

## GENERAL TERMS AND CONDITIONS FOR THE SALE OF MARINE FUELS

### 1. GENERAL

- 1.1. These Addax Energy SA (the “**Seller**”) General Terms and Conditions for the sale of Marine Fuels (the “**GTC**”), together with the Order Confirmation collectively defined as the “Sales Agreement”, constitute the entire agreement between the Buyer and the Seller (collectively referred to as the “Parties” or individually as a “Party”).
- 1.2. Unless specifically agreed differently by the Parties in writing, the Buyer unconditionally agrees to the applicability of this GTC in respect of the Order Confirmation, the invoice or purchase order or other format of quotation or confirmation issued by the Seller or the Buyer, even if such applicability is not explicitly mentioned therein. The Seller hereby gives notice that it objects to any term or condition contained in any document or form supplied by the Buyer to the Seller which is in addition to or different from the terms of the Sales Agreement.
- 1.3. Any modification, addition, waiver and annulment of this GTC must be expressly accepted by the Seller in writing. The Seller reserves the right to amend this GTC at any time. The Buyer shall be deemed to have been notified of the revised GTC upon its notification or inclusion in any of the documents mentioned in Clause 1.2. The amended GTC shall take effect on the date of the notification and shall apply to all existing and/or future transactions concluded between the Seller and the Buyer.
- 1.4. In case the Buyer wishes to make any payment under this Agreement from another company affiliated to it, the Buyer shall provide all supporting documentation showing the relationship between the Buyer and the company making the payment, satisfactory to the Seller at its sole discretion. Such company shall sign a deed of novation in a format acceptable to the Seller.
- 1.5. The Parties are independent contractors, and the relationship created hereby shall not be deemed to attach the conferment of any exclusivity right, nor the establishment of any distributorship, franchising, commission, agency or similar, with or without representation.
- 1.6. Any election not to enforce any rights or remedies by the Seller shall not amount to a waiver of such rights or remedies and the Seller shall be entitled always to assert such rights or remedies thereafter, without restriction or limitation.

### 2. DEFINITIONS

**Barge** shall mean the barge or tanker, whether belonging to the Seller or to third parties, making the delivery of Marine Fuel to the Buyer's Vessel;

**Basic Cost of Marine Fuel** shall mean the cost of Marine Fuel which is calculated by multiplying the Unit Price by the number of Units delivered;

**Bunker Delivery Note** shall mean the document which contains information on the Marine Fuel deliveries.

**Buyer** shall mean (a) the party identified in the Order Confirmation as the Buyer, (b) the Buyer's servants, agents, assigns, brokers, representatives, or any other company as per Clause 1.4, together with her registered owners, disponent owners, charterers (by demise or otherwise), operators, managers or anybody else for account of whom the Buyer's Vessel received the Marine Fuel.

All such persons falling within this definition of Buyer shall be jointly and severally liable for and guarantee the performance of all obligations of the Buyer set out in the Sales Agreement.

**Buyer's Accredited Representative** shall mean an independent petroleum inspector approved by the Seller;

**Buyer's Vessel or Receiving Vessel** shall mean the vessel, ship, barge, on-shore tank, rig or other unit or installation that received, or was intended to receive, the Marine Fuel from the Seller either as end user or as a transfer unit to a third party;

**Cancelling Date** shall mean 1600hrs local time on the last day of the Delivery Date Range;

**KYC** shall mean the client onboarding process of the Seller which shall be updated from time to time at the sole discretion of the Seller;

**Day** shall mean a calendar day;

**Delivery** shall mean each separate delivery of the Marine Fuel to the Buyer's Vessel at the Place of Delivery.

**Delivery Date Range** shall mean the date range stated in the Order Confirmation for the supply of the Marine Fuel;

**Marine Fuel** shall mean any marine fuel oils, marine diesel oils, marine gas oils, lubricants and other related products;

**Order Confirmation** shall mean a confirmation in writing from the Seller to the Buyer setting forth the particular terms of each sale of Marine Fuel.

**Place of Delivery** shall mean the place of the delivery of the Marine Fuel to the Buyer's Vessel as specified in the Order Confirmation or as varied thereafter provided that such variation is confirmed in writing by the Seller;

**Seller's Supplier** shall mean the party supplying Marine Fuel to the Seller;

**Supplier** shall mean any party instructed by or on behalf of the Seller to supply or deliver the Marine Fuel together with the Supplier's servants, agents, successors, subcontractors and assigns.;

**Unit:** one unit is equal to one metric ton or such other measurement as the Order Confirmation may specify;

**Unit Price** is the price of one unit of Marine Fuel. Such price, unless the Seller expressly advises otherwise in writing does not include applicable duties, taxes and other such costs including without limitation those imposed by government authorities, barging and other delivery charges.

### 3. MARINE FUEL ORDERS AND CONFIRMATION

- 3.1. All sales of Marine Fuels require a written request to be submitted by the Buyer to the Seller. The Buyer's request shall include the following:
  - Name, flag, place of registry and IMO code of the Receiving Vessel.
  - Details of the place where the Marine Fuels are requested to be supplied.
  - Local agent's details if a local agent is to be used.
  - ETA of the Receiving Vessel at the Place of Delivery.
  - Full title of the Buyer.
  - Registered office address of the Buyer and principal place from where business is conducted.
  - Relationship of the Buyer with the Receiving Vessel (registered owner, disponent owner, manager, charterer, agent etc.).
  - Qualities and grades of Marine Fuels to be supplied.
  - KYC documentation as requested by the Seller.
- 3.2. The Seller will draw up a sale offer, which shall state the location and date on which it is willing to provide the supply, the Unit Price (or formula to determine this) as well as, when appropriate, the maximum amount of Marine Fuel it is willing to supply, and the means it has available to provide the supply at the port or location requested. Such offer, unless it states otherwise therein, will expire at 1700hrs Swiss time on the day that it is provided by the Seller.
- 3.3. The Sales Agreement shall only be concluded and final and binding when the Seller sends the Order Confirmation to the Buyer. A buyer deem to have accepted the Order Confirmation by 17:00 Swiss time on the same day or by virtue of any act which is, at the Seller's sole discretion, considered a preparation of performance.
- 3.4. The Sales Agreement is valid and binding regardless of whether the Buyer signs and returns a copy of the hereby to the Seller. The terms and conditions contained in the Sales Agreement shall be deemed to record the terms and conditions of the agreement between the Parties accurately unless the Seller hears from the Buyer to the contrary within 48 (forty-eight) hours of transmission to the Buyer or prior delivery date whichever occurs first.

