May 2022 and until further notice.
- 1.2 In these Terms, unless the context otherwise requires, the following definitions and meanings shall apply:
- 1.3. “**Affiliate**” means a company, partnership, or other legal entity which controls, is controlled by, or is under the indirect ownership of fifty per cent (50%) or more of the issued share capital or any kind of voting rights in a company, partnership, or legal entity, and “controls”, “controlled” and “under common control” shall be construed accordingly.
- 1.4. “**Agent**” means any entity acting on behalf of a Purchaser or the Vessel, including but not limited to a ship manager, broker or purchasing agent.
- 1.5. “**Bunker Delivery Note**” or “**BDN**” means a document issued by the Vendor or physical supplier of the Bunkers at the time of delivery, recording the quantity and specification of the Bunkers delivered, the samples numbers and signed on behalf of the Vessel.
- 1.6. “**Bunkers**” means any grade of fuel or gas oil and any grade of oil and lube oil and any other products or services contracted to be delivered or arranged to be delivered by the Vendor as specified in a Sales Confirmation.
- 1.7. “**Business Day**” a day on which commercial banks are open for general business at the Vendor’s domicile and at the Place of Delivery.
- 1.8. “**Contract**” shall have the meaning set out in Clause 3.1 of these Terms.
- 1.9. “**Place of Delivery**” means a port at which the Vendor delivers or arranges for the delivery of Bunkers pursuant to a Contract.
- 1.10. “**Purchase Price**” means the price of Bunkers stated by the Vendor in the Sales Confirmation together with all and any taxes, levies, duties, expenses, delivery charges, barging/trucking fees, jetty fees, fees imposed by the government or authorities or competent organizations at the Place of Delivery arising out of and/or incurred in connection with the delivery of Bunkers under a Contract together with any costs arising out of and/or incurred in connection with deliveries made on Saturdays, Sundays and Public Holidays, and outside of normal working hours at the Place of Delivery.
- 1.11. “**Purchaser**” means the entity or entities named in the Sales Confirmation together with the Vessel supplied and its registered owner and any Agent, all of whom shall be jointly and severally liable as Purchaser under each Contract. Reference herein to a Purchaser may be to all those comprising the Purchaser or to any single entity comprising the collective Purchaser, as the context may require.
- 1.12. “**Sales Confirmation**” means an order confirmation in writing from the Vendor to the Purchaser setting forth the terms of each sale of Bunkers.
- 1.13. “**Sanctions Laws**” means the various export controls and economic sanctions regulations, including but not limited to, those maintained by various European Governments and the EU, Switzerland, the US Government as enforced by the US Office of a Contract Foreign Assets Control, the US Department of State, and the US Department of Commerce, and various UN sanctions as implemented into local laws.
- 1.14. “**Terms**” shall means the terms and conditions set-out within this document.

- 1.15. “**Vendor**” means Bunkernet Ltd and shall include any of its branch offices, servants, agents and designated representatives.
- 1.16. “**Vessel**” means the ship or vessel nominated to take delivery, or taking delivery or having taken delivery of the Bunkers under a Contract.
- 1.14. If any part of the Contract is declared invalid, it shall not affect the validity of the remainder of the Contract or any part thereof.
- 1.15. The headings of each section herein are descriptive only and are provided for organizational purposes.

## **2. PARTIES TO THE CONTRACT**

- 2.1. All entities comprising the Purchaser and all entities comprising the Agent shall be jointly and severally liable for the obligations arising out of a Contract. Reference hereafter in these Terms to the Purchaser shall include the Agent.

## **3. SALES CONFIRMATION**

- 3.1. These Terms together with the Sales Confirmation shall constitute the full and final Contract between the parties and shall supersede and replace any other agreements between the parties and any other terms that the Purchaser may seek to impose. The Terms may only be revised in writing within a Sales Confirmation.
- 3.2. A binding Contract comes into existence when the Vendor sends the Sales Confirmation to the Purchaser. If the Vendor for whatever reason fails to issue or send a Sales Confirmation a Contract pursuant to these Terms shall govern the sale nonetheless and a Contract pursuant to these Terms shall be deemed to have come into existence.
- 3.3. In the event of a conflict between the Terms and the Sales Confirmation the Sales Confirmation shall prevail but only to the extent of the conflict and in all other respects the Terms shall apply.

