

# **STANDARD TERMS AND CONDITIONS OF SALE AND DELIVERY**

## **1. DEFINITIONS**

- 1.1. Agreement means an agreement between the Seller and the Buyer concluded by way of exchange of written confirmation messages (including facsimile, telex or e-mail messages). The Agreement shall incorporate these terms and conditions.
- 1.2. Basic Cost means the basic cost of the Product calculated by multiplying the Unit Price by the quantity of the Product delivered to the Vessel.
- 1.3. Buyer means the party requesting the Seller to arrange for the delivery of the Product, and defined as being so in the Confirmation, as well as any party acting on behalf thereof.
- 1.4. Confirmation means a confirmation message sent to the Buyer by the Seller to confirm conclusion of the Agreement.
- 1.5. Due Date means the date when payment is to be made according to the Confirmation.
- 1.6. Owner means the registered Owner or Bareboat Charterer of the vessel;
- 1.7. Physical Supplier means the party which delivers the Product directly to the Vessel.
- 1.8. Place of Delivery means the port or other readily identifiable geographical location specified in the Confirmation as the place where the Product is to be delivered.
- 1.9. Product means marine bunker fuel, oil, lubricants, etc., the exact fuel grade and specification to be agreed upon in writing between the Seller and the Buyer for every delivery separately.
- 1.10. Seller means Bunker holdings limited, 4th floor, Vashiotis Business Center, 156 28th October & Iakovou Tompazi Street, 3107, Limassol, Cyprus.
- 1.11. Unit Price means the cost of metric ton or other unit of the Product in United States Dollars (USD).
- 1.12. Vessel means the vessel duly nominated to receive the Product as specified in the Confirmation.

## **2. APPLICABILITY**

- 2.1. Unless explicitly agreed otherwise, these terms and conditions shall apply to all offers, quotations, orders, services relating to supplies of the Product by the Seller.
- 2.2. Each Agreement shall be evidenced by the Seller's written Confirmation. In the event of any conflict between these terms and conditions and the terms of the Confirmation, the ones of the latter shall prevail.
- 2.3. An Agreement between the Buyer and the Seller shall not be deemed concluded and these terms and conditions shall not apply without written Confirmation of the Seller.

## **3. ENTIRETY AND VALIDITY OF THE AGREEMENT**

These terms and conditions together with the Confirmation constitute the entire Agreement. No derogation, addition or amendment of the Agreement shall be in force or in effect unless or until expressly agreed between the parties. If any provision of the Agreement is invalid to any extent or unenforceable, the remainder of the Agreement shall not be affected thereby.

## **4. DELIVERY**

### **4.1. Allocation**

If the Seller at any time and for any reason considers that there may be a shortage of the Product in the Place of Delivery, it may allocate the available quantity of the Product among its customers.

### **4.2. Restrictions**

The Seller shall not be bound to export any Product if permit of state bodies is required for such kind of export and the Seller has not been granted such permit. In such a case the Seller shall not be held financially or otherwise responsible for the non-delivery

#### 4.3. Means of Delivery

Delivery shall be made in such number of consignments and by such means as the Seller considers appropriate in the circumstances.

#### 4.4. Barging

When delivery is made by a barge(s), the Buyer shall, at its own expense, provide safe and clear berthing for the barge(s) alongside the Vessel's receiving lines as well as all necessary facilities and assistance required to effect delivery. The Buyer shall pay and indemnify the Seller against all claims and expenses in respect of any loss, damage or delay caused by the Vessel to any such barge and/or its equipment.

#### 4.5. Connection

The Buyer shall connect the pipelines/delivery hoses with the Vessel's intake line, render all necessary assistance and provide sufficient tankage and equipment for prompt receipt of the Product. The Buyer is responsible for ensuring that the Product is delivered at a safe pressure and that all the utilized equipment is in safe and satisfactory condition. For the purpose of ensuring the safe pressure, the Seller must be informed by the Buyer of the pressure level applicable to the Vessel equipment.

