

## Avin International Bunkers Supply S.A. 2007 Standard Supply Terms

### 1. Introduction:

The following are the General Terms and Conditions (known as the "The Avin International Bunkers Supply S.A. 2007 Standard Supply Terms" and referred to hereinafter as the "Terms") setting out the legal basis on which, with effect from September 1<sup>st</sup> 2007 ("the Effective Date"), Avin ("Seller") undertakes all deliveries of all the marine bunker fuels, oils, lubricants and other products and materials which it offers for supply.

### 2. The Confirmation

2.1 Any agreement for the supply of marine bunker fuels, oils, lubricants and other products and materials shall only be binding on the Seller upon confirmation in writing thereof by the Seller ("**Confirmation**"). The Confirmation shall be the exclusive and conclusive evidence of the agreed terms of sale and delivery. Even if not expressly mentioned in the Confirmation, the Terms shall be deemed to be referred to therein. The Terms and the Confirmation are together hereinafter referred to as the "**Contract**" and represent the entire agreement between the parties (superceding all prior warranties, representations and communications made or given in relation to the subject matter of the Contract) in relation to the supply and delivery to the Buyer (as hereinafter defined) of the marine bunker fuels, oils, lubricants and other products and materials referred to in the Confirmation (the material referred to in the Confirmation being hereinafter referred to as the "**Product**"). Where more than here one Product is referred to in the Confirmation, the Terms shall apply separately to the supply of each Product and there shall be deemed to be a separate Contract in relation to each. In the event of conflict or inconsistency between the Terms and the Confirmation, the latter prevails.

2.2 For the purposes of this clause, "writing" includes facsimile or other electronic means of communication.

### 3. Further Definitions

"**Agreed Delivery Place**" means the place specified in the Confirmation as being that at or within which the Vessel is to position within the Agreed Delivery Date for the purpose of receiving the Product

"**Agreed Delivery Date**" means the date or range specified in the Confirmation as being that within which the Vessel is to position at the Agreed Delivery Place for the purpose of receiving the Product

"**Buyer**" has the meaning ascribed to it in clause 4.

"**Vessel**" means the vessel, ship, barge or off-shore unit nominated in the Confirmation as the vessel to which the Product is to be delivered.

"**Owner**" means the registered owner or bareboat charterer of the Vessel

"**Bunker Tanker**" means a vessel that loads the Product from a supply vessel or onshore or offshore storage facility or vessel and delivers the Product to the Buyer

"**Unit Price**" means the rate of cost charged by the Seller to the Buyer in United States dollars (or such other currency specified in the Confirmation) per metric tonne (or such other unit of measurement as may be specified in the Confirmation) of Product, and as further defined in clause 8

"**Contract Quantity**" has the meaning ascribed to it in clause 5.

"**Purchase Price**" has the meaning ascribed to it in clause 8.

"**Substitute Product**" has the meaning ascribed to it in clause 6.

### 4. Parties bound

Where the Contract is made by a party acting as agent for another or by a party whose acts in concluding the Contract are subsequently ratified by that other, both the agent and the party or parties on whose behalf he acts shall be bound by the Contract, and liable to the Seller thereunder jointly and severally to the same extent as if they had all been principals, whether or not the principal was disclosed and whether or not the agent purported to contract as agent only, and the term "Buyer" shall embrace all such parties. Further and without prejudice to that the Buyer warrants that it is the Owner and, if not the Owner, that it has the Owner's actual authority to conclude the Contract on terms which bind the Owner as principal

### 5. Quantity

5.1 Subject to the other provisions hereof, the Seller shall supply the quantity of Product specified in the Confirmation ("Contract Quantity").

5.2 However the Seller shall have liberty to deliver 5% more or less than the Contract Quantity and shortfall or excess within that tolerance shall not be a breach. The Buyer shall pay for any quantity in excess of the Contract Quantity at the Unit Price.

5.3 The quantity delivered shall be determined exclusively by reference to measurement of the contents of the Bunker Tanker's tanks before and after completion of the delivery. The measurement referred to in this clause shall be measurement of all parameters deemed relevant by those undertaking the measurement as provided for in sub-clauses 5.4 and 5.5 for a determination of the quantity of Product delivered by the Bunker Tanker

5.4 If the Confirmation provides for appointment of a joint surveyor or one is otherwise agreed, the measurement required by clause 5.3 shall be undertaken by a joint surveyor appointed by the Seller and approved by the Buyer.

5.5 Otherwise the measurement required by clause 5.3 shall be undertaken by the crew of the Bunker Tanker or (in the Seller's option) by a surveyor appointed by the Seller, whose measurements the Buyer shall in each case be entitled to witness.

5.6 The quantity specified in a quantity certificate issued by or on behalf of the joint surveyor following measurement pursuant to clause 5.4 or the quantity specified in a quantity certificate issued by or on behalf of the Seller's surveyor following measurement by such surveyor pursuant to clause 5.5 or the quantity specified in a bunker delivery note or bunker receipt issued in relation to the Product and signed by or on behalf of the Bunker Tanker crew following measurement by the Bunker Tanker crew pursuant to clause 5.5 shall be conclusive as to the quantity delivered and final and binding on both parties, whether or not the Buyer has attended to witness the determination of quantity.