## **4. PAYMENT**

- 4.1. Payment shall be made in United States Dollars (or any equivalent currency as the Vendor may require) on or before the date stipulated in the Order Confirmation by bank transfer to the Vendor’s bank account, net of all banking charges in accordance with the Contract as specified in the invoice. Payment shall be deemed to have been made on the date the payment is credited to the Vendor’s bank account. Payment to any other bank account shall not release the Purchaser from its payment obligations.
- 4.2. The Vendor shall issue its invoice for the Purchase Price and shall provide a copy of the BDN, but the Purchaser’s liability shall not be contingent upon an invoice being issued or the BDN being supplied.
- 4.3. It is the Purchaser’s risk and responsibility to ensure that the Vendor’s bank details are bona fides. Where payment is being made to an account for the first time the Purchaser must check the bank details with the Vendor by secure means (ie. by telephone, encrypted messaging or in person). The Vendor shall be entitled to allocate payments from the Purchaser at its sole discretion and regardless of any allocation stipulated by the Purchaser and shall be entitled to extinguish claims for compensation, interest, legal fees or any other sums due from the Purchaser in priority to invoices for Bunkers and regardless of the date that respective obligations arose.
- 4.4. Where payment is delayed in part or in full the Purchaser shall pay to the Vendor interest at the rate of 3% per month or part thereof on the delayed sum due, until payment is received. In the event that the interest rate herein exceeds that permitted by any applicable Law, it shall be substituted by the maximum rate so permitted. The Purchaser understands that the Vendor does not provide extended finance, and the interest provisions herein reflect the costs to the Vendor of unauthorized credit.

- 4.5. Payment shall be made in full without any discount or deduction, and there shall be no withholding either in part or in full by reason of any set-off, counter-claim or for any other reason, whether relating to the Contract or past agreements or Contracts. If payment is withheld or set-off by the Purchaser, partly or in full, due to alleged short delivery, quality dispute or any other reason whatsoever or if any sum due pursuant to any Contract is not paid within the agreed time, the Purchaser shall pay, in addition to the outstanding amount and any interest that accrues until the due date, compensation to the Vendor of 20% of the outstanding amount. The Purchaser recognizes that such compensation is a reasonable pre-estimate of the Vendor's loss, taking account of factors including but not limited to the additional management time incurred in dealing with the late payment, the loss of opportunity to reinvest the missing funds and currency exchange fluctuations.
- 4.6. Where credit is granted such credit is entirely discretionary and the Vendor shall at all times be entitled to withdraw credit and demand immediate payment by giving written notice without providing reasons. For example, but without limitation, credit may be withdrawn if the Vendor has reason to believe that the Purchaser's (or companies related to the Purchaser) financial circumstances have deteriorated or the Vendor receives information that causes it to alter its assessment of the credit risk. Where credit is withdrawn prior to delivery of Bunkers then the Vendor shall be entitled to withhold delivery until payment of the Purchase Price is made or alternatively the Vendor may cancel the order, without recourse by the Purchaser.
- 4.7. Where payment of any invoice is delayed beyond the due date any Purchaser who has the right to bring a claim against any other party in relation to the Bunkers that are the subject of any Contract, such claim shall be automatically assigned to the Vendor as at the date of the Vendor's written notice that the Vendor has elected to take that assignment. A Purchaser in receipt of the Vendor's notice consents to being named as claimant/plaintiff or co-claimant-co-plaintiff. Where the Vendor receives payment as a result of the assigned claim such proceeds shall be set against any sum owing to the Vendor by the Purchaser, including any claims for interest, compensation or legal costs and where the sum received exceeds the sum owed by the Purchaser then the balance shall be paid to the Purchaser. The Purchaser shall provide full cooperation to the Vendor by way of witness evidence and documentation to enable the Vendor to pursue the assigned claim.
- 4.8. If the Vendor incurs any costs in relation to attempts to collect any sums due from the Purchaser and arising out of any Contract the Purchaser shall indemnify the Vendor for such costs and shall pay the same upon first demand. Such costs include but not limited to attestation and translation costs, fees of third party debt collection agencies, lawyer's fees, court fees and deposits and communication/postal costs and including costs arising from the arrest, detention or seizure of any Vessel or other assets of the Purchaser.
- 4.9. Vendor may from time to time without need for prior consent of Purchaser, assign any of its rights under the Contract to any third party and the assignee shall enjoy and be entitled to exercise against Purchaser any and all rights herein conferred upon Vendor.
- 4.10. If at any time an amount is payable by Purchaser to Vendor, such amount may at the sole discretion of Vendor be fully or partially paid by set-off against any amounts payable to Purchaser by Vendor and any Affiliate of Vendor.
- 4.11. The Purchaser shall provide the Vendor with no less than seven (7) days' prior notice in writing before making payment from an account belonging to a party that is not the Purchaser. Under such circumstances, for verification purposes the Vendor shall require the Purchaser to provide details and relevant supporting documentation on the payor's full name, country of incorporation, registered address, line of business, relationship with the Purchaser, and the reason why payment is being made on behalf of the Purchaser. In the event that the Vendor is unable to verify the payment and/or payor to its satisfaction, the Vendor shall be entitled in its discretion to reject such payment and require the Purchaser to make another payment from another duly verified account and/or payor.

