

## GENERAL TERMS AND CONDITIONS

### 1. Agreement

- (a) Unless it is otherwise agreed in writing between the Seller and the Customer, these General Terms and Conditions ("T & Cs") shall apply to any Contract for the sale of Marine Fuel between the Seller and the Customer of such Marine Fuel. Where the Seller agrees expressly with the Customer in writing for a particular term or terms to be included in their Contract which are inconsistent with these T & Cs, such particular term or terms shall prevail over these T & Cs only to the extent of such inconsistencies.
- (b) No binding agreement is entered into between the Seller and the Customer until the Seller has sent its confirmation of nomination by email or by fax.

### 2. Definitions

In these T&Cs, unless the context otherwise requires, the following definitions and meanings shall apply:

- (a) "Customer" means the company(ies) named in the Sales Confirmation buying the Marine Fuel under a Contract with the Seller and shall include its principal, servants, agents and designated representatives and the registered owner of the Vessel to which bunkers are being supplied, its charterers and/or managers and/or operators and/or the Customer of the Vessel on whose behalf the company(ies) named in the Sales Confirmation is acting.
- (b) "Seller" means Australia Bunkering Pty Limited and shall include any of its branch offices, servants, agents and designated representatives.
- (c) "Marine Fuel" means the different grades of Bunker Fuel Oil, Intermediate Bunker Fuels, Marine Fuel Oil, Thin Fuel Oil, Marine Diesel Oil, Light Marine Diesel Fuel and Gas Oil or any other type and grade of oil delivered or contracted to be delivered or arranged to be delivered by the Seller.
- (d) "Contract" means an agreement by the Customer to buy and a corresponding agreement by the Seller to sell and deliver or to arrange for the sale and delivery of Marine Fuel of a specified quantity at a specified price.
- (e) "Delivery Port" means a port at which the Seller delivers or arranges for the delivery of Marine Fuel pursuant to a Contract.
- (f) "Company" includes a body corporate, a natural person, an unincorporated body, a governmental-agency and/ or a statutory corporation.
- (g) "Vessel" means the ship or vessel(s) nominated to take delivery, or taking delivery or having taken delivery of the Marine Fuel under a Contract on behalf of the Customer for which Marine Fuel is to be, has been or arranged to be delivered by the Seller.

### 3. Price

- (a) The price of Marine Fuel shall be the price quoted by the Seller and accepted by the Customer as confirmed in the sales confirmation or its equivalent pursuant to the Contract for the relevant type of Marine Fuel delivered or to be delivered. The Seller shall invoice the Customer in US\$ or any other pre agreed currency for the price which it has agreed in writing to supply the Customer.
- (b) The Customer shall also pay:
  - (i.) all and any duties, levies, expenses, taxes, impositions, delivery charges, barging fees, road trucks, jetty fees, freights, premiums, overtime and other costs incurred by the Seller, or for which it is accountable, in respect of deliveries and for arranging delivery of Marine Fuel to the Customer;
  - (ii.) all and any losses, costs and expenses incurred by reason of the master of the vessel rejecting the whole or any part of the delivery of the Marine Fuel for any reason whatsoever;
  - (iii.) if the Seller or its supplier does not have duty free stocks of Marine Fuel available and delivers from duty paid stocks to the Customer, the Customer shall be responsible for paying the amount of any such duty;
  - (iv.) all and any additional fees, costs and charges identified in the Port Guide applicable to the Delivery Port;
  - (v.) all and any losses, costs, expenses and charges incurred by the Seller resulting from the Customer's failure and/or breach and/or non-compliance with its obligations under the Contract for whatever reason;
  - (vi.) all and any losses, damages, demurrage, overtime and additional expenses incurred by the Seller by reason of the Customer's failure, or that of its representative and/or agents, to provide the Seller or its supplier with at least 48 hours' prior notice (which excludes Saturdays, Sundays and Public Holidays) of any changes to previously notified delivery times, grades, quantity or cancellations;
  - (vii.) all and any extra 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 Delivery Port or place of delivery/work;
  - (viii.) all and any losses, damages or demurrage, whatsoever and howsoever incurred by the Customer due to and/or arising out of and/or in connection with any delay or congestion at the shore terminal, or to any other commitment(s) of available barges in the delivery of Marine Fuel under the Contract to the Customer. This condition will also apply where the delivery of Marine Fuel is affected by public holidays and practices of the Delivery Port and/or the country where the Delivery Port is located.
  - (ix.) all applicable barging charges together with transportation taxes and pumping charges if applicable.
- (c) The Seller reserves the right to increase the price charged for any Marine Fuel if there is any increase in the costs incurred or to be incurred by the Seller in making the relevant supply due to factors beyond its control. Such factors include, without limitation, any increased taxes, duties, the making of any law, order, by-law or other regulation, the occurrence of any currency fluctuation affecting the cost of any imported items and any increase in costs charged by the Seller's supplier for any reason whatsoever.