5.7 No claim for short delivery shall be entertained if put forward by reference to any evidence other than that referred to in clause 5.6, and in particular evidence as to the contents of the Vessel's tanks shall be irrelevant and inadmissible.

5.8 The Buyer undertakes and guarantees that the Bunker Tanker will not (whether de facto or by force of law or otherwise and whether by the Buyer or any third party including, but not limited to, the Owner or Charterer of the Vessel) be detained or prevented from or hindered in unmooring and/or departing from alongside the Vessel in the event that the Bunker Tanker crew wish to so unmoor or depart for any reason whatsoever (including, but not limited to, the fact that according to a certificate of quantity issued in accordance with the foregoing provisions the Bunker Tanker has delivered a quantity of Product which is within the range plus or minus 5% of the Contract Quantity, or because the Buyer or Vessel refuses or fails to accept the Product in accordance with the Contract, or because in the exercise of any liberty under this Contract the Seller declines to commence or continue delivery of the Product or for any other reason of whatsoever nature), and the Buyer will indemnify the Seller from and against any and all losses arising from any such detention, prevention or hindrance.

5.9 The cost of the joint survey under clause 5.4 shall be borne equally by the Seller and the Buyer. The cost of a Buyer's representative appointed pursuant to clause 5.5 above shall be borne by the Buyer

5.10 If the Seller at any time and for any reason believes that there may be a shortage of Product at the Place of Supply it may allocate its available and anticipated supply of Product among its customers in such a manner as it may in its absolute discretion determine.

### 6. Quality

6.1 Subject to the other provisions hereof, the Product shall conform to the quality specifications prescribed in the quality standard specified in the Confirmation.

6.2 The Seller may discharge its obligation to deliver Product as specified in the Confirmation by supplying in substitution therefor product (the "Substitute Product") of a different grade and/or brand name provided always that the Substitute Product shall be of an equivalent or superior specification to that specified in the Confirmation. The Unit Price for the Substitute Product shall be adjusted to reflect the market price prevailing for the Substitute Product at the Agreed Delivery Date and at the Agreed Delivery Place and otherwise the Contract shall apply to the Substitute Product to the same extent as it applies to the Product and where Substitute Product is supplied references in the Terms to "Product" shall be construed as references to Substitute Product.

6.3 No further or other warranties or guarantees are given by the Seller in relation to the Product as to quality, fitness for purpose or compliance with any particular description.

6.4 Without prejudice the generality of the foregoing, any terms (whether conditions, warranties or intermediate terms) as to merchantable, satisfactory or suitable quality, fitness for any particular purpose or compliance with any description are hereby excluded, and the Buyer represents and warrants that in entering into the Contract it has not relied on the skill or judgment of the Seller as to the fitness of the Product for its intended purpose.

6.5 Further, the Buyer shall be exclusively responsible for ensuring that the Product tendered for delivery is

6.5.1 that which is required by the Buyer and the Vessel

6.5.2 compatible with and suitable in every respect for use by the Vessel, her engines, machinery and fuel system and for transfer and storage within that system

- 6.5.3 in every respect fit for its intended purpose,  
6.5.4 compatible with any other product or products with which the Product may be blended, commingled or used in the Vessel's fuel system following initial delivery under the Contract  
and the Seller shall accordingly be under no liability whatsoever in relation to any of the aforesaid matters.

**7. Determination of quality**

7.1 Compliance of the product as delivered with the standards applicable to product of the description contained in the Confirmation as required by clause 6.1 shall be determined finally and conclusively by analysis in accordance with this clause of the samples drawn during bunkering pursuant to sub-clauses 11.12 to 11.16 inclusive. No other samples or analysis thereof shall be admissible as evidence of the conformity of the product as delivered to the requirements of the Contract.

7.2 In the event of a dispute as to the conformity of the product as delivered with the requirements of the Contract, the Buyer shall submit the sample retained by the Vessel for analysis by an independent laboratory approved in writing in advance by the Seller and local to the Agreed Delivery Place, or shall in its election request the Seller in writing to send one of its retained samples for analysis by an independent laboratory local to the Agreed Delivery Place.

7.3 Subject to sub-clauses 7.4 and 7.5 the results obtained by analysis pursuant to subclause 7.2 shall be final, binding and conclusive evidence as to the quality of the product as delivered.

7.4 If however, following receipt of the results of analysis undertaken pursuant to sub-clause 7.2 the Seller elects in his discretion to submit one of its retained samples (or, if one has already been analysed pursuant to sub-clause 7.2, its second retained sample) for analysis by an independent laboratory local to the Agreed Delivery Place, the results obtained by analysis of that sample shall (subject to clause 7.5) be final, binding and conclusive evidence as to the quality of the Product delivered.