## **5. MARITIME LIEN**

- 5.1. Where Bunkers is supplied to a Vessel, in addition to any other security, the Contract is entered into and Bunkers is supplied upon the faith and credit of the Vessel. It is agreed and acknowledged that

a maritime lien over the Vessel is thereby created for the Purchase Price of the Bunkers supplied and that the Vendor in agreeing to deliver Bunkers to the Vessel does so relying upon the faith and credit of the Vessel. The Purchaser, if not the owner of the Vessel, hereby expressly warrants that he has the authority of the owner to pledge the Vessel's credit as aforesaid and that he has given clear notice of the provisions of this clause to the owner. The laws of the United States, including but not limited to the Commercial Instruments and Maritime Lien Act, shall always apply with respect to the existence of a maritime lien, regardless of the country in which Vendor takes legal action unless the laws of that country does not recognize the US law lien, in which case the Vendor shall be entitled, at Vendor's election, to rely on the law of the flag, the law of the place of supply or the law of the country in which the action is brought.

- 5.2. Any notice or any stamp added to the BDN or similar shall be invalid and cannot waive the Vendor's maritime lien on the Vessel unless the Purchaser has notified the Vendor of its intention to exclude the liability of the Vessel at least 12 hours in advance of the supply by sending written notice to sales@bunkernet.com.cy. Notification to the physical supplier of Bunkers shall not be effective notice and any stamp or notice applied to the BDN after the supply of Bunkers shall also be ineffective and shall not vitiate the Vendor's lien on the Vessel.

## 6. COMPLIANCE AND ENVIRONMENT

- 6.1. By accepting the Vendor's offer and Sales Confirmation, the Purchaser thereby confirms and warrants that the Purchaser is in full compliance with the Sanctions Laws; that the Purchaser is purchasing the Bunkers as principal and not as agent, trustee or nominee of any person or entity with whom transactions are prohibited or restricted under the Sanctions Laws; and the Bunkers purchased will not be used in any manner whatsoever directly or indirectly in connection with any entities, persons, projects, contracts, transactions or payments that contravenes any Sanctions Laws. Further in relation to these Sanctions Laws, the Purchaser confirms and warrants that the Vessel to be supplied is not and/or will not be:
- 6.1.1. A designated vessel or flagged by a sanctioned country;
  - 6.1.2. Owned or chartered by or related to any designated entity or person;
  - 6.1.3. Coming from or on its way to visit countries or regions designated under the Sanctions Laws;
  - 6.1.4. Involved in the transfer of goods that may be prohibited under the Sanctions Laws; or
  - 6.1.5. Engaged in any conduct designed to evade any Sanctions Laws, including but not limited to turning off transponders, reporting false travel plans, deviating from reported travel plans and engaging in ship-to-ship transfers to hide the origin of goods.
- 6.2. If at any time during the performance of the Contract the Vendor becomes aware or have reasonable grounds to believe that the Purchaser, the Vessel and/or any related parties are in breach of the warranty as aforesaid, the Vendor shall have the option to immediately cancel the Contract for the Purchaser's account and risk. Under such circumstances, the Vendor shall not be held liable for any loss, delays, claims or damages incurred by the Purchaser, and the Purchaser shall be liable to indemnify the Vendor against any and all claims, including return of any payment, losses, damages, costs and fines whatsoever suffered by the Vendor resulting from any breach of warranty as aforesaid and in accordance with the Contract.
- 6.3. The Purchaser must inform the Vendor immediately if the Purchaser becomes aware of or has reasons to believe that any of the above items are fulfilled/apply. Should the Purchaser breach its obligation to inform the Vendor, the Purchaser shall fully indemnify and keep the Vendor harmless for any damage or loss caused by such breach, including consequential or liquidated damaged.
- 6.4. The Purchaser acknowledges that anticorruption laws and regulations, including but not limited to the U.S. Foreign Corrupt Practices Act ("FCPA"), shall apply to the parties. The Purchaser and Vendor shall comply with all applicable anticorruption laws and regulations and will not, offer, promise, pay, or authorize the payment of any money or anything of value, or take any action in furtherance of such a payment, whether by direct or indirect means, to any public official or private individual to influence the decision of such person in the performance of his duties to a government or to his company. Any breach of this clause will void the related Contract and in the sole discretion of the Vendor any other Contract between the parties, making any claims for payment, delivery or