### 4. ESTIMATED TIMES OF ARRIVAL

- 4.1. The Buyer shall give the Seller or the Seller's local representative at the Place of Delivery written notice of the date and estimated time of arrival of the Buyer's Vessel at the Place of Delivery and the time at which Deliveries are required (the "ETAs"). Such ETAs shall be sent 72 (seventy two), 48 (forty eight), 24 (twenty four), 12 (twelve) and 6 (six) hours prior to the Buyer's Vessel's ETA. In the event that the Buyer becomes aware of any facts or circumstances that render an ETA inaccurate by more than 10% (ten percent) the Buyer shall promptly

advise the Seller or the Seller's local representative of the revised ETA.

## 5. DELIVERY

- 5.1. In the event of Delivery by Barge(s), the Buyer, at its cost, shall provide a clear, safe, always afloat, accessible berth, position or anchorage for the Barge(s) alongside the Buyer's Vessel's receiving lines and ensure that all necessary assistance as required by the Seller or the Supplier is rendered. If the Seller, at its sole discretion, considers that a clear and safe, always afloat, accessible berth, position or anchorage is not available or delivery might or is being delayed, the Seller has the option to cancel the Delivery. Whether or not the Seller exercises the option to cancel shall be entirely without prejudice to its right to claim for its losses arising as a result of Buyer's breach of this Clause in respect of which the Buyer shall indemnify the Seller for any resulting loss, damage, cost, expense, delay to Buyer's Vessel and for any additional steaming time and bunkers consumed during the delay and during such additional steaming, fines or penalties irrespective of whether or not the circumstances were within the control of the Buyer or its local representative.
- 5.2. The Buyer's Vessel, at its cost, shall moor, unmoor, hoist the bunkering hose(s) from the Barge(s) and lower the hose(s), day or night, Sundays and holidays inclusive, whenever required by the Seller, Seller's representative or Supplier.
- 5.3. The Buyer shall be responsible for the safe receipt of the full quantity of Marine Fuel contracted, without any risk to the Seller or the Supplier or their agents, servants or property. The responsibility of the Buyer in this Clause includes, but is not limited to, provision of sufficient tankage and equipment, ensuring the readiness of all pipes, manifolds and receiving tanks, relevant valves and that the connection of the delivery hose to the Buyer's Vessel has been properly and safely made in order to exclude any risk of spillage during the bunkering.
- 5.4. The Seller shall conclude Deliveries subject to the availability to the Seller of the particular grade(s) of the Marine Fuel requested by the Buyer.
- 5.5. The Seller shall be entitled to deliver the Marine Fuel in separate part Deliveries, in which case each part Delivery shall be construed as a separate Delivery. Each such part Delivery may be made in a separate lot at wharf or at shore terminal of the Seller, by Barge or by a combination of the above-mentioned supply methods, at the Seller's option.
- 5.6. The Seller shall not be required to deliver the Marine Fuel into any of the Buyer's Vessel's tanks which, in the Seller's opinion, are not regularly and customarily used for Marine Fuels.
- 5.7. It is a condition of the Sales Agreement that the Buyer's Vessel:
  - is not registered under the Iranian or Venezuelan flag or any other flags subject to any sanction as per Clause 21.1 of this GTC;
  - is neither owned (registered, beneficial or otherwise), chartered (demise or otherwise) or managed by an Iranian or Venezuelan entity or individuals subject to any sanctions as per Clause 21.1 of this GTC;
  - is free from all conditions or defects which might give rise to any hazard or cause any delay in the Delivery of Marine Fuels; and
  - has onboard all required certificates and is in compliance with all applicable laws and regulations, including those requiring proof of financial ability in regard to spills of oil.
- 5.8. The Seller has the right to deliver by Barge, by pipeline, by road or alongside the terminal. The Buyer shall provide a free side for barge deliveries and prompt and safe passage between the public roadway and the actual place of unloading for road vehicles. The Seller shall not be obliged to deliver in locations or over roadways which in its sole discretion are unsafe or might become unsafe for its Barges or vehicles.
- 5.9. The Buyer shall comply with all local port regulations and other applicable laws with respect to delivery.
- 5.10. The Buyers shall obtain any license or permit required from any government authority or any instrumentality thereof, or from any public or private port authority, for any delivery of Marine Fuel. If the Seller is aware that the Buyer has not obtained such required license or permit, no Delivery shall be made until Buyer has obtained the same and the Seller will be entitled to recover from the Buyer all incurred costs and damages related thereto. The Seller shall be under no obligation to perform at a later date any obligation the time for the performance of which has expired during such suspension.
- 5.11. The delivery date shall be deemed to be the date of completion of Delivery as stated in the Bunker Delivery Note. The Seller may elect to discontinue operations at any Place of Delivery for any reason without obligation or liability to the Buyer.