7.5 A sample shall only be valid for analysis in terms of this clause if its seal has not been removed or tampered with other than as part of a procedure for analysis in accordance with this clause. Further, the results of any analysis shall only be final binding and conclusive if the party whose sample is being analysed has given 7 days' written notice to the other party of the intended time and venue for such analysis. Each party shall be entitled (by itself or its appointed representative) to attend to witness the breaking of the sample seal and the analysis itself. Failure by either party to attend or participate as aforesaid following receipt of notice as required by this clause shall not affect the final, conclusive and binding nature of the results of such analysis. For the purposes of this clause a laboratory local to the Agreed Delivery Place means one located in the same country as the Agreed Delivery Place.

7.6 If the Buyer fails, within 21 days from and including the date on which transfer of the Product to the Vessel is concluded, to give 7 days notice pursuant to sub-clause 7.5 in relation to the Vessel's retained sample or to request the Seller pursuant to sub-clause 7.2 to send one to the Seller's retained samples for analysis, the Product as delivered shall be deemed finally and conclusively to have conformed in all respects to the requirements of the Contract.

7.7 The costs of all analyses under this clause shall be borne by the Buyer in the event that the operation of this clause results in a final, binding and conclusive determination that the Product as delivered to the Vessel was in conformity with the requirements of the Contract as to quality, and otherwise shall be borne by the Seller.

**8. The Price:**

8.1 Subject to clause 8.4 the Purchase Price shall be the Unit Price stipulated in the Confirmation (or the Unit Price as adjusted in accordance with clause 6.2 as regards Substitute Product) multiplied by the Contract Quantity or the quantity actually delivered, if greater.

8.2 Save where the Confirmation stipulates that costs associated with bringing the Product by Bunker Tanker alongside the Vessel will be charged on a lump sum basis (in which case the Unit Price shall reflect only the cost charged by the Seller to the Buyer for the Product), the Unit Price shall reflect (i) the cost charged by the Seller to the Buyer for the Product and (ii) the all costs of delivering the Product to the Vessel.

8.3 All other costs and expenses associated with the delivery of the Product which are incurred (directly or indirectly) by the Seller (including without limitation the disbursements account, the Buyer's proportion of the fees and expenses of joint surveyors appointed to determine bunker quantities and their attendance on board the Bunker Tanker or the Vessel and so forth) shall be for the Buyer's account and shall be invoiced separately to the Buyer on a lump sum basis. Further where delivery is required outside normal business hours at the Agreed Delivery Place, and is permitted by applicable regulations, the Buyer shall pay all overtime and other extra expenses incurred (even if delivery takes place within the Agreed Delivery Date) which will be invoiced separately to the Buyer.

8.4 If, by reason of any breach of the terms of the Contract on the Buyer's part (including, but not limited to, the failure of the Vessel to arrive at a point within the Agreed Delivery place in full readiness in accordance with the Contract to receive the Product) the commencement of delivery of the Product is delayed by more than 48 hours after expiry of the Agreed Delivery Date, without prejudice to the Sellers' other rights and remedies the Purchase Price shall be increased to such value as the Seller may stipulate in a notice to the Buyer to reflect any increase in either the market value of the Product or the cost of delivery or both up to the date of actual commencement of delivery. For avoidance of doubt "Purchase Price" where used in these terms refers to the price determined in accordance with clause 8.1 or, if varied by this clause, the price as so varied.

8.5 The Purchase Price in relation to each part of the Product delivered shall be deemed earned as that part is delivered and for the purposes of any claim for security the Buyer agrees that the Seller has a sufficient cause of action in relation to the Purchase Price relating to the part so delivered to support any application for security in relation thereto with effect from that time, even though the Purchase Price is not payable until the time stipulated in clause 14.1

**9. The Delivery window:**

9.1 The Buyer undertakes that within the Agreed Delivery Date the Vessel will be at a position within the Agreed Delivery Place at which she can receive the Product and fully ready to do so in compliance in all respects with the terms of the Contract.

9.2 The Seller will endeavour, without guarantee and subject to (i) receipt of the Notices of Readiness ("NORs") required by this clause, (ii) the Buyer's compliance with its other obligations under this clause and (iii) generally to the Terms, to commence the delivery of the Product to the Vessel within the Agreed Delivery Date.

9.2 However failure to commence delivery of the Product within the Agreed Delivery Date shall not give rise to any right on Buyer's part to cancel this contract.

9.3 Further the Seller shall not in any event be liable if delivery is delayed or hindered beyond the Agreed Delivery Date for any reason whatsoever. Without prejudice to the generality of that, the Seller shall not be liable for any losses incurred by the Buyer or for which the Buyer may be liable to any third party, or for any loss, damage or delay to the Vessel of any nature whatsoever due to congestion, lack of availability of the Product, delays in supplying the Product to the Bunker Tanker, lack of bunker tankers or barges, other commitments of available bunker tankers or barges, sea or weather conditions, failure of Vessel to follow Seller's instructions or any other cause of whatsoever nature.

9.4 The Buyer or the Vessel shall provide not less than seventy-two (72) hours (approximate) notice of the Vessel's readiness for delivery, followed by a forty-eight (48) hours, twenty-four (24) hours, and twelve (12) hours notice of readiness for delivery specifying a time of readiness falling within the Agreed Delivery Date and a bunkering position within the Agreed Delivery Place where local port or other regulation permits the performance of bunkering operations.