any other obligation of the Vendor under this Agreement void. The Purchaser is liable for any and all costs or losses incurred by the Vendor due to such breach and/or a Contract becoming void as a consequence.

- 6.5. It shall be the sole responsibility of the Purchaser to ensure that the Vessel, its crew and those responsible for its operation and management observe and comply with all health, safety and environmental laws and regulations with regard to the receipt, handling and use of the Bunkers.
- 6.6. The Purchaser warrants that the Vessel now and at all times is and will be in compliance with all governmental, international convention and international shipping association trading and pollution standards and regulations. The Purchaser further warrants that the Vessel will not be moored at a wharf or alongside other marine loading facilities of or chosen by the Vendor unless free of all conditions, deficiencies or defects.
- 6.7. In case of any spillage (which for the purpose of this clause shall mean any leakage, escape, spillage, discharge or overflow of the Bunkers) occurring before, during or after the delivery of the Bunkers, the Purchaser shall, in addition to any other obligations imposed by law, immediately notify the appropriate governmental authorities and take or arrange whatever action is necessary to respond and clean-up such spillage, and shall pay all costs and expenses incurred in connection therewith. If the Purchaser fails to take such prompt action, the Purchaser hereby authorizes the Vendor, the supplier and/or any other party appointed by the Vendor or the supplier, to take such action on behalf of the Purchaser, at the Purchaser's sole risk and expense, and the Purchaser shall fully indemnify and hold the Vendor, the supplier and/or any other party appointed by the Vendor or the supplier, harmless against any damages, expenses, claims, fines and any kind of liabilities, of whatever nature, unless such spill or discharge is proven to be solely caused by the Vendor's gross negligence or willful misconduct.
- 6.8. The Purchaser shall fully indemnify and keep fully indemnified the Vendor against any liability, fine, claim or proceedings whatsoever arising out of or in connection with any failure by the Purchaser to comply with its obligations under this clause 6.
- 6.9. The Purchaser acknowledges having read and understood the Vendor's Code of Conduct (copy available upon request) and confirm that they operate their business under the same or similar standards therein.

## **7. DELIVERIES**

- 7.1. Wherever the Vendor accepts delivery nominations, all such deliveries shall be within port limits, unless delivery outside of such port limits is agreed in advance in writing by the Vendor.
- 7.2. All deliveries under a Contract shall be made ex-wharf or ex-lighter/barge in accordance with the delivery procedures customary at the Place of Delivery unless otherwise specifically agreed in the Sales Confirmation, however, always in accordance with all applicable regulations, requirements and procedures adopted by the authorities at Place of Delivery. The Purchaser shall be solely responsible for ascertaining, acquainting itself and complying with, all such regulations, requirements and procedures and the Purchaser shall indemnify the Vendor for any losses, costs and expenses incurred by the Vendor following the Purchaser's failure to comply with such regulations, requirements and procedures.
- 7.3. The Vendor shall deliver the Bunkers within the agreed delivery window as stated in the Sales Confirmation. The Purchaser shall give the Vendor no less than five (5) Business Days written notice specifying:
  - (i) the name of the Purchaser,
  - (ii) the Sales Confirmation,
  - (iii) name of the Vessel,
  - (iv) the port of delivery,
  - (v) the local port agent, and
  - (vi) the Vessel's estimated time of arrival.