## 6. LATE DELIVERY/LATE ARRIVAL

- 6.1. Notwithstanding anything elsewhere herein, the Seller will affect the supply of Marine Fuel as promptly as circumstances permit, having regard to congestion affecting the delivery facilities of the Seller, its Suppliers or agents, the prior commitments of Barges and any other reason or circumstance whatsoever. Delivery within the Delivery Date Range is not guaranteed and time shall not be of the essence thereof. Neither the Seller nor Supplier shall be liable for any consequences, loss of time, damages, expenses, consequential losses or any other loss whatsoever incurred by the Buyer arising out of or in connection with any delay in the supply howsoever caused.
- 6.2. If a charge is imposed on the Seller by the owners/operators of a berth and/or Barge by reason of the prolonged occupation of the berth and/or delays in unmooring from the Barge, for reasons beyond the control of the Seller, its servants or agents, the Buyer shall be liable for such charge.
- 6.3. Time shall be of the essence in relation to the arrival of the Buyer's Vessel at the Place of Delivery.
- 6.4. If the Buyer's Vessel is not at the Place of Delivery and in all respects ready to take delivery of the Marine Fuel by the Cancelling Date, the Seller shall be entitled to immediately cancel the Delivery without giving prior notice.
- 6.5. Whether or not the Seller exercises the option to terminate shall be entirely without prejudice to its right to claim for its damages arising as a result of the Buyer's Vessel not being ready to take delivery by the Cancelling Date. In the event that the Seller elects not to terminate, then the Seller shall be entitled to claim damages arising out of the late arrival, compensation for such damages being calculated at US\$ 5,000.00 (five thousands US Dollars) (without any evidence) unless the Seller is in a position to prove a higher damages in which case the Seller will be entitled to compensation at such higher loss in addition to recovering from the Buyer any increases in the Basic Cost of Marine Fuel resulting from the delayed arrival of the Buyer's Vessel.

## 7. TITLE AND RISK

- 7.1. The risks in and to the Marine Fuel shall pass from the Seller to the Buyer according to the rules of Incoterms® 2010 applicable to the terms of delivery of the Marine Fuel set out in the Order Confirmation.
- 7.2. Title and/or property rights in and to the Marine Fuel delivered shall remain vested in the Seller, and regardless the applicable Incoterms® 2010, until full payment has been received by the Seller of all amounts due in connection with the respective Delivery. Until that time, the person in possession of the Marine Fuels delivered shall hold the Marine Fuel as a mere bailee for the Seller
- 7.3. Although the Marine Fuel remains the Seller's property until fully paid for, it shall be at the Buyer's risk from the time of Delivery. Delivery is completed and risk in the Marine Fuel passes to the Buyer once the Marine Fuel has passed the Seller's or its Supplier's flange connection. At that stage the Buyer assumes all risks, including loss, damage, contamination, leakage, fire, spills, deterioration, depreciation, evaporation and shrinkage to the Marine Fuel delivered and shall insure the Marine Fuel against any such loss or damage. In the event of such loss or damage, the Buyer shall hold the proceeds of such insurance on behalf of the Seller as trustee of the Seller.
- 7.4. Until full payment of any amount due to the Seller has been made, the Buyer shall not be entitled to use the Marine Fuel other than for the propulsion of the Buyer's Vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the Marine Fuel to any third party or other vessel. In the event that the Marine Fuel has been mixed with other bunkers onboard the Buyer's Vessel, the Seller shall have a valid claim and lien on such part of the mixed bunkers as corresponds to the quantity or net value of Marine Fuel delivered by the Seller.
- 7.5. In case of breach of 7.3 by the Buyer, the Seller is entitled to take back the Marine Fuel without prior juridical intervention, without prejudice to all other rights or remedies available to the Seller. In such case, the Marine Fuel supplied in each Sales Agreement is sold and applied to the credit of the Buyer's Vessel, as well as on the promise of the Buyer to pay amounts due in connection with the respective Delivery. It is agreed that the Seller shall have and may assert a maritime and/or contractual lien against the Buyer's Vessel for any amounts due under the Sales Agreement. Any such lien shall extend to all hire and/or sub hire and/or freight and demurrage and/or sub freights and demurrage for any amounts due under the Sales Agreement.
- 7.6. No disclaimer stamp or notice of any type applied by the Buyer on a Bunker Delivery Note issued by the Seller to the Buyer shall be accepted, nor shall any stamp or notice waive or alter the Seller's lien on the Marine Fuel or the Vessel or waive the Vessel's or the Buyer's liability under the Sales Agreement.

- 7.7. In case the Marine Fuel, in part or full, is no longer present or can no longer be identified or distinguished from other bunkers, the Seller has the right to arrest and attach the Buyer's Vessel at any port where the Buyer's Vessel may be found, and also any sister ship and/or any other assets of the Buyer or of the owner of the Buyer's Vessel, wherever situated in the world, without prior notice.
- 7.8. Where title in and to the Marine Fuel delivered has passed to the Buyer and/or any third party before full payment has been made to the Seller of all sums due in connection with the Delivery, the Buyer shall further be deemed to have granted a pledge in such Marine Fuel to the Seller. The Buyer shall furthermore be deemed to have granted a pledge in any other Marine Fuel present in the Buyer's Vessel, including any mixtures of the delivered Marine Fuel and other Marine Fuel. Such pledge will be deemed to have been given for any and all claims, of whatever origin and of whatever nature that the Seller may have against the Buyer.

## **8. QUANTITY DETERMINATION**

- 8.1. The quantity of Marine Fuel delivered shall, at the Seller's option, be determined by the Seller's or Supplier's personnel or representative from the official gauge or meter of the bunkering barge or tank truck effecting Delivery, or of the shore-tank in the case of Delivery ex-wharf.
- 8.2. Except where government regulations or local authorities determine otherwise, adjustment in volume owing to difference in temperature shall be made in accordance with API/ASTM-IP Petroleum Measurement Standards.
- 8.3. In the absence of manifest error or fraud, the Seller's measurements of volume and calculations of quantity in accordance with Clause 8.1 shall be final and conclusive of the quantity of Marine Fuel delivered. However, should quantity be subject to determination by local customs authorities, the final and binding quantity shall be the one resulting from such determination.
- 8.4. The Buyer, at its own expense, shall be at liberty to appoint a Buyer's Accredited Representative who shall witness and check such weights and measurements, but determination of quantity shall be made solely by the Seller, and will be conclusive, subject to Clause 8.3.
- 8.5. The Buyer shall be deemed to have accepted the Seller's or Supplier's measurement of the volume of Marine Fuel delivered unless the Buyer's Accredited Representative has witnessed such measurement and has made a complaint in writing as to accuracy at the time of Delivery. The Seller has the option to leave delivery equipment connected to the Buyer's Vessel at the Buyer's expense until such quantity dispute has been resolved to the Seller's satisfaction. However, the Buyer has no right to leave delivery equipment connected and/or delay unmooring pending resolution of such a quantity dispute. Unless otherwise instructed by the Seller or Supplier and notwithstanding the fact that a quantity dispute might exist, the Buyer's Vessel shall always promptly disconnect delivery equipment and unmoor on the advice from the Seller or Supplier that Delivery has been completed.
- 8.6. The content of 0.5% (zero point five percent) of water and non-petroleum sediments plus 0,59 x reproducibility of the relevant test method in the Marine Fuel shall be allowed and accepted by the Buyer as part of the invoiced quantity, with no additional liabilities for the Seller whatsoever.
- 8.7. In respect of the quantity agreed upon, the Seller shall be at liberty to deliver, and the Buyer shall accept a variation of 10% (ten percent) from the agreed quantity, with no other consequences whatsoever other than a similar variation in the corresponding invoice from the Seller.