#### 4.6. Passing of Ownership

Delivery shall be deemed completed when the Product has passed the flange connecting the Physical Supplier's delivery facilities with the receiving facilities provided by the Buyer. However, the title of ownership of the Product shall pass to the Buyer only after the payment has been received by the Seller as provided in Clause 8. Until the payment is received by the Seller, the person in possession of the Product delivered shall hold the Product for the Seller as a mere bailee.

#### 4.7. Passing of Risk

The Seller's responsibility for the Product shall cease and the Buyer shall assume all risks and liabilities relating to deterioration, depreciation, contamination, evaporation or shrinkage of the Product as well as responsibility for any loss, damage and harm caused by pollution or in any other manner to third parties when the Product has passed the flange connecting the Physical Supplier's delivery facilities with the receiving facilities provided by the Buyer. The Buyer agrees to indemnify the Seller without any limitation in respect of any liability, claim or demand for which the Buyer is liable.

#### 4.8. Measurement

The quantities of bunkers shall be determined from the official gauge or meter of the bunkering barge or tank delivery or of the shore tank in case of delivery ex wharf.

The Buyer or his representative shall together with the Seller's representative measure and verify the quantities of Bunkers delivered from the tank(s) from which the delivery is made.

Should the Buyer or his representative fail or decline to verify the quantities, the measurements of quantities made by the Seller shall be final, conclusive and binding and the Buyer shall be deemed to have waived any and all claims in regard to the variance.

Upon the agreement between the Seller and the Buyer the measurements can be evidenced by an independent certified surveyor. The costs for the surveyor services shall be shared equally between the Seller and the Buyer.

#### 4.9. Specification

The Product to be delivered shall be as specified in the Confirmation or, otherwise, it shall be one of the Seller's commercial grades of Product currently offered generally to its customers at the Place of Delivery for marine bunkering and lubrication purposes. No other warranty as to the quality or fitness of the Product for any purpose shall be contained in the Agreement.

In order to determine the quality of the Product delivered, Seller shall be entitled to draw or cause to be drawn, samples of each delivery from Supplier's designated facilities, and to have them sealed. Where reasonably practical, the samples shall be taken in accordance with ISO-8217, but shall otherwise be taken from a point and in manner chosen by Seller or its representative.

The Buyer shall have the sole responsibility for the nomination of the grades of the Product fit for use by the Vessel. The Seller warrants that the Product shall be of a homogeneous and stable nature, shall comply with the grades nominated by the Buyer and be of satisfactory quality. The Product shall in all respects comply with SPECIFICATION as mentioned in Seller's Confirmation.

#### 4.10. Compatibility and Segregation

Responsibility for determining compatibility of the Product delivered with any other Product or Products and for segregating or commingling of the same rests solely with the Buyer.

#### 4.11. Substitution

Subject to the provisions of this Clause, the Seller may discharge its obligation to deliver the Product specified in the Confirmation by supplying, in substitution thereof, Product of a different grade and/or brand name always provided that such substitute Product is of equal or superior quality to that specified in the Confirmation.

#### 4.12. Availability

The Seller shall ensure that the Product is delivered promptly upon the Vessel's arrival but the Seller shall not be responsible for any loss, expense, damage or increased costs incurred in consequence of the Buyer's failure to provide the Vessel in time or the Vessel's delay or restraint for any other reason whatsoever.

#### 4.13. Delay

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

#### 4.14. Notice and Other Delivery Requirements

The Buyer shall give the Seller at least seven (7) days prior notice of deliveries required, specifying the name of the Vessel, Vessel's agents, approximate date of delivery, grade and quantity of the Product. The Buyer or Vessel's local agents shall give to the Seller or a physical supplier at least 72 (seventy-two) hours notice (excluding Saturdays, Sundays, public holidays and other non-working days at the Place of Delivery) of the Vessel's readiness to receive the Product and provide the Vessel name, IMO number, exact quantity and time of the Product required, and exact location and time at which delivery is required.

Notice must be given during the Seller's normal business hours (Monday to Friday inclusive, 08.00-18.00 CET). Notice given outside these hours shall be deemed to have been given at 08.00 on the first business day thereafter.

4.15. If the Buyer for whatever reason is unable to receive the full quantity ordered and rendered, the Seller shall have the right to invoice the Buyer for the loss incurred by having to transport the Product back to the storage or by having to sell the bunkers in a degraded form at a lower price than that applicable to the grade originally nominated by the Buyer. The Seller may use this right without prejudice to the Seller's other rights for damages or otherwise pursuant to these terms.