- 7.4. The Purchaser shall give further arrival notice 72, 48 and 24 hours before the Vessel's arrival at the Place of Delivery. If the Contract is entered into less than 72 hours from delivery, notices shall be provided daily from the date of the Sales Confirmation.
- 7.5. If the Vessel is not available to receive Bunkers within the agreed delivery period or within 2 hours of the arrival time as stated in the last arrival notice, the Vendor may at its discretion revise the Purchase Price and date of supply or terminate the Contract, and the Purchaser shall be liable for any cost and losses incurred by the Vendor as a result of the delay.
- 7.6. If the Purchaser fail or refuse to take delivery in part or in full, or if the Purchaser causes the delivery to be delayed, the Purchaser shall be liable to the Vendor for all losses, costs and expenses incurred by the Vendor as a result hereof.
- 7.7. The Vendor shall use reasonable endeavors to commence delivery within the delivery period agreed in the Sales Confirmation however no guarantee of the time or pumping rate of delivery is given, and the Vendor shall in no event and regardless of cause be liable for any losses, damages or demurrage, whatsoever and howsoever incurred by the Purchaser due to and/or arising out of and/or in connection with any delayed delivery of Bunkers under the Contract, including delay due to congestion at the supplier's delivery facilities, the refinery, the shore terminal, or to any other (prior or subsequent) commitment(s) of available barges in the Purchaser, any public holidays at the Place of Delivery, shortage of Bunkers, breakdown or under performance of the supply equipment, and/or any other cause or conditions outside the control of the Vendor.
- 7.8. The Purchaser shall ensure that the Master of the Vessel shall:
- (a) advise the Vendor, in writing prior to delivery, of the maximum allowable pumping rate and pressure and agree on communication and emergency shut down procedures;
  - (b) notify the Vendor, in writing prior to delivery, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Bunkers; and
  - (c) provide a free and safe side of the Vessel to receive the Bunkers and render all necessary assistance which may reasonably be required to moor or unmoor the Vessel and/or the delivery barge, as appropriate.
  - (d) sign the Bunker Delivery Note and apply the Vessel's stamp, to acknowledge the receipt of the Bunkers delivered to the Vessel.
- 7.9. The Purchaser shall be responsible for making all connections and disconnections of the delivery hose(s) to the Vessel's bunker manifold and to ensure that the hose(s) are properly connected to the Vessel's manifold prior to the commencement of delivery. The Purchaser 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 Purchaser shall promptly receive the delivery and shall forthwith withdraw the Vessel from the shore terminal or wharf once delivery is completed.
- 7.10. For deliveries within Singapore, the Singapore Standard SS600:2008 Code of Practice for Bunkering and any subsequent amendments thereto (the "Code") is deemed to be incorporated by reference into all Contracts. In the event of any inconsistency between the Terms and the Code in any respect, these Terms shall prevail.

## **8. SAMPLING**

- 8.1. The Vendor or its representatives shall arrange for minimum three (3) representative samples of each grade of Bunkers to be drawn throughout the entire bunkering operation. Such sampling shall be performed in the presence of the Vendor or its representatives and the Purchaser or its representatives, but the absence of the Purchaser or its representatives during all or any part of the

sampling process shall not prejudice the validity of the samples. Samples shall be drawn according to physical supplier's standard procedures, or the procedures applicable in the port.

- 8.2. The samples shall be securely sealed and provided with labels showing the Vessel's name, physical supplier, product name, delivery date and place and seal number, authenticated with the Vessel's stamp and signed by the Vendor's representative and the Master of the Vessel or his representative. The sample seal numbers shall be inserted into the Bunker Delivery Note.
- 8.3. One (1) sample shall be retained by the Vendor for thirty (30) days after delivery of the Bunkers, or if requested by the Purchaser in writing, for as long as the Purchaser reasonably requires. The other two (2) samples shall be retained by the Vessel, one of which being dedicated as the MARPOL sample. No samples drawn by the Purchaser's personnel or any samples subsequently taken shall be allowed as evidence of the quality of the Products. If any seals have been removed or tampered with by an unauthorised person, such samples shall be deemed to have no value as evidence.
- 8.4. In the event of a dispute with regard to the quality of the Bunkers delivered, the samples retained by the Vendor shall be deemed conclusive and final evidence of the quality of the product delivered. The conformity of the Bunkers shall be determined in accordance with ISO 4259 and to the extent that the components detected are within the allowed tolerances in respect of reproducibility or repeatability in quality are accepted, as set out in ISO 4259 the Bunkers shall be deemed to be compliant according to ISO 8217.
- 8.5. If the Purchaser's complaint concerning the quality of the Bunkers is based on the presence of substances which are not part of the quality specifications set out in Table 1 or Table 2 of ISO 8217, the Purchaser shall show that the substances in question without a reasonable doubt jeopardize the safety of the Vessel or adversely affect the performance of the machinery.
- 8.6. The sample retained by the Vendor shall be forwarded to a mutually agreed, independent and certified laboratory for analysis, the results of which are to be made available to both parties. If the Vendor and the Purchaser cannot agree on an independent laboratory to perform mutual analysis or if the Purchaser fails to reply to the Vendor's notice hereof within seven (7) days from receipt, the Vendor may at its sole discretion appoint an independent laboratory to perform the analysis. The analysis of the independent laboratory shall be final and binding for all interested parties. The costs of any tests and analysis carried out by the independent laboratory shall be borne by the Purchaser if the results are in favour of the Vendor, or by the Vendor if the results are in favour of the Purchaser.
- 8.7. The seal must be breached in presence of both parties, unless one or both parties have declared in writing that it/they will not be present, or if a party fails to be present at the appropriate time and place despite having been given sufficient and proper notice of at least seven (7) days in advance.