**4 Payment**

- (a) Payment shall be made by the Customer in the agreed currency in accordance with the Seller's invoice, and without any discount, withholding, offset or allowance, and shall be made by means of electronic wire transfer to the bank account in accordance with the payment instructions stated in the Seller's invoice.
- (b) The Customer is in default of this Agreement if payment is not received in full by the due date stated in the Seller's invoice. In addition to any other rights which the Seller may have it shall be entitled to charge the Customer interest on the overdue amount at a rate equivalent to the maximum business overdraft rate of Westpac Banking Corporation, Australia, prevailing on the due date stated in the Seller's invoice plus 2% per annum pro rata from the due date for payment of the overdue amount until it is received in full by the Seller. Interest will be calculated on a daily basis.
- (c) If at any time the Seller is of the opinion before delivery to the Customer that adequate assurance of the Customer's ability to perform its obligations under these T & Cs is lacking and/or become doubtful, or that the financial ability of the Customer is impaired or unsatisfactory, the Seller may, in its sole and absolute discretion, request the Customer to pay cash in advance or to put up security acceptable to the Seller, and the Seller may refuse and/or withhold delivery until the Customer complies with such requests, or failing the Customer's compliance with such request within 3 working days from the date of request, the Seller shall be entitled to terminate the Agreement but without prejudice to the Seller's rights to claim damages from the Customer. In such circumstances, the Customer shall have no recourse against the Seller.
- (d) All overdue payments may be applied, at the sole and absolute discretion of the Seller, first towards the settlement of interest outstanding before application to the principal payment sums under this Agreement or any other contract between the Customer and Seller.
- (e) The Customer shall be liable for all legal fees, costs and any expenses incurred by the Seller in connection with the recovery of any amount that is due under the Seller's invoices or in accordance with these T&Cs. In particular, the Customer agrees to reimburse the Seller on a full indemnity basis for all legal costs incurred by the Seller in connection with enforcement of the Seller's rights under this Contract.

**5. Deliveries**

- (a) Wherever the Seller accepts delivery nominations, all such deliveries shall be within port limits, unless delivery outside of such port limits of such other ports is agreed in advance in writing by the Seller.
- (b) All deliveries under a Contract shall be made ex-wharf or ex-light/barge in accordance with the instructions given by the Customer or the Master of the Vessel, subject to the Seller's agreement to such instructions, which agreement shall be reached before the delivery is commenced by the Seller pursuant to the Contract. Without recourse available to the Customer, the Seller is entitled to suspend delivery of the Marine Fuel under the Contract until such agreement is reached, and if no such agreement is reached within fourteen (14) days from the date of delivery intended under the Contract, the Seller shall be entitled to terminate the Contract but without prejudice to the Seller's rights to claim damages from the Customer.
- (c) The Customer shall give the Seller, unless otherwise agreed or requested by the Seller, at least five (5) working days' advance notice of the requested date of delivery (which excludes Saturdays, Sundays and Public Holidays) and to provide the details of the delivery between 09:00 to 17:00 hours (Australian time) by email, telex or telefax, unless waived by the Seller in writing. Such notice shall identify the Customer and the Contract and shall specify all delivery details, including but not limited to, the port, name of Vessel, the agent of Vessel, its estimated time of arrival, approximate date of delivery, location of Vessel, method of delivery and confirmation of the grade and quantity of Marine Fuel ordered. The Customer and/or the agent of the Vessel shall give the Seller at least Forty-Eight (48) hours confirmation notice (which excludes Saturdays, Sundays and Public Holidays) between 09:00 to 17:00 hours (Australian time) by email, telex or telefax, unless waived by the Seller in writing, of the exact quantity of Marine Fuel required and the exact location and exact time at which the delivery is required. If the Customer makes any changes after the confirmation notice, such a bunker delivery will be subject to point 3(b) above.
- (d) Delivery of Marine Fuel by the Seller to the Customer shall be carried out, inter alia, subject to any regulations, requirements and procedures (including any amendments and revisions thereof) as may be prescribed from time to time by any governmental or port authority at the port at which the Seller accepts delivery nominations. The Customer shall, in any event, be solely responsible for ascertaining, acquainting itself and complying with inter alia, all such regulations, requirements and procedures which are applicable at the Delivery Port and in complying with all relevant berth restrictions and requirements and the Customer agrees to indemnify the Seller for any losses, costs and expenses which have been incurred by the Seller following the Customer's failure to comply with such regulations, requirements and procedures.
- (e) The Customer shall make all necessary connections and disconnections between the delivery hose(s) and the vessel's intake pipe and to ensure that the delivery hose(s) are properly connected to the Vessel's intake pipe prior to the commencement of delivery. The Customer shall render all other necessary assistance and provide sufficient tankage and equipment to receive all the delivery promptly under the Contract. Where delivery is undertaken ex-wharf, the Customer shall promptly receive the delivery and withdraw the Vessel from shore terminal or wharf once delivery is completed.
- (f) The delivery date shall be deemed to be the date of completion of delivery as stated on the bunker delivery note.