4.16. If delivery is required outside normal business hours or on local weekends, Saturday, Sunday or national Christian holidays the extra expenses incidental to such delivery shall be reimbursed by the Buyer as additional costs.

4.17. The Buyer agrees to reimburse the Seller for overtime and/or other additional expenses incurred due to the failure of the Buyer, its servants or Vessel's local agents to provide the Seller or a physical supplier with sufficient prior notice of amendments of delivery time, quantity changes or cancellations.

## **5. PRICE**

### 5.1. Unit Price

Where in the Confirmation the Unit Price is stated not to be subject to variation the Unit Price shall, subject to Clause 4.13, not to be varied unless otherwise agreed between the Parties. In all other cases having agreed the Unit Price of the Product the Seller will endeavour to refrain from making any increase and any increase if required shall be specifically and expressly agreed with the Buyer in writing. Notice of increase shall be given during the Seller's

normal business hours (Monday to Friday inclusive, 08.00-18.00 CET). Notice given outside these hours shall be deemed to have been given at 08.00 on the first business day thereafter. In such event the Buyer may forthwith give written notice of cancellation of the Agreement to the Seller. If no such notice is received by the Seller within two (2) hours after it has served the notice of increase, the Buyer shall be deemed to have agreed to the revised Unit Price.

## 5.2. Additional Costs

In addition to the Basic Cost of the Product the Buyer agrees to pay for any charges raised in respect of taxes, freight, barge, vehicle, wagon or clean up costs including overtime or other such payments; insurance, pilotage; port dues and any other such costs and expenses incurred by or charged to the Seller.

## 5.3. Proof of Delivery

The Buyer or its representative shall accept delivery of the Product and obtain at the time of delivery all necessary information relating to delivery including the exact quantity and precise specification of the Product delivered. Unless the Buyer has requested otherwise before the Confirmation is sent by the Seller, the Seller shall be under no obligation at any time to provide the Buyer with any evidence of delivery of the Product to the Vessel.

## 6. PAYMENT

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

6.1. The payment shall be made in United States Dollars (USD) to the bank account specified by the Seller in full without set-off, counterclaim, deduction and/or discount free of bank charges to the bank account indicated by the Seller on the respective invoice(s) so as to ensure that the Seller receives the full amount due to it on or before the Due Date.

6.2. The Due Date is as provided in the Confirmation or, in default, the date of Delivery.

6.3. If the party requesting the Product is not the Owner of the Vessel, the Seller shall have the right to insist as a precondition of sale that a payment guarantee is provided by the Owner. Owner is specified in Clause 1. The Seller shall have the right to cancel any agreement with the Buyer at any time, if such payment guarantee is not received upon request thereof from the Seller to the Owner.

6.4. Timely payment is of the essence of the Agreement.

6.5. If the Buyer fails to make payment on or before the Due Date, it shall be charged with 2.5 % (two and a half per cent) of the outstanding sum per calendar month calculated on a daily basis starting from the Due Date up to receipt of the cleared outstanding funds by the Seller. The interest accrued shall be added to and become the part of the outstanding sum. In the event that such rate of interest specified in the Agreement is in the excess of that permitted by relevant law, it shall be substituted by the maximum rate of interest so permitted.

6.6. Payment shall be made by way of telegraphic, swift or rapid electronic transfer to the bank account specified by the Seller. All bank and other charges, if any, incurred in connection with funds remittance shall be for the Buyer's account. Notice of remittance including identifying references shall always be given to the Seller.

6.7. Payments received by the Seller from the Buyer or other party acting on behalf of the Buyer notwithstanding any specific requests to the contrary shall be applied to settle the outstanding sums in the following order:

6.7.1. Interest accrued in respect of the overdue transactions where the principal sum has been previously paid.

6.7.2. Interest accrued in respect of all other transactions.

6.7.3. All the outstanding principal sums starting from the oldest one and proceeding chronologically up to the most recent one.