## **9. QUANTITY**

- 9.1. Quantity shall be determined at the Vendor's option from the gauge or meter of shore or barge tanks. Such determination shall be considered to be the sole valid and binding determination of the quantity supplied, to the exclusion of all other measurements. The volume shall be adjusted to 15°C under prevailing ASTM-IP Petroleum Measurement tables. The quantity of Bunkers to be delivered shall be the quantity specified in the Sales Confirmation with a tolerance at Vendor's option of +/- 5 % or the tolerance level of the physical supplier whichever is greater.
- 9.2. Any claim regarding the quantity of the Bunkers delivered under the Contract shall be notified by telephone by the Purchaser or the Master or the Chief Engineer of the Vessel to the Vendor before the delivery hoses are disconnected. Notice to the delivery barge or physical supplier including by way of a letter of protest or statement on the BDN shall not be adequate notice. The Purchaser shall in addition make a written claim providing a full explanation of the circumstances and basis for the claim, including all the relevant supporting documentation, not later than fifteen (15) days from the date of delivery of the Bunkers to the Vessel. Failure to make timely notification as stipulated in this clause shall result in the claim being deemed waived and barred.

## 10. QUALITY

- 10.1. The Purchaser shall bear the sole responsibility and risk for the selection and nomination of the grades of Bunkers and the Vendor does not warrant and is under no obligation to check whether Purchaser's selection and nomination is suitable for use by the Vessel. The Bunkers arranged or supplied by the Vendor shall be of a homogeneous nature generally available at the place where the Vessel is to take/has taken delivery of the Bunkers.
- 10.2. The Purchaser shall advise the Vendor as soon as reasonably practicable of any circumstances that may give rise to the possibility of a claim related to the quality of Bunkers. Any claim regarding the quality of the Bunkers delivered shall be made in writing by the Purchaser to the Vendor together with a full explanation of the circumstances and basis for the claim, including all relevant supporting documentation, no later than fifteen (15) days from the date of delivery to the Vessel, failing which any such claim shall be deemed to be irrevocably waived and time barred.
- 10.3. Where the Purchaser nominates Bunkers above the sulphur limits set out in MARPOL Annex VI, the Purchaser shall be fully responsible for, and on the Purchaser's request provide confirmation in writing, that the Vessel has working Abatement Technology (as defined in MARPOL Annex VI) installed in compliance with MARPOL Annex VI or must include a copy of a valid Fuel Oil Non-Availability Report (FONAR) and the relevant authorisation granted to the Vessel for that specific delivery of Products. The Purchaser shall indemnify the Vendor of all cost or losses incurred as a result of Vendor's breach of this Clause 10.