**6. Samples**

The Seller or its supplier or their agents or representatives shall take one primary sample of each grade of Marine Fuel at the time of delivery from which four representative samples shall be taken and be used. The samples shall be conclusively deemed to be representative of the quality of the Marine Fuel supplied to the Vessel. The Customer, or its agent/representative, shall be at liberty to witness the sampling. Three of those samples are taken for quality purposes and the fourth is to be the MARPOL Control Sample. One sealed quality sample and the MARPOL Control Sample shall be handed to the master of the vessel and the other two quality samples retained by the Seller or its supplier for a thirty day period.

**7. Measurement of quantity**

The quantity of marine fuel delivered shall be measured by the barge effecting delivery or by gauging in the supplier's store tank or oil meter, in accordance with the ASTM-IP Petroleum Measurement Tables, or the methods of any other recognised standards authority at the discretion of the Seller or its supplier.

**8. Safety**

- (a) The Customer shall take all necessary measures and precautions to provide a safe environment for the Vessel prior to and during the delivery of marine fuel.
- (b) The Customer 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 Customer further warrants that the Vessel will not be moored at a wharf or alongside other marine loading facilities of or chosen by the Seller unless free of all conditions, deficiencies or defects.
- (c) The Seller and/or its supplier reserve the right not to commence delivery or to terminate delivery in the event that it is reasonably determined that the environment for delivery is unsafe.

**9. Title and risk**

- (a) Delivery of marine fuel shall be deemed to be complete and risk shall pass from the Seller or its supplier to the Customer as the marine fuel passes the flange connecting the delivery facilities provided by the Seller or its supplier with the receiving facilities provided by the Customer.
- (b) Title to the Marine Fuel shall remain with the Seller and pass to the Customer only upon payment in full of the price of the Marine Fuel delivered pursuant to Clauses 3 and 4 hereof. Until such time as payment is made in full, on behalf of itself and the Vessel, the Customer agrees that it is in possession of the Marine Fuel as Bailee of the Seller and the Customer warrants that it will hold the Marine Fuel subject to the interest and entitlement of the Seller and will keep separate and not use, consume, burn, assign, on-sell or co-mingle the Marine Fuel to any extent. If however, prior to payment, the Seller's Marine Fuel is co-mingled with other marine fuels on board the Vessel, title to the Marine Fuel shall remain with the Seller corresponding to the quantity of the Marine Fuel delivered. If the Customer co-mingles the Marine Fuel with bunkers owned by a third party and the total co-mingled bunkers are reduced through use to an amount less than the amount delivered under the Contract, title in the unused Marine Fuel will remain with the Seller on a pro rata basis calculated using the amounts as they were when originally co-mingled.
- (c) Clause 9(b) is without prejudice to such rights as the Seller may have to enforce its right of lien against the ships or to otherwise obtain security by seizure, attachment or arrest of assets under this Contract and the laws of the governing jurisdiction against the Customer or the Vessel in the event of non-payment.