## **9. QUALITY**

- 9.1. The quality of the Marine Fuel shall be determined by the Seller which shall be of the quality generally offered to the Seller's customers for the similar use.
- 9.2. The selection and acceptance of a particular grade of Marine Fuel, including determination of compatibility with other Marine Fuel already on board the Buyer's Vessel, shall be the Buyer's responsibility. There are no conditions, guarantees, warranties or terms, express or implied, by common law or statute or otherwise, as to the satisfactory quality, merchantability, fitness, durability or suitability of the Marine Fuel for any particular purpose whatsoever, or otherwise, which extend beyond the description of the Marine Fuel appearing in Clause 9.1.
- 9.3. The Buyer shall have the sole responsibility and bear the risk for the selection of the proper grades of Marine Fuel for use in the Buyer's Vessel and the Seller shall be under no obligation to check whether the grade of Marine Fuel is suitable for the Buyer's Vessel.

- 9.4. The Buyer shall also have the sole responsibility for the selection of the Marine Fuels to comply with any and all government (including customs) regulations and any IMO regulations including MARPOL Annex VI.
- 9.5. The Buyer may at its own expense appoint an independent petroleum inspector to inspect the Marine Fuel to be delivered before it is pumped onto the Buyer's Vessel. Any such inspection shall take place in the presence of personnel and/or a representative of the Seller or Supplier.
- 9.6. The Buyer shall be responsible for keeping the delivered Marine Fuel segregated from any other Marine Fuel or any other product on board the Buyer's Vessel or from a different Delivery to the Buyer's Vessel. The Buyer shall not have the benefit of this warranty if any alterations to the Marine Fuels were carried out by the Buyer or a third party without the Seller's consent, or if a defect is due in whole or in part to the misuse, abuse, improper use or storage of the Marine Fuels.
- 9.7. Marine Fuel shall be accepted by the Buyer with no additional liabilities whatsoever if the test result for an acid number indicates that the acid number is less than or equal to a specification limit of 101.5% (hundred one point five percent) of 0,59 x (fifty nine) reproducibility of the acid number test method.
- 9.8. Where standard specifications are being given or referred to, Marine Fuel shall be considered to meet the specification limit and shall be accepted by the Buyer without compensation or any other liability or consequences whatsoever on the part of the Seller if the test result is such that:
- In the case of a maximum specification limit, the test result is less than or equal to a specification limit 0,59 x (fifty nine) reproducibility of the relevant test method.
  - In the case of a minimum specification limit the test result is greater than or equal to the specification limit plus 0,59 x (fifty nine) reproducibility of the relevant test method
- 9.9. Defects and/or complaints on the quality of the delivered Marine Fuels, if any, do not affect the Buyer's obligation to pay for the delivered Marine Fuels as provided in Clause 12 herein.

## 10. CLAIMS

- 10.1. The Buyer shall be deemed to have accepted the quality and the quantity of Marine Fuel (as stated in the Bunker Delivery Note) unless a written notice in relation to quality from the Buyer or in relation to the quantity (in accordance with the stipulations of Clause 8.5) from the Buyer's Accredited Representative accompanied by fully set of documentation in accordance with Clause 10.2 (the "**documented quantity/quality claim**") is received by the Seller within 30 (thirty) days of Delivery.
- 10.2. The documented quantity/quality claim must include, but not limited to, the full report of the Buyer's Accredited Representative together with ullage reports for all bunker tanks (including settling, service and storage tanks) on the Buyer's Vessel both prior and subsequent to the Delivery; an independent laboratory analysis report of the Buyer's retained quality sample as referred to in Clause 11.3; the position, destination and ETA of the Buyer's Vessel; all correspondence to/from the fuel testing organization used by the Buyer; the location of the Marine Fuel on board the Buyer's Vessel and the rate and quantity of consumption since the Delivery; details as to the 3 (three) previous Marine Fuel deliveries to the Buyer's Vessel in terms of the quantity, quality and specification of the product supplied and the place and date of supply and name of supplier; and ullage reports for all bunker tanks (including settling and service tanks) on the Buyer's Vessel both prior and subsequent to the Delivery.
- 10.3. Following any claims made by the Buyer under Clauses 10.1 and 10.2, the Buyer must within 15 (fifteen) days of the Seller's written demand provide the Seller with true copies of any requested vessel logs, records plus copies of communications between the Buyer and the Buyer's Vessel both prior and subsequent to the Delivery, failing which the Buyer will be deemed to have accepted that the quantity and/or quality that was stated in the Bunker Delivery Note was correct and the Buyer will have waived its right to and be barred from progressing the claim.
- 10.4. The Buyer shall provide full co-operation to the Seller and make all necessary arrangements for the Seller or its representatives to investigate such claim(s) made in accordance with Clauses 10.1, 10.2 and 10.3, including, but not limited to, the boarding and inspection of the Buyer's Vessel, the interviewing of the officers and crew and the inspection and copying of the Buyer's Vessel's documentation. Failure to comply with this Clause 10.4 shall be deemed to constitute an acceptance on the part of the Buyer that the quantity and/or quality that was stated in the Bunker Delivery Note was correct and the Buyer shall be deemed to have waived any entitlement to and shall be barred from progressing any such claim(s).