**10. Passing of risk**

All risk and responsibility in and in relation to the each part of the Product shall pass to the Buyer as that part reaches the flange connecting the bunkering hose provided by the Bunker Tanker to the line or manifold supplied by the Vessel, at which point delivery of that part shall be deemed completed. The Buyer's risk and responsibility includes, but is not limited to, loss of or damage to, or deterioration, depreciation, evaporation, shrinkage, or contamination of, the Product and any loss, damage or other harm caused by the Product including (without limitation) pollution damage. The Buyer will indemnify the Seller in respect of any liability, claim or demand falling within the scope of the risk and responsibility allocated by this clause.

**11. The delivery operation**

11.1 The Buyer warrants that the vessel is capable of being, and will (entirely free of expense and risk to the Seller) prior to arrival of the Bunker Tanker alongside and at all material times thereafter be, safely and securely berthed or anchored at a clear and safe berth or safe anchorage to which the Bunker Tanker can proceed and at which it can remain alongside the Vessel throughout the bunkering operation and depart therefrom, always in safety, and that the Vessel will maintain position by her own means without aid of tugs or other external assistance and will be in every way fitted in herself and as regards her cargo for the bunkering operation and free from any peculiarities, conditions, defects, deficiencies or characteristics which the Bunker Tanker Master considers, in his sole and absolute discretion, may result in any increase in the hazards normally associated with any aspect of the operation to deliver bunkers by Bunker Tanker alongside or at anchorage, as the case may be. If the Bunker Tanker Master so considers or if he considers, in his sole and absolute discretion, that the provisions of this sub-clause have not otherwise been met, or if the relevant authorities so direct, the Seller shall be at liberty at any time to decline to commence or (if already commenced) to suspend (temporarily or permanently) the delivery of the Product under the Contract.

11.2 The Buyer shall ensure (free of expense to the Seller) that the Vessel provides a free, unobstructed, safe, always afloat and accessible side for the delivery of

the Product alongside which the Bunker Tanker can position in way of the Vessel's bunker manifold. The responsibility for and expense of providing proper and adequate fendering and any other protective equipment to ensure that the Bunker Tanker can remain safely alongside the Vessel shall rest with the Buyer. The Buyer shall ensure that all assistance as required by the Seller or its representatives in connection with the delivery is rendered promptly.

11.3 The Buyer and Vessel shall (free of expense to the Seller) moor and unmoor the Bunker Tanker and hoist and lower bunkering hose(s) from the Bunker Tanker whenever required by the Seller or the Seller's representatives and shall in any way requested assist the Bunker Tanker to achieve a smooth supply. The Buyer is responsible for ensuring that prior to and throughout the delivery all Vessel's pipes, manifolds, flanges, tanks and all other receiving equipment to be used is oil-tight and in good working condition to receive the Product in a safe manner. The Buyer shall make and be responsible for all connections and disconnections between the bunkering hose(s) and the Vessel's intake pipe and ensure that prior to and throughout the delivery the bunkering hose(s) are properly secured to the Vessel's manifold and all valves are opened or closed as appropriate to the tanks into which the Product is intended to be received, it being the Buyer's responsibility to ensure that the products tendered for Delivery are delivered into the correct tanks. The Buyer is further responsible for ensuring that Product is delivered at a safe rate and pressure and for ensuring that any local requirements for receiving bunkers are followed strictly by the Vessel.

11.4 The Seller shall not be required to deliver Product into any of the Vessel's tanks or other places that are not regularly used for storage of product of that type or grade and shall not be required to deliver any Product for the export of which a Government permit is required and has not been obtained.

11.5 The Buyer is responsible for obtaining (at its expense) all necessary permits, licences and approvals required to enable both parties to execute all of their obligations under the Contract, including (without limitation) all those required to enable delivery of the Product to take place at the Agreed Delivery Time and at the Agreed Delivery Place, and those mentioned in sub-clause 11.4.

11.6 The Buyer shall ensure that the Product is delivered only into empty bunker tanks and that in no circumstances will the Product be loaded on top of any other material already in such tanks.

11.7 The Buyer is responsible for ensuring that the Vessel is ready to receive the Product at the point stipulated in the NORs within the Agreed Delivery Place at the time stipulated in the NORs within the Agreed Delivery Date.

11.8 The Seller shall be entitled to deliver the Product in several part deliveries, in which case each part delivery shall be construed as a separate delivery.

11.9 If a spill occurs while the Product is being delivered (whether or not the Product spilt has been formally delivered in terms of clause 10), the Buyer shall at its expense promptly take such action as is necessary to remove the spilled Product and mitigate the effects of such spill. Without prejudice to the generality of the foregoing, the Seller is hereby authorized (but not obliged) in its full discretion at the expense of the Buyer to take such measures and incur such expenses (whether by employing its own resources or by contracting with other third parties) as are necessary in the judgment of the Seller to remove the spilled Product and mitigate the effects of such spill. The Buyer shall co-operate and render such assistance as is required by the Seller in the course of such action.

11.10 The Buyer shall indemnify and hold the Seller harmless against all expenses, claims, losses, damages (including damage to the Vessel), liabilities, penalties, costs and expenses (including legal expenses) arising from any spill, leakage or overflow, all of which shall be for Buyer's ultimate account.