**10. Claims**

- (a) Any claim by the Customer concerning: (i) quantity must be notified in writing to the Seller and/or its supplier prior to the signing of delivery receipts; (ii) quality or price must be made in writing to the Seller within fourteen (14) days after the date of delivery of the Marine Fuel setting out the full details of the claim with supporting documents, otherwise the Customers' rights to such a claim shall be extinguished and time barred.
- (b) In default of the relevant notices as required in Clause 10(a)(i) and/or (ii) above, the Customer shall be deemed to have waived all claims in relation to the quality or quantity of the Marine Fuel delivered and shall be barred from commencing any proceedings for any claim for damages and/or losses and/or costs of whatsoever nature and howsoever caused against the Seller.
- (c) Disputes as to quality shall be determined in the following manner:
  - (i) a retained sample taken at the time of the delivery of the Marine Fuel by the Seller or its supplier shall be analysed by a mutually agreed independent laboratory in accordance with ISO 8217 or any other specification as agreed between the Seller and the Customer.
  - (ii) In the event that the Seller makes a proposed appointment of an independent laboratory, this shall be notified to the Customer by fax or email. The Customer shall reply to the Seller within 15 days from receipt of the Seller's proposed choice of the independent laboratory. Otherwise, the Customer shall be deemed to have accepted the Seller's proposal and the independent laboratory proposed by the Seller will be appointed. Both the Seller and the Customer agree to be bound by the results of the tests performed by the independent laboratory so appointed. If the parties cannot agree on a choice of independent laboratory, then an expert appointed by the Chairman of the time of the Australian Institute of Petroleum shall be asked to nominate one and that choice will be final.
  - (iii) The test results produced by the independent laboratory appointed under Clause 10 (c)(ii) shall be interpreted in accordance with ISO 4259 Sections 9 and 10 and shall be conclusive as to the quality of marine fuel delivered and are binding on the Seller and the Customer. The costs and expenses of any tests and the analysis shall be borne by the Seller if the results are in favour of the Customer or by the Customer if the results are in favour of the Seller.
  - (iv) In the event of any claim as to quality of the Marine Fuel delivered under the Contract, the Seller shall be entitled and the Customer shall permit, or where the Customer has chartered the Vessel, shall obtain the owners' authorisation to allow the Seller or its supplier and/or their agents/ representatives to attend on board the vessel, to carry out all necessary inspections and investigations,

including but not limited to the inspection of the Master's logs and/or the Vessel's engine records and taking copies of these documents which the Seller considers necessary for its investigations and shall have access to the Vessel's engine spaces and taking whatever samples the Seller considers necessary. The Customer shall under no circumstances deny the Seller access to such documents and/or refuse copies to be produced. Failure to allow boarding, access and/or to produce copies of documents shall constitute a complete defence to any claim brought by the Customer.

**11. Exclusion clause**

- (a) The Seller gives no guarantee or warranties and makes no representations as to, and shall have no liability for, the satisfactory quality, merchantability, fitness or suitability of the Marine Fuel for any particular purpose or otherwise. The Customer warrants that it relies solely on its own enquiries in respect of the satisfactory quality, merchantability, fitness or suitability of the Marine Fuel in all respects.