- 10.5. No servant or agent of the Seller or Supplier shall in any circumstances whatsoever be under any liability whatsoever to the Buyer for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on its part while acting in the course of or in connection with its employment and, without prejudice to the generality of the foregoing provisions of this Clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Seller or to which the Seller is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the Seller acting as aforesaid and for the purpose of all the foregoing provisions of this Clause the Seller is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be its servants or agents from time to time and all such persons shall to this extent be deemed to be parties to the Sales Agreement.
- 10.6. The Seller shall be discharged from all liabilities whatsoever in respect of any claims of whatsoever nature that the Buyer may have under the Sales Agreement and all claims shall be time barred 30 (thirty) days after the Delivery or the date by which Delivery should have been made. This provision shall survive any termination of the Sales Agreement.

## 11. SAMPLES

- 11.1. The Seller shall arrange for the collection of 4 (four) representative samples of each grade of Marine Fuel delivered in accordance with its sampling procedures or the procedures of any accredited petroleum inspector appointed by Seller, prior to the Marine Fuel leaving the shore tank, Seller's Barge or tank trucks.
- 11.2. The Buyer or the Buyer's Accredited Representative has responsibility to witness that such samples are drawn correctly and shall be deemed to have confirmed his witnessing thereof and that the samples were properly and correctly sealed by signing the labels of the sample bottles unless he or it shall have given the Seller within 24 (twenty four) hours of the completion of sampling notice in writing of any perceived discrepancies. However, the absence of the Buyer or the Buyer's Accredited Representative during all or any part of the sampling process shall not in any way prejudice the validity of the 4 (four) representative samples.
- 11.3. 3 (three) of the representative samples shall be taken for quality purposes ("**Quality Samples**"). The 4th (fourth) sample shall be known as the MARPOL Control Sample. One sealed Quality Sample and the MARPOL Control Sample shall be handed to the Master of the Buyer's Vessel and the two other Quality Samples shall be retained in a safe place by the Seller for 15 (fifteen) days or such other minimum period as is required under applicable law, whichever is the longer, from the date of Delivery. At the end of the said period the remaining Quality Samples retained by the Seller may be discarded unless the Buyer has made a complaint or claim as provided for under Clauses 10, in which case one of the Quality Samples shall be retained by the Seller for its own use and other Quality Sample shall be retained by the Seller for analysis by the Seller for analysis by the expert referred to in Clause 11.4.
- 11.4. Within the time limits set out in Cause 10, any dispute as to the quality of the Marine Fuel delivered shall be determined finally and conclusively by an independent laboratory appointed and paid for jointly by the Buyer and the Seller. If the Seller and Buyer cannot agree on such an appointment, then the Seller can at its sole discretion decide which laboratory will perform the analysis and the findings of that laboratory shall be final and binding on both Parties.
- 11.5. Any samples drawn by the Buyer's personnel either during bunkering or at any later date shall not be valid and shall be deemed to have no evidential value whatsoever as an indicator of the quality of Marine Fuel supplied.

## 12. PAYMENT AND INVOICES

- 12.1. Unless otherwise specified in the Order Confirmation all payments shall be made by bank transfer into the Seller's nominated bank account, for the amount and in the currency specified in the Order Confirmation, in full without any set-off, withholding, deduction, counterclaim of any kind whatsoever. Any deduction or set off from the Seller's invoice after the payment date for whatever reason shall be considered a breach of the Sales Agreement and the Buyer shall be deemed to have automatically waived and lost its rights to make or pursue any claim against the Seller of whatsoever nature whether notified or not including any right to terminate the Sales Agreement.
- 12.2. Unless otherwise specified in the Order Confirmation, all payments shall be made by the Buyer within 30 (thirty) days from the date of the Seller's relevant invoice (electronic copy accepted).
- 12.3. If the terms of the Sales Agreement between the Seller and the Buyer contains conditions of a security payment instrument ("**SPI**") to be provided by the Buyer to the Seller, such as, but not limited to, pre-payment, irrevocable documentary or stand-by letter of credit, before such SPI receipt considered as being in good order by the

Seller, the Seller reserves the right not to make available for collection, load, ship or otherwise deliver any quantity of the Marine Fuels. All resulting losses, costs and/or damages incurred by the Seller due to delay or failure by the Buyer to provide the SPI in accordance with the Seller's instructions shall be for the account of the Buyer and payable by the Buyer to the Seller immediately upon demand for payment of the latter.