## 11. CLAIMS

- 11.1. In the event of any claim presented in accordance with clauses 9 and 10, the Purchaser shall:
- (a) Cooperate with the Vendor and make all necessary arrangements for the Vendor or its representatives to investigate such claim, including but not limited to the boarding and inspection of the Vessel, the interviewing of crew and the inspection, review and copying of Vessel's relevant documents, logs and records; and
  - (b) Take all reasonable steps and actions to mitigate any damages, losses, costs and expenses related to any claim of alleged off-specification or defective Bunkers, including where possible consuming the Bunkers with use of purification tools, recommended dilution or other appropriate measures.
  - (c) Take all reasonable steps to preserve the Vendor's recourse against the physical supplier of the Bunkers or any other third party. The Vendor shall not be liable in damages, if the Purchaser has failed to safeguard the Vendor's recourse against the supplier of the Bunkers or any other third party or has failed to ensure the existence of the necessary evidence.
- 11.2. The Purchaser shall not be entitled to claim any cost, loss, expense or damages from the Vendor which could have been prevented by the Purchaser's compliance with clause 11.1, and the Vendor shall be entitled to set-off any such cost, loss, expense or damages against any liability to the Purchaser.
- 11.3. In the event that the Purchaser has made a valid claim regarding the quality of the product, which cannot be mitigated in accordance with Clause 11.1, the Vendor shall have the option to debunker the product and perform redelivery of on-spec product in accordance with the terms of the Contract.
- 11.4. To the extent that the Purchaser's test report evidence that the components detected are within the allowed tolerances in respect of reproducibility or repeatability as set out in ISO 4259, the Product shall be deemed to be compliant and the Purchaser cannot require further testing of the Product.
- 11.5. Any claim against the Vendor arising out of or in connection with a Contract shall be brought before the relevant court or arbitral tribunal in accordance with clause 188 within three (3) months of the date of delivery of the Bunkers, failing which any such claim shall be forever waived and time barred.

## **12. RISK AND TITLE**

- 12.1. Title to the Bunkers shall be retained by the Vendor until the Purchaser has paid all sums due to the Vendor under any Contract. Until title passes the Purchaser shall have permission to allow the consumption of the Bunkers on the Vessel to which they were delivered, but the Bunkers shall not be resold. Title to the unconsumed Bunkers shall pass to the Purchaser upon payment of the Purchase Price of the Bunkers and all other monies, pursuant to Clause 4 hereof. Until such time as payment is made, on behalf of itself and the Vessel, the Purchaser's agrees that it is in possession of the Bunkers is as a mere bailee of the Vendor. Unless and until title passes to the Purchaser, the Purchaser shall not co-mingle the Bunkers with other Bunkers on board the Vessel. Notwithstanding the retained title and the permission to consume as set-out herein, and without prejudice to all other rights and remedies available to the Vendor in contract or law, the Vendor shall be entitled to bring a claim for the Purchase Price for the full Contract quantity of Bunkers delivered to the Vessel.

## **13. CANCELLATION**

- 13.1. 13.1 In the event that Purchaser cancelling the delivery or Vendor's termination due to Purchaser's delay in accordance with Clause 7.5, the Vendor shall as liquidated damages be entitled to charge and receive from the Purchaser a cancellation fee of US\$10 per metric ton for the Bunkers ordered under the Contract, and the Vendor shall be entitled to additional damages for any documented costs or losses incurred by the Vendor exceeding these liquidated damages.

## **14. TERMINATION BY DEFAULT**

- 14.1. The following shall constitute events of default by a Purchaser, entitling the Vendor to terminate by written notice to the Purchaser any Contract for the sale of Bunkers forthwith and claim damages from the Purchaser:
- (a) failure by the Purchaser to perform any obligations under the Contract;
  - (b) arrest/seizures of assets of the Purchaser, including but not limited to, the Vessel;
  - (c) the Purchaser becomes insolvent according to the laws of the place of incorporation or establishment of the Purchaser or has a liquidator, receiver, or judicial manager appointed or enters into any arrangement or composition with its creditors;
  - (d) liquidation/bankruptcy or any other changed financial or legal position of the parent company, sister companies or affiliated companies to the Purchaser, which the Vendor deems in its sole discretion to adversely affect the financial position of the Purchaser;
  - (e) in case of any other situation, which the Vendor deems in its sole discretion to adversely affect the financial position of the Purchaser.
- 14.2. Upon the occurrence of an event of default as set out above, all sums owed by the Purchaser shall become immediately due and payable and without limiting any other remedies available, the Vendor shall also be entitled to:
- (a) cancel all outstanding stems and/or withhold future deliveries;
  - (b) store the Bunkers in full or in part for the Purchaser's account and risk;

## **15. FORCE MAJEURE**

- 15.1. The Vendor shall not be liable for any loss, damage or liability and/or for any breach, delay or non-performance of the Contract to the extent such is caused:
- (a) by any governmental act or compliance 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 programme of any authority created by governments); and/or

- (b) the interruption, unavailability, or inadequacy of Bunkers, 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, strikes, lockouts, labour or employment difficulties, fires, acts of God, epidemics, accidents, breakdowns, or any other cause whatsoever which is not within the control of the Vendor including, 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 Vendor of Bunkers, or the crude oil or petroleum products from which such Bunkers is derived.