6.7.4. Any principal sum which the Seller knows or reasonably expects to fall due at a future date.

6.8. The Buyer and the Owner of the Vessel are jointly and severally liable for payment. The vessel stamp on the bunker delivery receipt shall evidence that the owner of the Vessel has agreed to incur such liability.

6.9. The overdue payments shall constitute a lien against the Vessel to the extent permitted by pertinent local law.

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

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

6.12. In the event that either party is the subject of debt, bankruptcy or liquidation proceedings, the other party may forthwith terminate the Agreement.

6.13. All legal and other costs and expenses incurred by either party including those of either party's legal department and of other lawyers acting on behalf of such party in connection with the other party's failure to comply with any term of the Agreement shall be for the defaulting party's account.

## **7. CANCELLATION OF ORDER BY THE BUYER**

7.1. The Buyer shall have the right to cancel all deliveries by giving the Seller or Supplier at least seventy two (72) hours prior written notice of such cancellation.

7.2. If the Buyer at any time cancels an order of the Product or fails to take delivery of a whole consignment or a part of it on the Vessel, the Seller reserves the right to pursue a claim against both the Buyer and the Vessel for all damages thereby suffered including loss of profit.

## **8. CLAIMS, DISPUTES AND PRECAUTIONS**

### 8.1. Notification

A written notice of claim or a potential claim must be given to the Seller within the time limit specified in these terms and conditions or in the Confirmation. It is the Buyer's responsibility to ensure that the notice is received by the Seller whose confirmation of receipt should always be sought.

### 8.2. Sufficiency of Information

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

### 8.3. Categories of Claims

For the purposes of these terms and conditions all possible claims and disputes arising out of the Agreement are divided into three categories:

#### 8.3.1. Quantity claims and disputes.

#### 8.3.2. Quality claims and disputes.

#### 8.3.3. Other claims and disputes.

### 8.4. Quantity Claims and Disputes

8.4.1. For bulk supplies delivery barges, wagons and vehicles must be checked by tank-dipping to measure the content and to ensure full turn-out. Flow meters must be checked for seals, correct settings, calibration and general condition. All such checks must be carried out before and after delivery of each consignment of the Product as well as before and after each loading of a barge, wagon or vehicle tank. The delivery of the Product must be supervised at all times and care must be taken to ensure that all documentation is complete and accurate before signing and stamping it. Any discrepancy must be recorded in the Physical Supplier's delivery receipt. Unless these procedures are observed, it is nearly always impossible for a claim to be substantiated. The Seller shall therefore reject the claims for short delivery where the above receiving procedures have not been observed.

8.4.2. The Seller shall not accept a claim for short delivery based on the figures obtained by measuring the Product in the Vessel's tanks.

8.4.3. The time limit for receipt of a notice of a quantity claim by the Seller is 7 (seven) calendar days starting from the date of delivery or a shorter period if agreed between the Parties and specified in the Confirmation.

#### 8.5. Quality Claims and Disputes

8.5.1. It is the Buyer's responsibility to ensure that the Product tendered for the supply is that required by the Vessel and is delivered into correct tanks.

8.5.2. Four (4) representative samples of each consignment must be taken during the process of delivery of the Product immediately to the Vessel. The samples shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, Product name, delivery date and place and seal number, authenticated with the Vessel's stamp and signed by the Seller's representative and the Master of the Vessel or his representative. The seal numbers shall be inserted into the Bunker Delivery Receipts (BDR), and by signing the BDR both parties agree to the fact that the samples referred to therein are deemed valid and taken in accordance with the requirements as specified in this clause. Two (2) sets of samples must be retained by the Physical Supplier, the other two (2) sets must be retained by the Buyer or the receiving Vessel. One sample shall be retained by the Seller for ninety (90) days after delivery of the Bunkers, or if requested by the Buyer in writing, for as long as the Buyer reasonably required.

8.5.3. The Buyer and Seller agree that only analyses of sealed samples taken as "drip samples" at the sampling valve on the bunkering barge shall form the basis of documentation that bunker oil was substandard or "off-spec" when delivered. In case that drip sampling is not available onboard barge, tanktruck or shoretank, representative samples shall be taken as a composite of each tank divided with 1/3 from each the top/mid/bottom of the tanks of Supplier's facilities. No samples subsequently taken shall be allowed as (additional) evidence.