11.11 The Buyer shall provide the Seller with all documents and other information concerning any spill or any programmed for the prevention thereof, that are required by the Seller, or are required by law or regulation applicable at the time and place of delivery.

11.12 The Seller shall arrange for three (3) representative samples of each grade of Product delivered to be drawn throughout the entire bunkering operation by means of manual drip or automatic sampling devices installed at the Bunker Tanker discharge manifold.

11.13 In the event that drip or automatic sampling is not available or functioning on board the Bunker Tanker, samples shall be taken as a composite of each of the Bunker Tanker's tank before commencement of the delivery operation, one-third of the sample to be taken from each of top/mid/bottom levels of the tanks.

11.14 The Buyer shall be entitled to have its representative present when such samples are taken.

11.15 The samples shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility/Bunker Tanker, product name, grade, quantity, delivery date and place and seal number. The labels shall be stamped with the Vessel's and the Bunker Tanker's stamp and signed by the Seller's representative and the Buyer's representative (but any failure of the labels to contain all information required by this clause or any failure or refusal of the Vessel to stamp the label or of the Buyer's representative to sign the label shall not affect the validity of the samples as final, binding and conclusive evidence of the quality of the Product in terms of clause 7).

11.16 Two (2) samples shall be retained by the Seller for thirty (30) days after completion of delivery of the Product. One (1) sample shall be retained by the Vessel.

## 12. Cost of delivery

Without prejudice to sub-clauses 8.2 and 8.3, all costs of and associated with the delivery shall be paid for and borne by the Buyer, including (without limitation) any taxes, pilotage dues, port dues and any and all other like costs, and the Buyer shall indemnify the Seller from and against any such matters.

## 13. The passing of title

13.1 Title in and to the Product delivered shall remain vested in the Seller, and shall not pass to the Buyer, until full payment has been received by the Seller of the Purchase Price and of any other sums due to the Seller under the Contract or under any other contract between the Seller and the Buyer.

13.2 Until payment in full has been made as aforesaid, the Buyer and Vessel owners undertake to hold the Product to Seller's order as bailees segregated from other product, and not to use it other than for propulsion of the Vessel, nor to mix, blend, sell, encumber, charge, pledge, alienate or surrender the same to any third party.

13.3 In case of any failure to pay the Purchase Price within the credit period (if any) allowed under the Contract, or in case of any failure to pay any other sums due to the Seller hereunder or under any other contract between the Seller and the Buyer, or in case of any insolvency of the Buyer within that credit period the Seller shall be entitled to take back the Product without judicial intervention, and the Buyer and Vessel owners warrant and undertake that the Seller by itself or its representativeness shall have liberty to enter on board the Vessel for that purpose

13.4 If, in breach of clause 13.2, the Product is mixed with any other bunkers or material on board the Vessel, the Seller shall thereupon acquire an interest by way of charge over the resultant blend to the extent of the outstanding Purchase Price relating to the quantity of the Product which was so blended (which, in the absence of proof to the contrary by Buyers, shall be deemed to have been the entire quantity of Product delivered) and to the extent of any other sums due to the Seller hereunder.

13.5 If in breach of clause 13.2 hereof the Product is sold whether upon delivery of the Vessel to a Charterer or otherwise, the proceeds of sale shall be held on trust for the Seller to satisfy the Purchase Price and any other sums due to the Seller hereunder or under any other contract between the Seller and the Buyer.

13.6 The provisions of this clause are without prejudice to all other rights and remedies available to the Seller to secure Buyer's obligation to pay the Purchase Price or any other sums due to the Sellers and to enforce their payment.

## 14. Payment:

14.1 Unless the Confirmation provides otherwise, and subject to the other provisions of this clause, the Purchase Price is payable on the 30<sup>th</sup> day after the date of the invoice issued in respect of the Product. Any lump sum or other cost or expenses as referred to in clauses 8.2 and 8.3 are payable on the day specified in the invoice issued in respect thereof as being the due date.

14.2 Payment of all sums due under the Contract shall be made to in full, without set-off, counterclaim, deduction, withholding and/or discount of any kind whatsoever and free of bank charges, to the bank account indicated by the Seller on the invoice.

14.3 Notwithstanding any agreement or other provision to the contrary, payment will be due immediately in case of bankruptcy, liquidation or suspension of payment or comparable situation of the Buyer, or arrest or attachment of assets or in case of any other situation, which in the sole discretion of the Seller, is deemed to affect the financial position of the Buyer adversely.

14.4 Payment shall be deemed to have been made on the date on which the Seller has received the payment in immediately available funds corresponding to the amount due.

14.5 Any delay in payment beyond the date stipulated in clause 14.1 or such other date as provided for in the Confirmation for payment shall entitle the Seller (without prejudice to its other rights or remedies) to interest at the rate of 2% per month or any part thereof.

14.6 Payments made by the Buyer shall at all times be credited in the following order: (1) costs, (2) interest, and (3) invoices in the order of their date of issuance, even if not yet payable.