- (b) The Seller shall not have any responsibility or liability for the choice and nomination of Marine Fuel made by the Customer or its suitability for the Vessel, including compatibility with fuel already on board. The Seller does not warrant and is not under any obligation to inspect whether the Customer's selection and nomination is suitable for use by the vessel in question or any other receiving facility. The Marine Fuel arranged or supplied by the Seller shall be of a homogeneous nature generally available at the place where the Vessel is to take/has taken delivery of the Marine Fuel. The Seller shall bear no responsibility whatsoever for any information which it has given to the Customer on the characteristics of the Marine Fuel and which shall not in any event be taken to be a specification of the Marine Fuel to be and/or has been supplied under the Contract.
- (c) The Seller shall not be responsible for any claim as to quality arising from the co-mingling of the marine fuel with other products or materials by the Customer on board the Vessel.
- (d) The Seller's obligation to deliver is subject to availability to it and/or its supplier at the delivery port.
- (e) Neither the Seller nor its supplier shall have any liability to the Customer, whether in contract, tort, under statute or otherwise, under or in connection with this Contract for:
  - (i) Any loss of hire and/or loss of freight; and/or
  - (ii) Demurrage; and/or
  - (iii) Any acts or omissions of the Seller's agents and/or subcontractors including but not limited to those transporting the Marine Fuel and/or fueling agents; and/or
  - (iv) loss of actual or anticipated profit; and/or
  - (v) losses caused by business interruption; and/or
  - (vi) loss of goodwill or reputation; and/or
  - (vii) any indirect, special or consequential cost, expense, loss or damage, even if such cost, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by the Seller or its supplier and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise
- (f) If price controls are imposed at the Delivery Port, the Seller and/or its shall be entitled to suspend or withhold the delivery. In such circumstances, the Customer shall have no recourse against the Seller.
- (g) In any event, save for claims in respect of death and personal injury, the Sellers' liability to the Customer or any person claiming to have rights under this contract against the Seller, for any claims, whether arising from quality, quantity, accident, delay, spill, pollution or any other cause whatsoever, shall be limited to the price of the Marine Fuel contracted to be delivered as confirmed in the Seller's sales confirmation

## 12. Rights of the Seller

- (a) The Seller is hereby granted and will have and may assert a maritime lien or the like over the Vessel, its machinery and equipment to the extent that this is permitted under the laws which govern this contract or by the laws which apply in any jurisdiction where the Vessel is found and/or registered. All costs associated with the arrest, seizure or detainment of the vessel are to be for the Customer's account.
- (b) In circumstances where the Customer is not the owner of the Vessel the Seller reserves the right to claim against the owner of the Vessel for payment of any sum or liability arising under or in connection with these T&Cs or any Contract to the extent that the owner of the Vessel would be liable under the law and legislation of the place:-
  - (i) where the owner of the Vessel is incorporated or maintains its principal place of business; and/or
  - (ii) where the Vessel can be found.
- (c) It is noted that the rule concerning venue and choice of law mentioned below shall be considered unwritten in relation to the rights conferred on the Seller according to the present point.
- (d) The Seller will not accept bunker delivery receipts endorsed with "No-Lien" stamps, or words to that effect.

## 13. Force majeure

The Seller shall not be responsible for any loss, damage or demurrage howsoever arising and/or for any breach, delay, failure or non performance of the obligations under the Contract if it is prevented from doing so by reasons of:

- (i) any circumstance whatsoever which is not within the Seller's control; or
- (ii) the interruption, unavailability, or inadequacy of Marine Fuel, or any constituent thereof, or any facility of production, manufacture, storage, transportation, distribution or delivery, because of wars, hostilities, public disorders, acts of enemies, sabotage, strikes, lockouts, labour or employment difficulties, fires, acts of God, accidents, breakdowns, weather conditions, or any other cause whatsoever which is not within the control of the Seller including, but not limited to, the curtailment, failure, termination or cessation in whole or in part of any of the existing or contemplated sources of the Seller's supply of Marine Fuel, or the crude oil or petroleum form which such Marine Fuel is derived ; or
- (iii) by any compliance with any law, regulation or ordinance, or with any order, demand or request of any international, national, port, transportation, local or other authority or agency or of any body or person purporting to be or to act for such authority or agency or any corporation directly or indirectly controlled by any of them whether or not such order or request is later determined to be invalid;