- 12.4. Regarding any payments, time is of the essence. Accordingly, the Seller may, without prejudice to any other of its rights, automatically and without prior notice, charge interest on any overdue payment at the rate of 3-month USD LIBOR plus 5% (five percent) per annum from the due date of the payment calculated on a daily basis (when USD LIBOR rate is negative, 0% (zero percent) shall be applied) and an administrative fee being US\$ 1.00 (one US Dollar) per metric ton of Marine Fuel supplied or US\$250.00 (two hundred fifty US Dollars), whichever is the higher, until all outstanding amounts are received by the Seller in full. All costs and expenses incurred by the Seller with respect to the collection of overdue payments (including, but not limited to, attorney's fees, expert fees, court costs and other expenses) shall be borne by the Buyer.
- 12.5. (i) If the Seller decides, at its sole discretion, to reduce such interest and charge in Clause 12.4 to the maximum amount permitted by the law or lower, or, (ii) if such interest rate is finally determined by any court of competent jurisdiction to exceed the maximum amount permitted by law, the interest and charge shall be reduced to the amount decided by the Seller or the maximum permitted by law.
- 12.6. Failure by the Buyer to pay, partially or wholly, in accordance with the terms of the Sales Agreement for any quantity of Marine Fuels delivered by the Seller will immediately entitle the Seller: (a) to suspend Delivery of any or all other instalment(s) corresponding to the Sales Agreement or any other agreements existing between the Parties; and/or (b) to enforce the provisions of the Clause 12.4 herein; and/or (c) to cancel the Sales Agreement and claim any and all the Seller's incurred direct and indirect costs, damages and losses related to such suspension of delivery or cancellation of the Sales Agreement.
- 12.7. If the payment date falls on a Saturday, Sunday or a London Banking Holiday, payment will be effected on the preceding London Banking Day. For Deliveries made in the port, in the event the Delivery falls outside normal business hours at the relevant port or outside harbour limits, the Seller shall invoice the Buyer with all extra charges associated with such Delivery, including, but not limited to, overtime and extra fees.
- 12.8. If the Buyer has not by the expiration of the credit period, which might be granted at the full discretion of the Seller, paid any amount due to the Seller in respect of the Delivery under this or any other Sales Agreement between the Seller and the Buyer and/or in the case of occurrence of any of the events listed in Clause 13.1, the Seller, in addition to and without prejudice to any other rights it may have, shall have the right: (i) if the Delivery hereunder has been made, to notify the Buyer that the amount due in relation to the Delivery under this or any other Sales Agreement is immediately due and payable, and (ii) if the Delivery hereunder has not been made, to notify the Buyer of the termination with immediate effect of the Sales Agreement for such Delivery or any other Sales Agreement.
- 12.9. Payments made by the Buyer shall at all times be credited in the following order (i) interest and administrative fees (ii) financial charges incurred as a result of the Buyer's late payment (including all costs) (iii) invoices in their order of age.

### **13. RIGHT TO SUSPEND THE PERFORMANCE OF THE ORDER AND TO TERMINATE THE SALES AGREEMENT IN CASE OF DEFAULT**

- 13.1. If the Buyer is in default of performance of any of its obligations towards the Seller under the Sales Agreement; or where the Buyer fails to complete the KYC or give timely delivery instructions to enable the Seller to make deliveries in accordance with the terms of the Sales Agreement; or if the Seller, at its sole discretion, determines that a change in the person of the Buyer, its subsidiaries, parent, associates or affiliate companies (together for the purpose of this Clause, the "**Company**") has occurred, in its Company ownership, structure or situation, in its financial or property situation or in its commercial image, as well as in the event of protests, executive or precautionary proceedings, suspension, difficulties or delays in fulfilling third party obligations including paying invoices and, in any case, should the Seller determine that the Buyer and the Company are insolvent or subject to composition procedures, then the Seller may at any time, and at its option without prejudice to any of the Seller other rights: (i) suspend the performance of its obligations under this Sales Agreement; and/or (ii) hold the Marine Fuels due at its shipping point for Buyer's account, in which case the Buyer shall be liable to pay storage charges for such Marine Fuels at appropriate storage rates as established by the Seller; and/or (iv) demand return and take repossession of any delivered Marine Fuels which have not been paid for and all costs relating to the recovery of those Marine Fuels shall be borne by the Buyer; (v) cancel the order for the Marine Fuels, in which case the Buyer shall be liable to pay appropriate Cancellation Fee as per Clause 14.1; and/or (vi) terminate the Sales Agreement and claim any direct or indirect costs, losses, damages incurred by the Seller pursuant to such termination.

- 13.2. Notwithstanding the above, the Seller has the right to claim from the Buyer liquidated damages in case of delay or failure to take delivery by the Buyer of any quantity of the Marine Fuels specified in the Sales Agreement, for any loss it suffers as a result of delay or failure to take delivery by the Buyer amounting to of 0.5% (zero point five percent) of the value of the rejected/or un-accepted/or un-collected Marine Fuels, per day of delay up to a maximum of 110% (hundred ten percent) of the total value of the rejected/or un-accepted/or un-collected Marine Fuels. The Parties agree that quantifying losses arising from rejection or failure to collect the Marine Fuels by the Buyer is inherently difficult insofar as such delay or failure may impact the Seller's reputation or require the Seller to provide non-monetary concessions to its own suppliers, and further stipulate that the agreed upon sum is not a penalty, but rather a reasonable measure of damages, based upon the Parties' experience in the industry and given the nature of the losses that may result from delay. This Clause shall apply in the event of concurrent delay or delay caused by a third-party.
- 13.3. The amount of the liquidated damages payable by the Buyer as described in this Clause 13 is strictly without prejudice and not limited to any other direct damages or indirect damages suffered by the Seller as a result of failure by the Buyer to perform any of its obligations under the Sales Agreement.

#### 14. CANCELLATION

- 14.1. Without prejudice to any other rights of the Seller under the Sales Agreement, if subsequent to Seller's Order Confirmation the Buyer cancels or reduces the quantity of the Marine Fuel ordered or if the Buyer fails to take delivery of part or all of the quantity of Marine Fuel by the delivery date specified in the Order Confirmation, the Buyer shall pay to the Seller a cancellation fee in the amount of 10% (ten percent) of the Unit Price for such quantity of the Marine Fuel order that is cancelled, reduced or in respect of which the Buyer had failed to take delivery of by the delivery date specified in the Order Confirmation ("**Cancellation Fee**"), provided that the minimum amount of such Cancellation Fee shall be in any event not less than US\$ 5,000.00 (five thousand US Dollars). If the Seller's losses exceed the Cancellation Fee, then the Seller shall also be entitled to claim for such additional losses.
- 14.2. The Buyer's: (i) wrongful non-acceptance or rejection of Marine Fuels and/or (ii) cancellation of the Order Confirmation, shall entitle the Seller to recover from the Buyer, automatically, (a) its direct or indirect damages, including but not limited to, transportation costs, storage costs, return of the Marine Fuels, taxes, custom duties, insurance costs, loss of market, loss of reputation, etc. caused by such Buyer's actions and (b) if the Marine Fuels cannot be resold by the Seller to a third party within a reasonable timeframe, the Price of such Marine Fuels as quoted in the Order Confirmation. The payment of any amount which become due by the Buyer shall be paid by the Buyer within 15 (fifteen) days from the date of the Seller's demand.