14.7 All costs borne by the Seller in connection with the collecting of overdue payments, whether made in or out of court and in general all costs in connection with breach of the Contract by the Buyer including all legal fees incurred, shall be for the sole account of the Buyer and shall be paid on an indemnity basis as a debt due and payable on first demand.

## 15. Breach/cancellation and other remedies

15.1 In the event of any of the following:

15.1.1 the failure to provide each of the notices required under clause 9.4

- 15.1.2 the failure on the Buyer's part to obtain all permits or licenses required for the bunkering
- 15.1.3 the failure of the Vessel to arrive within 48 hours after the expiry of the Agreed Delivery Date at the position within the Agreed Delivery Place designated in the NORs at which bunkering is permitted by local regulation
- 15.1.4 the failure or refusal by the Buyer or the Vessel, for whatever reason, to accept or to be ready in accordance with the Contract to accept, the Product in full when tendered by the Seller;
- 15.1.5 the failure of the Buyer in part or in full to comply with its obligations to pay any amount due to the Seller whether in respect of the Contract or any other contract between the Seller and the Buyer.
- 15.1.6 if, before the delivery, it is apparent in the opinion of the Seller that the financial position of the Buyer is such as to present a risk which the Seller considers, in its sole and absolute discretion to be unacceptable to the Seller
- 15.1.7 the Seller exercises its liberty under clause 11.1 hereof to decline to commence the delivery or to suspend the same
- 15.1.8 if the Buyer commits any other breach of the Contract  
the Seller shall have the option (without prejudice to its other rights and remedies) to do any of all or a combination of the following
- i. cancel the Contract, in which event the Buyer shall be liable to make good all Seller's losses arising from the loss of the Contract as if on termination for repudiatory breach, including (without limitation) by payment of any loss of profit, the cost of storage and/or demurrage/hire or freight on bunker tankers pending re-sale and any wasted cost of delivery under the Contract or
  - ii. to store or to procure the storage of the Product in whole or in part for the account and risk of the Buyer and to charge the Buyer for the expenses thereby incurred, or
  - iii. to hold the Buyer fully to the Contract in which event the Buyer shall remain fully liable for (i) the Purchase Price (adjusted in accordance with the Contract as appropriate) for which action may immediately be brought by the Seller, and (ii) all Seller's losses arising from accrued breaches of the Contract by the Buyer, or
  - iv. to take any other measures which the Seller deems appropriate.
- 15.2 None of the Sellers' rights and remedies under this clause or elsewhere in the Contract (including, without prejudice to the generality of the foregoing, the right to increase the Purchase Price under clause 8.4) shall in any way be affected or waived by acceptance by the Seller of notices of readiness given under clause 9.4 or otherwise which indicate a time of readiness or arrival after the Agreed Delivery Date, and acceptance of such notices shall not constitute agreement on Seller's part to vary the Agreed Delivery Date.

#### **16. Time limits for, and handling of, claims**

- 16.1 Any claim for alleged short delivery of the Product must be submitted to the Seller and the Bunker Tanker by letter of protest (identifying the extent of the alleged shortage and a valid basis on which the Buyer believes the Product has been short delivered in sufficient detail to allow for investigation) before the Bunker Tanker's departure from alongside the Vessel, failing which the Seller shall be discharged and released from any and all liability in respect of any claim for short delivery of the Product. For the avoidance of doubt figures obtained by measuring Product in the Vessel's tanks shall not be a valid basis for believing a shortage to have occurred, and a letter of protest founded on such figures shall be deemed not to be a valid letter for the purpose of this clause
- 16.2 The Seller shall in any event be discharge and released from any and all liability in respect of any claim of whatsoever nature which the Buyer may have relating in any way to the quality of the Product delivered unless such claim has been presented in writing with all available supporting documents within 14 days from and including the date on which transfer of the Product to the Vessel is concluded.
- 16.3 In order to fulfill the condition in clause 16.2, the claim document referred to in that sub-clause must give full details of (and be accompanied by all available supporting documents in relation to) (1) the respects in which the Product is believed not to be of the quality required by the Contract and the factual basis for that belief, (2) the time at which the Product was first consumed (3) the rate of consumption of the Product and the quantity of Product consumed since delivery (4) the tanks into which the Product was delivered and the contents of those tanks before the delivery (5) the location of the Product and the quantities and locations of all other bunkers on board the Vessel in each case prior to consumption (6) the capacities and content of the Vessel's tanks used for storing the Product at the time of the written claim referred to in 16.2 and (7) any other information with regard to the technical specification relating to the systems used for treatment, heating, pumping and storage of the Product that Seller deems relevant to an evaluation of the claim (provided however that the provision of the information referred to in item (7) shall not be a condition precedent to a valid written claim under clause 16.2 unless the Seller has requested such information before expiry of the 14 day period provided for in that sub-clause, without prejudice however to Buyer's obligation to provide such information upon request).
- 16.4 Further in relation to any such claim as referred to in clause 16.2, within 28 days from and including the date on which transfer of the Product to the Vessel is concluded, the Buyer shall furnish the Seller with details (supported by documents) for each of the three preceding deliveries of bunkers to the Vessel of the quantity, quality and specification of the bunkers supplied, the place and date of supply and the name of the supplier, failing which the Seller shall be released and discharged from any and all liability in respect of such claim.
- 16.5 In the event of the Buyer has grounds to believe that the Product supplied does not accord with the Contract the Buyer shall immediately take all reasonable steps to mitigate the consequences of having been supplied with possibly defective or incorrect Product, including (without limitation) by retaining and/or blending the Product or adjusting the operating parameters of the fuel treatment and/or heating and/or pumping and/or storage and/or management systems on board the Vessel to accommodate the specification of Product actually delivered. To that end the Buyer is under a strict obligation to cooperate with the Seller to find and achieve the most cost-effective solution, and failing such cooperation any liability which the Seller might otherwise have had under the Contract shall thereupon be forthwith released. Further in the event of the supply of defective or incorrect Product as aforesaid the Seller may (in its sole and absolute discretion and option) remove and replace the same, and in that event the Seller's liability in respect thereof under the Contract or otherwise in respect of the Product shall thereupon cease and be released.
- 16.6 All other claims save as aforesaid must be submitted to the Seller in writing with all available supporting documents no later than 14 days from and including the date on which transfer of the Product to the Vessel is concluded, failing which the Seller shall be discharge and released from any and all liability in respect of such claim.
- 16.7 In any event the Seller shall be discharge and released from any and all liability in respect of any claim which the Buyer may have arising out of or in connection with the Contract if proceedings accordance with clause 25 have not been commenced by the Buyer in respect of such claim within 12 months from and including the Agreed Delivery Date.
- 16.8 Notwithstanding the submission of any claim hereunder, the Buyer shall be obliged to remit payment of the Purchase Price in respect of the Product supplied under the Contract.