- (iv) by any circumstance which is outside its control which it reasonably considers makes performance of this Contract uneconomic to it.
- (b) The Seller shall not be required to remove any such cause or replace the affected source of supply or facility, and, in the event of an actual or anticipated shortage of supply that directly or indirectly prevents the Seller from fulfilling its own requirements as well as those of its customers including its affiliated companies and the Customer, the Seller may allocate available quantities of Marine Fuel to it, its buyers and the Customer in its absolute discretion.
- (c) In the event that any governmental authority imposes any form of price control, rationing, allocation, or other emergency measures on the Seller's sales of Marine Fuel at the port where the Customer desires to take delivery of the Marine Fuel and has contracted with the Seller for the same, then the Seller has the right to:-
  - (i) suspend delivery of any Marine Fuel under the Contract for such periods as the Seller may determine are required to resolve uncertainties raised by such governmental actions, alternatively to cancel such delivery and/or terminate the Contract if the Seller is of the opinion that the period of time required for such uncertainties to be resolved may be indeterminate or unforeseeable. In the event of such termination of Contract, the Seller shall be relieved of its obligations to perform hereunder; or
  - (ii) allocate such quantities of Marine Fuel to the Customer as the Seller may determine to be appropriate in its absolute discretion and in respect of any shortfall of the Contractual quantity, the Seller shall be entitled to suspend delivery of such shortfall for such period as the Seller may determine is required to resolve uncertainties raised by such governmental actions or alternatively to cancel any further delivery of such shortfall if the Seller is of the opinion that the period of time required for such uncertainties to be resolved may be indeterminate or unforeseeable, in which event the Seller shall be relieved of any further obligations to perform under the Contract in respect of this shortfall.
- (d) Where the Seller exercises the right to cancel or suspend any further delivery of such shortfall, the Customer shall only be liable to pay for the quantity delivered and if full payment has already been made by the Customer in respect of the contractual quantity, the Seller shall refund the Customer the value of such shortfall from the contractual price which has been paid.

**14. Indemnity**

- (a) The Customer shall defend, indemnify and hold the Seller and/or its supplier harmless against any claims, losses, costs (including costs as between attorney or solicitor and client), damages, liabilities, fines, penalties and expenses incurred or sustained, arising out of or in connection with this Contract howsoever except to the extent that such claims, losses, costs, damages, liabilities and expenses arise through the negligent act or omission of the Seller.
- (b) The Customer shall indemnify the Seller and/or its supplier against all expenses, disbursements and all costs which they incur in taking any measures to remove marine fuel or mitigate the effect of any escape, spillage or discharge which has been caused or contributed to by the Customer.

**15. Agents**

If this Contract is entered into by the Customer as an agent for a principal, whether such agency is disclosed or undisclosed, then such agent shall be liable, as well as the principal, not only as agent but also for the performance of all obligations of the principal. Such liability shall be joint and several.

**16. Termination**

- (a) This Agreement may be terminated forthwith by the Seller by giving written notice to the Customer if:
  - (i) the Customer breaches any obligation under the Contract whatsoever and howsoever arising; and/or
  - (ii) the Customer is placed into liquidation, receivership, administration, or enters into any arrangement or compromise with its creditors or anything analogous to any of the events as described happens to the Customer.

**17. Effects of Termination**

On any termination of this Agreement:

- (i) all sums owed to the Seller shall become immediately due and payable;
- (ii) The Seller is entitled to suspend delivery or vary the stipulated method of payment with immediate effect and to claim damages against the Customer if the Customer is in breach of any of its obligations under this Agreement or any of the events described in clause 16 take place.

**18. Assignment**

Prior to any assignment of this Agreement, the Customer must obtain the Seller's written consent.

**19. Environmental protection**

- (a) In the event of any escape, spillage or discharge of marine fuel while delivery is taking place under this Agreement, the Customer shall promptly take such action that is reasonably necessary to remove the marine fuel and mitigate the effects of any such occurrence.
- (b) The Seller and its supplier are hereby authorised, at their option, to take such measures as are reasonably necessary to remove the marine fuel and mitigate the effects of such an occurrence.
- (c) Any expenses, damages, costs, fines and penalties arising from such occurrence shall be paid by the company or person whose negligent act or omission caused or contributed to it. Reasonable disbursements incurred directly by the Customer and/or Seller for combating and limiting the pollution shall be borne at first instance equally by the parties, until and subject to an apportionment of liability agreed between the parties or determined in accordance with the laws of New South Wales by a competent Court in a

jurisdiction at the election of the Seller. The Customer's share of the disbursements shall become immediately due and payable on demand supported by invoices from the Seller and vice versa.

- (d) If a third party, including but not limited to government agencies and public authorities, makes a claim against the Customer and the Seller, whether jointly and/or severally, in connection with a pollution claim, the Customer and the Seller shall settle the pollution claim on the basis of the apportionment of liability agreed between the parties or determined in accordance with the laws of New South Wales by a competent Court in a jurisdiction at the election of the Seller .