#### 15. EXCLUSION OF LIABILITY AND LIMITATION OF WARRANTY

- 15.1. The Seller shall not be liable for any direct or indirect loss or damage whatsoever, including any loss of profit or any other indirect, special, incidental or consequential loss or damage howsoever arising from any cause whatsoever whether in contract, tort or otherwise including, without limitation, the acts or omissions or negligence of the Seller, its servants, agents or sub-contractors. No liability will be borne by the Seller for deviation costs, demurrage, damage or delays to any vessels or the Buyer's Vessels or to their engines or tanks, and any actual or prospective loss of profits or the damages or loss arising from the exercise of the Seller's right to suspend and/or terminate the delivery of the Marine Fuel.
- 15.2. The Seller shall in no circumstances be liable to the Buyer whether in contract, tort (including without limitation negligence), breach of statutory duty, strict liability or otherwise, for any direct or indirect loss, expense or damage whatsoever resulting from incomplete or erroneous information provided by the Buyer, irrespective of whether such error is innocent or intentional, with respect to the specified sulphur content limit to be recorded in the Bunker Delivery Note on the basis of the Buyer's notification that the fuel is intended to be used i) in combination with an equivalent means of compliance in accordance with Regulation 4 of MARPOL Annex VI; or ii) is subject to an exemption for a ship to conduct trials for the development of ship emission reduction and control technologies and engine design programmes in accordance with Regulation 3.2 of MARPOL Annex VI.
- 15.3. The Buyer shall indemnify and hold harmless the Seller, the Supplier and the Seller's and Supplier's servants and representatives for and in respect of any and all claims, losses, damages, liabilities, fines, penalties, expenses and legal costs of whatsoever nature arising out of or in any way for the breach of the Sales Agreements, fault or neglect of the Buyer, its agents, servants, sub-contractors, representatives, employees and the officers and crew of the Buyer's Vessel, delivery of and/or the Buyer's receipt, use, storage and/or transportation of the Marine Fuel. The Buyer further agrees to defend, hold harmless and indemnify the Seller from all claims, proceedings, demands, settlements and/or recoveries that arise from, relate to, and/or are

alleged to arise from or relate to, the sampling or the boarding or presence onboard the Buyer's Vessel of any employee, servant, agent or sub-contractor of the Seller.

15.4. Notwithstanding the foregoing provisions of this Clause, in the event that the Seller is found to be liable to the Buyer:

- under no circumstances shall the total maximum liability of the Seller for all claims including claims for interest and costs exceed an amount equal to 50% (fifty percent) of the purchase price of the Marine Fuel delivered or intended to be delivered under each Sales Agreement; and
- In respect of any liability for damage to the Buyer's Vessel, such liability shall in any event be reduced by 20% (twenty percent) of the invoice value of the spare parts for each year or fraction thereof in which the replaced part has been in use; and
- It is a precondition to the payment of any compensation by the Seller that all sums standing due to the Seller from the Buyer, including any interest that may have accrued, are first paid and settled in full without deduction or set off.

15.5. The Buyer is under an obligation to take all reasonable actions to avoid, eliminate and/or minimize damages and costs associated with any off-specification or suspected off-specification Marine Fuel, including the retention and burning of Marine Fuel in accordance with Seller's instructions. If the Buyer removes such Marine Fuel without the express written consent of the Seller, then all such removal and related costs shall be for the Buyer's sole account.

## 16. TAXES AND OTHER CHARGES

16.1. The Basic Cost of Marine Fuel is calculated on an ex-wharf basis. The Buyer shall pay any and all additional charges expenses and/or costs associated with the delivery, including but not limited to:

- Wharfage, the use of all oil pollution control equipment required to effect delivery, clean-up costs, insurance, delivery charges (barging, pipeline, vehicle or wagon charges and other similar charges) , demurrage or other similar charges;
- Any mooring or unmooring charges, port dues which may be incurred by the Seller in connection with the delivery of Marine Fuel to the Buyer's Vessel;
- Duties; taxes (imposed, levied or assessed on the purchase, exchange, importation, use, resale, transportation or handling of the Marine Fuel); tolls; fees; freights or other costs without limitation in the country where delivery takes place, for which the Seller is accountable but which are for Buyer's account;
- Any overtime charges as per Clause 12.6.

16.2. The Basic Cost of Marine Fuel shall be VAT exclusive, unless specifically stated otherwise.

## 17. FORCE MAJEURE

17.1. Both Parties shall be released from their respective obligations, other than the Buyer's obligation to make payment or to take Delivery of the Marine Fuel, in the event that a delay in performing or inability to perform any of the Party's obligations in this Agreement as a result of force majeure. For the purpose of this Agreement "force majeure" means any unavoidable circumstance beyond the control of a Party including but not limited to an act of God, storm, flood, tempest, riot, civil disturbance, war (declared or undeclared), military action, insurrection, act of government or military agency acting under actual or assumed authority, expropriation, failure of any source of supply, acute or unusual material shortages, strike, lockout, labour disturbances, or lawful or unlawful labour disputes, prohibitive governmental regulation and any other causes whatsoever beyond the control of the Seller or the Buyer. Provided however, that extended labour problems affecting the Buyer's operations shall not be considered force majeure.

17.2. The Party affected by an event of force majeure will inform the other Party within 7 (seven) days following the date when it becomes aware of it. If, within a cumulative period of 10 (ten) days suspension, the affected Party is unable to resume performance under this Sales Agreement, the Parties shall meet and mutually agree restructuring of their obligations and failing such agreement being reached, any Party may terminate this Sales Agreement upon written notice, in which case all money due for the Marine Fuel delivered by the Seller to the Buyer shall be paid by the Buyer.

## 18. ENVIRONMENT

18.1. The Buyer shall provide its employees, agents, contractors, users and customers with health, safety and environmental information including the Material Safety Data Sheets ("**HSE Data**"). The Seller on request from the Buyer shall supply the HSE Data and any other relevant information relating to the danger to health and environment of the Marine Fuels. The Buyer shall be responsible for ensuring that all relevant requirements,

obligations, recommendations, international regulations, directives, conventions or guidelines in respect of health, safety and the environment relating to the delivered Marine Fuels are complied with.