#### **17. Extent of liability:**

- 17.1 The Seller shall have no responsibility or liability other than as expressly provided for in the Contract
- 17.2 The Seller shall not in any circumstances be responsible or liable for any actual or prospective loss of profits, earnings, demurrage, time, opportunities to trade or to contract for the trading of the Vessel whatsoever which the Buyer may sustain or for which it may be liable to the Owner or to any third parties, whether or not the said losses are losses which arise directly or indirectly or according to the ordinary or usual course of events from any breach of the Seller's obligations.
- 17.3 If and to the extent that the Seller is liable to the Buyer for any loss or damage whatsoever and on whatever basis arising out of or in connection with the sale or delivery of the Product, such liability shall not in any circumstances exceed the sum of US\$100,000 or the amount of the invoiced Purchase Price for the Product whose delivery under the Contract gives rise to the liability in question, whichever is the lesser.
- 17.4 The Terms replace and exclude any other liability, responsibility, warranty or condition imposed or arising or implied (whether by law, custom, statute, or presumed intention of the parties) or otherwise by reason of the Contract, and any and all liability at common law (whether in negligence or any other tort or otherwise) is expressly excluded. Without prejudice to the generality of the foregoing the U.N. Convention on Contracts for the International Sale of Goods, Vienna 1980, the Sale of Goods Act 1979 and the Unfair Contract Terms Act 1977 shall not apply, and the Seller shall be under no liability in respect of any statement of representations made prior to or in connection with the conclusion of the Contract, on which the Buyer warrants that in any event it placed no reliance in entering into the Contract.
- 17.5 The foregoing is without prejudice to clause 16.5 hereof.
- 17.6 Where however in the event that the Contract is one to which the Unfair Contract Terms Act 1977 applies mandatorily nothing in these Terms shall in that event have the effect of excluding or restricting such liability as the Seller may otherwise have to the Buyer for death or personal injury
- 17.7 The Buyer shall be liable to the Seller and shall indemnify and hold the Seller harmless from and against any and all claims, costs, expenses, demands, suits, damage and liabilities for damage to property or for injury or death of any person suffered or otherwise incurred by the Seller due to a breach of the Contract and/or any act or omission on the part of the Buyer, its agents, servants, employees and the officers, crew and/or other individuals on board or associated with the Vessel. The Buyer shall also indemnify and hold the Seller harmless in the event of any third party instituting a claim of any nature against the Seller which claim is a result, whether directly or indirectly, of any matter relating to the Contract and was not solely caused by any breach by the Seller of any of the terms of the Contract. Third party shall

mean any other (physical or legal) person than the Buyer.

**18. Insurance**

The Buyer shall effect and maintain insurances which will fully protect the Buyer, the Seller and all third parties from all risks, hazards and perils associated with or arising from the Contract or its performance.

**19. Himalaya**

Every exception, limitation, condition and liberty contained in the Contract, and every right, exemption from liability, defence or immunity of whatever nature applicable to the Seller or to which it is entitled under the Contract shall also be available to and shall extend to protect every servant, representative, agent or independent contractor of the Seller acting in the course of or in connection with its employment and/or agency for the Seller.