## 20. Governing law and jurisdiction

Subject to the Seller's right set forth herein to enforce its right of lien against any Vessel to which the Seller provides Marine Fuel in any jurisdiction in accordance with the law of the United States of America, this Agreement shall be governed by the laws of New South Wales, Australia. Both the Customer and the Seller shall submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia. However, nothing herein shall affect or prejudice the right of the Seller to take action and/or commence proceedings in any jurisdiction to enforce its right of lien on ships or to otherwise obtain security by seizure, attachment or arrest of assets, and with regard to the enforcement of such rights the Seller shall be entitled to elect that the laws of the United States of America shall apply to this Contract, regardless of the country in which the Seller takes legal action. Should any provision hereof be finally determined to be inconsistent with or contrary to applicable laws, such provisions shall be deemed amended or omitted, but only to the extent necessary to conform with such application laws and this shall not affect any other provision hereof or the validity of the Contract.

## 21. Entire Agreement

- a) This Contract constitutes the entire agreement of the parties concerning its subject matter and any previous agreements, understandings and negotiations on that subject matter are of no effect.
- b) The Customer irrevocably warrants that in entering into this Contract it relied solely on its own enquiries and investigations and did not rely on any warranty, representation, undertaking, statement or matter made by or on behalf of the Seller and/or its supplier.

## 22. Miscellaneous

- (a) The Seller shall have a lien on the Vessel for all amounts owed to the Seller for Marine Fuel provided to the Vessel.

In the event that payment of the price is not received in full by the Seller within 30 days from the date of invoice, failing which within the period stated in the Seller's invoice, failing which from the date of delivery of Marine Fuel or as otherwise agreed between the parties in writing (the "Due Date"), upon notice from the Seller to the Customer the Customer agrees that, effective from the Due Date, an assignment shall take place of all the Customer's rights, interest and claims, including rights of action in rem against the receiving Vessel and/or claims in personam against her owners and/or bareboat charterers and/or time charterers and/or voyage charterers and/or managers, arising in connection with their (i.e. the Customer's) sale of such Marine Fuel to any receiving Vessel(s) and/or her owners/bareboat charterers/time charterers/voyage charterers/managers. No further agreement is required from the Customer for such an assignment to take effect in law and/or equity. For the avoidance of doubt, the Seller may then if it so wishes bring any action (including any action in rem against the receiving Vessel of the Marine Fuel) in the Customer's name or jointly in the names of Seller and Customer. The Customer irrevocably consents to have itself named as the Plaintiff or Co-Plaintiff in such action and hereby authorises the Seller to take all steps in connection with the commencement and continuance of such an action, including the terms on which any such claim may be settled, whether in its sole name or jointly. A receiving Vessel refers to the vessel to which the Customer shall deliver or agree to deliver or has delivered, pursuant to any contract of sale or supply of Marine Fuel between him (i.e. the Customer) and any third party (including the owner or bareboat charterers of such a vessel and/or time charterers and/or voyage charterers and/or managers). In these circumstances, the Customer agrees to use all reasonable efforts to comply with requests made by the Seller for copies of documents in the Customer's possession, custody or control in relation to the assigned claim and the Customer further agrees that it will execute any further document(s) reasonably required by the Seller in order validly to exercise these rights against a third party. It is hereby agreed that the Seller has the sole right to retain for itself any money recovered from a third party pursuant to this clause. Any claim brought against a third party under this clause shall be entirely without prejudice to the other claims or rights the Seller may have against the Customer under the Contract, which claims or rights shall remain in full force and effect. The recovery of any money under this clause from a third party shall not reduce or by way of set off be allowed to diminish the amounts which may be owed to the Seller by the Customer under the Contract.

- (b) Subject always to any other term of this Contract which provides for a different period, the Seller shall be discharged from all liability whatsoever in respect of the Marine Fuel or this Contract, whether arising in contract, tort, under statute or otherwise and any claim against the Seller shall be time barred unless suit is commenced in a Court of competent jurisdiction and served on the Seller within 3 months of the date of delivery of the Marine Fuel or the date on which the Marine Fuel should have been delivered.

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