- 15.2. The Vendor 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 prevents the Vendor from fulfilling the requirements of its customers including its affiliated companies and the Purchaser, the Vendor may allocate available quantities of Bunkers to its customers and/or the Purchaser in its absolute discretion.
- 15.3. In the event that any governmental authority imposes any form of price control, rationing, allocation, or other emergency measures on supply of Bunkers at the Place of Delivery, then the Vendor has the right to suspend delivery of any Bunkers under the Contract for such periods as the Vendor may determine are required to resolve uncertainties raised by such governmental actions, alternatively to cancel such delivery and/or terminate the Contract. In the event of such termination of Contract, the Vendor shall be relieved of its obligations to perform hereunder.
- 15.4. The Purchaser shall have no right of cancellation of the Contract due to Force Majeure as stated in clause 15.115.1.

## **16. LIMITATION OF VENDOR'S LIABILITY**

- 16.1. The Vendor's liability for any losses or damages that may be suffered by the Purchaser or the Vessel or any third party whatsoever, howsoever caused and including due to the negligence of the Vendor, its servants, sub-contractors or agents and whether based in tort or contract, shall be limited to the Purchase Price of the Bunkers as set out in the Vendor's invoice issued pursuant to the Contract.
- 16.2. The Vendor shall under no circumstances regardless of cause be liable for any consequential loss or damage whatsoever, whether direct or indirect and whether or not foreseeable at the time of contract, that may be suffered by the Purchaser or the Vessel, including but not limited to:
  - (a) any loss of hire or freight and/or loss of income or profit,;
  - (b) any delay, detention or demurrage;
  - (c) any indirect, special or consequential losses and/or damages, including but not limited to damages arising from the exercise of the Vendor's rights to suspend and/or to withhold and/or to terminate delivery of the Bunkers; and/or
  - (d) any damages or losses as a result of any acts or omissions of the Vendor's agents and/or subcontractors including but not limited to those transporting the Bunkers and/or fueling agents.
- 16.3. Any liability for damage to the receiving Vessel shall be limited to documented cost of engine repairs and in any event be reduced by 20 percent of the invoice value of spare parts for each year or fraction thereof in which the replaced part has been in use.
- 16.4. Any damage caused by contact or collision between the supply barge and the Vessel, or any other marine incident occurring in connection with the delivery shall be dealt with by the Purchaser directly with the owners of the supply barge or the relevant third party. The Vendor shall not be held liable

for any such damages and the Purchaser shall indemnify the Vendor against any claims made against the Vendor arising out of such incident.

## **17. INDEMNITY AND CANCELLATION**

- 17.1. The Purchaser shall defend, indemnify and hold the Vendor harmless with respect to any and all liability, loss, claims, expenses or damage the Vendor may suffer or incur by reason of, or in any way connected with, the acts omissions, fault or default of the Purchaser or its agents or its representatives in the purchase, receipt, use, storage, handling or transportation of the Bunkers under the Contract.
- 17.2. The Purchaser undertakes to indemnify the Vendor against any claims, losses or costs of whatever kind related to the Contract instituted by third parties against the Vendor to the extent such claims exceeds the Vendor's liability towards the Purchaser as set out in clause 16.116.1.

## **18. LAW AND JURISDICTION**

- 18.1. The Contract, these Terms and all claims and disputes arising under or in connection therewith, including any dispute as to whether a contract has come into existence, shall be governed by the general maritime law of the United States of America. If there are any gaps in the general maritime law of the United States or if the general maritime law of the United States does not address a disputed issue, the law of the State of New York shall apply. The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 18.2. Any dispute arising out of or in connection with a Contract between the Vendor and a Purchaser (which shall include any Agent) shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced ("the LMAA Terms").
- 18.3. In cases where the claim or any counterclaim does not exceed the sum of USD 2,000,000 (or such other sum as the parties may agree) the arbitration shall be referred to a sole arbitrator. In all other cases the reference shall be to three arbitrators. In all cases the appointment or arbitrators shall be subject to the LMAA Terms.
- 18.4. Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
- 18.7. Notwithstanding the provisions of clauses 18.2 to 18.6 the Vendor shall be entitled to commence proceedings in a court of law of any country, including but not limited to any jurisdiction where the Vessel other assets of the Purchaser (which includes any Agent) may be found and shall be entitled to issue proceedings in such courts to obtain security or interlocutory remedies in support of arbitration proceedings or where arbitration proceedings have not yet been commenced for substantive remedies.