- 18.2. The Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of any Marine Fuels.
- 18.3. The Buyer shall at all times comply with any obligations, requirements or recommendations contained in any law, statute, directive or regulation of any territory, state or jurisdiction in or through which the Marine Fuels may be delivered, sold, transported or used and all Government, state or local regulations at the port such as, but not limited to, those related to fire, or spillage or loss of Marine Fuels. Compliance by the Buyer with the recommendations in HSE Data shall not excuse the Buyer from its obligations under this Clause.
- 18.4. If a spill occurs during Delivery the Buyer shall promptly take all action reasonably necessary to remove the spillage and mitigate its effect. If the Buyer fails to promptly take such action, the Seller may, at its option and upon notice to the Buyer or the agent for the Buyer's Vessel, take such measures it considers to be required for the removal of the spillage and the mitigation of its effects by employing its own resources or contracting with others. The Buyer shall indemnify the Seller against all liability, costs and expenses including but not limited to those incurred by the Seller in accordance with the provisions of this Clause arising from any spillage except to the extent that such spillage has been caused or contributed to by the negligence of the Seller or failure of or defect in the Seller's equipment. The Buyer shall promptly provide the Seller with any requested documents and information regarding a spill including the vessel's spill contingency plan or any other applicable programme for the prevention or mitigation of pollution as required by any applicable laws or regulations.
- 18.5. The Buyer shall indemnify and keep indemnified the Seller against any liability, fines, penalties, costs, expenses, claims or proceedings whatsoever arising out of or in connection with any failure by the Buyer to comply with its obligations under this Clause.

## 19. ASSIGNMENT

- 19.1. The Buyer shall not assign this contract to any third party and shall not in any other way alienate any of its rights under this Sales Agreement whether in whole or in part without prior written consent of the Supplier. The Seller shall be free to assign or transfer its rights and obligations under the Sales Agreement to any of its affiliated companies and/or third parties, it is being understood that no prior written consent of the Buyer shall be required.
- 19.2. In the event of any such assignment, the assignee will be bound by the obligations of the assignor under the Sales Agreement, and the assignee shall agree in writing to be bound by the terms of the Sales Agreement.

## 20. NOTICES AND COMMUNICATION

- 20.1. Any electronic communication between the Seller and the Buyer shall be effective as originals and shall be considered to be "in writing" or "written" between the Parties.
- 20.2. The Buyer acknowledge and consent that the Seller may electronically record telephone conversations between the Parties including but not limited to any of the Buyer's employees, officers, or agents in relation to the Sales Agreement. The Seller may use such recording for the purposes of resolving any disagreement between the Parties including submitting such recordings as evidence in any legal proceeding. The Buyer undertakes to notify accordingly any employees or third parties whose conversation may be recorded.

## 21. OTHER TERMS

- 21.1. Notwithstanding anything to the contrary contained herein, nothing in the Seller's terms is intended, and nothing herein shall be so interpreted or construed, to induce or require either party hereto to act in any manner (including any failure to take any action in relation to a transaction) which is inconsistent with, penalised by or prohibited under any laws, regulations, or other official government, United Nations or European Union requirements applicable to such Party, relating to foreign trade controls, export controls, embargoes or international sanctions of any type.
- 21.2. The Sales Agreement contains the entire agreement between the Seller and the Buyer with respect to the matters set forth in the Order Confirmation and supersedes all prior agreements, whether oral or written, in connection therewith as well as any other/conflicting terms and conditions which the Buyer may seek to rely on against the Seller. The application of the Buyer's terms and conditions is excluded.
- 21.3. No term of the Sales Agreement, unless expressly stated otherwise, is intended to, or does, confer a benefit or

remedy on any third party. A person, company or other legal entity who is not a party to the Sales Agreement shall not have or acquire by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise any rights in relation to the Sales Agreement.

- 21.4. The Buyer warrants that it has not in connection with this Sales Agreement relied upon any representations, whether written or oral, made by or on behalf of the Seller, but has relied on its own knowledge, judgment and expertise.
- 21.5. The Sales Agreement and any documents related to it shall be strictly confidential and neither Party shall disclose the Sales Agreement or its existence to any third party whatsoever without the written consent of the other Party, save where, and to the extent that the Party is under a legal or regulatory obligation to make such disclosure.
- 21.6. Rules of Incoterms® 2010 shall apply when not in contradiction with the terms and conditions of the Sales Agreement. In the case of any inconsistency between the Order Confirmation, this GTC and the Incoterms® 2010, the Order Confirmation and other provisions of the GTC shall primarily prevail and the GTC terms shall prevail over the Incoterms® 2010.
- 21.7. If any provision of this Sales Agreement in whole or in part, is rendered void, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 21.8. All headings and titles of the Clauses contained in these GTC are included for mere convenience of reference and shall not affect the latter construction or interpretation.
- 21.9. If there is any translation of these GTC in any other language than English, the English version shall prevail in case of discrepancies in the texts or in the interpretation.

## **22. GOVERNING LAW AND JURISDICTION**

- 22.1. The Sales Agreement, including the GTC, shall be governed by and construed in accordance with English law except that the federal laws of the United States of America shall apply to the substantive issue of the existence and enforcement of a maritime lien. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply to the Sales Agreement.
- 22.2. No term of the Sales Agreement shall be enforceable under the contracts (Rights of Third Parties) act 1999 by any person, company or other legal entity which is not a party to the Sales Agreement against one of the Parties to the Sales Agreement.
- 22.3. Any dispute arising out of or in connection with Sales Agreement, including any question regarding its existence, validity or termination, shall be referred exclusively to the High Court in London. Nothing in this Clause shall (or shall be construed so as to) limit the right of the Seller to take proceedings against the Buyer in the courts of any country in which the Buyer has assets, financial interests or business or in any other court of competent jurisdiction whether in relation to the existence of a maritime lien or otherwise nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.