**20. Force Majeure**

Without prejudice to the other Terms,

20.1 The Seller shall not in any event be liable, nor shall the Buyer have any rights or remedies against the Seller (including, without prejudice to the generality of the foregoing and of the other Terms, the right to terminate the Contract or to abate or set off against the Purchase Price or any other sums due under the Contract), where performance of any obligation of the Seller under the Contract is delayed, hindered or prevented (whether temporarily or permanently) in or by any of the following circumstances: (a) because of compliance with any order or request of any government authority, or person purporting to act on its behalf; or (b) when supply of the Product or any facility of production, manufacture, storage, transportation, distribution or delivery used or contemplated for use by the Seller is interrupted, unavailable or inadequate for any cause whatsoever which is not within the immediate control of the Seller, including (without limitation) if such is caused by labour disputes, strikes, governmental intervention, wars, civil commotion, fire, flood, earthquake, accident, storm, ice, adverse weather or any act of God, the failure, cessation, termination, or curtailment in whole or in part of any existing or contemplated sources of the Seller's supply of the Product or crude oil or petroleum products from which such Product is derived or any other cause whatsoever which is not in the immediate control of the Seller. The Seller shall not be required to remove any such cause or replace any effected source or supply or facility if doing so shall involve additional expense or a deviation from the Seller's normal practices. The Seller shall not be required to make any deliveries omitted in accordance with this clause at any later time.

20.2 If such delay, hindrance or prevention lasts for more than 30 days, the Seller shall be at liberty to terminate the Contract without liability and upon such termination the Seller shall stand released from any and all liabilities in relation to future performance and in respect of any accrued breaches of the Contract.

20.3 In the event that any direct or indirect governmental authority or regulatory body imposes any form of price control, allocation or other emergency measures on Seller's sales of the Product at the Agreed Delivery Place, then the Seller has the right (without prejudice to its other rights):

- (a) to suspend or postpone delivery of the Product for such period or periods as Seller may determine are required to resolve uncertainties raised by such governmental actions; or
- (b) to allocate such quantities of Product to the Buyer as Seller may determine in its sole discretion to be appropriate; or
- (c) to cancel the Contract

20.4 The Buyer shall in no circumstances be relieved of its obligation to make payment of the Purchase Price or any other sum due under the Contract.

20.5 In the event that the Seller, as a result of force majeure as provided for herein, can only deliver a suitable variation (including a superior) grade of Product, the Seller is entitled as provided for in clause 6.2 (but not obliged) to offer the said grade, and the Buyer must accept delivery thereof and pay therefor at the price prescribed by reference to clause 6.2.

**21. Lien**

21.1 The Buyer agrees and acknowledges that, without prejudice to the terms of the Contract and in addition to any other security, the Product is supplied to the Vessel on the faith and credit of the Vessel and the Buyer hereby agrees that the act of supply confers on the Seller a lien over the Vessel in respect of the Purchase Price and all other sums due under the Contract. The Buyer, if not the owner of the Vessel, hereby expressly warrants that he has the authority of the Vessel's owners to pledge the Vessel's credit as aforesaid and to confer such lien and that he will give notice of this provision to the Owner prior to the supply. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit the creation of a lien as aforesaid.

21.2 Further and in any case and without prejudice to any rights or remedies otherwise available to the Seller, the Buyer expressly warrants that the Seller is authorized to arrest the Vessel and any other vessel in the same ownership, management or control, as security for the obligations of the Buyer under the Contract. Should the Buyer fail to make any payment to the Seller immediately when due the Seller may dispose of such arrested vessel whether by sale or otherwise as applicable under the relevant jurisdiction. All costs or expenses of whatever kind incurred by the Seller in respect of such arrest shall be for the sole account of the Buyer and shall be added to the claim for which arrest is made.

**22. Waiver**

The failure by any party to the Contract to enforce any right against any other party shall not be construed as a waiver of that right or in any way affect the validity of the Contract. Compliance by one party with a request which the other is not entitled to make hereunder shall not constitute waiver by the party so complying's strict rights hereunder or a variation of the Contract. In particular, the granting by the Seller of any additional time to make payment or the waiving or reducing of any financial or other charge shall not prevent the Seller at any time thereafter from relying upon its strict contractual rights. No waiver by either party of any breach of any of the covenants or conditions herein contained to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition.

**23. Assignment**

The Seller may assign all or any of its rights and obligations hereunder, and shall be at liberty to render performance of any or all of its obligations hereunder through, and to delegate such performance to, any third party of the Seller's choice. Without the prior written consent of the Seller the Buyer shall not be entitled to assign or transfer in full or in part any of its rights or obligations under the Contract.

**24. Severability**

In the case that for any reason whatsoever one or more of the (sub)clauses of these Terms are held to be invalid or unenforceable by any competent jurisdiction, court, authority or arbitration then the remainder of all other (sub)clauses contained herein shall remain valid and binding upon the parties.

**25. Law and jurisdiction**

25.1 The Contract shall be governed and construed in accordance with English law

25.2 Any dispute arising out of or in connection with the Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement. Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

25.3 In cases where neither the claim nor any counterclaim (excluding interest and costs) exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

25.4 For the sole benefit of the Seller it is further agreed that the Seller, without prejudice to any of its rights hereunder and to any claims or proceedings instituted pursuant to clauses 25.2 and 25.3 above, shall have the right to proceed against the Buyer, any third party or the Vessel in such jurisdiction as the Seller in its sole discretion sees fit, inter alia, for the purpose of securing payment of any amount due to the Seller from the Buyer.