8.5.4. In the event of a dispute in regard to the quality of the Bunkers delivered, the samples drawn pursuant to clause shall be deemed to be conclusive and final evidence for the quality of the Product delivered. In case of disputes one of the samples retained by Sellers shall be forwarded to a by both Sellers and Buyers agreed independent laboratory for final and binding analyses. The seal must be breached only in presence of both parties unless one/both in writing have declared that they will not be present; and both parties shall have the right to appoint independent person(s) or institute(s) to witness seal breaking. No samples subsequently taken shall be allowed as (additional) evidence. If any of the seals have been removed or tampered with by an unauthorized person, such sample(s) shall be deemed to have no value as evidence.

8.5.5. Any samples drawn from the Receiving Vessel's tanks shall not be valid as an indicator of the quality supplied.

8.5.6. Likewise when quantity claims are raised, it is important to check that all documentation is in order and to note discrepancies in the Physical Supplier's delivery receipt before signing and stamping it.

8.5.7. If the Buyer has grounds to believe that the Product supplied does not meet the relevant specification contained in the Confirmation or is defective, the Buyer shall immediately:

8.5.7.1. take all reasonable steps to mitigate the consequences of the supply of possibly defective or incorrect Product;

8.5.7.2. give a notice containing full details of possibly defective or incorrect Product to the Seller together with information about the Vessel's position, destination and ETA; the quantity and location of all bunkers on board the Vessel, the rate and the quantity of consumption since their delivery and their location immediately prior to consumption; for each of the three preceding supplies to the Vessel quantity, quality and specification of the Product supplied, the place and the date of supply and the name of the supplier;

8.5.7.3. inform the Seller of the whereabouts of the Buyer's set of samples.

8.5.8. When the Buyer raises a quality claim and gives a notice to the Seller, the former is deemed to have retained its set of sealed samples in full and to be ready to present it for analysis to a reputable independent testing laboratory approved by the Seller. The analysis of the samples shall be conducted in accordance with the established procedures in the presence of the Seller's representative. In the event that the Buyer is unable or unwilling to present its samples for analysis within 28 (twenty eight) calendar days starting from the date of the Seller's request to do so, the Seller may proceed with the Physical Supplier's samples analysis. The results of such analysis shall be binding upon the parties to the Agreement.

8.5.9. If it is alleged that any equipment or machinery has been damaged by a defective Product, full details and evidences of the alleged damage must be given to the Seller as early as possible. The damaged item must be preserved and provided for inspection on demand of the Seller or its representative at any reasonable time.

8.5.10. The time limit for the Seller to receive a notice of a quality claim is 7 (seven) calendar days starting from the date of delivery or a shorter period if specified in the Confirmation.

#### 8.6. Other Claims and Disputes

Notice of any other claim excepting all claims relating to or associated with those relating to the matters of quality and quantity, shall be given to the Seller as soon as possible but in any event not later than 28 (twenty-eight) calendar days after delivery. If the Confirmation provides for a shorter period, such shorter period shall apply.

#### 8.7. Summary of the Time Limits

8.7.1. Quantity claims and disputes -- 7 (seven) calendar days.

8.7.2. Quality claims and disputes -- 7 (seven) calendar days.

8.7.3. Other claims and disputes -- 28 (twenty-eight) calendar days.

8.7.4. Time period for presenting a notice of any claim to the Seller shall commence from the date of delivery of the Product in question.

8.7.5. All time limits for any claim are subject to substitution by a shorter time limit agreed between the Parties and stipulated in the Confirmation.

8.8. The Buyer shall be obliged to make payment in full and fulfill all other obligations in accordance with the terms hereof, whether or not they have any claims or complaints.

### **9. FORCE MAJEURE. EXEMPTION OF LIABILITY**

9.1 The Seller, the Seller's supplier or the Buyer shall not be liable for any loss, damage or demurrage due to any delay or failure in performance (a) because of compliance with any order or request of any government authority, or person purporting to act therefore, or (b) when supply of the Product or any facility of production, manufacture, storage, transportation, distribution or delivery contemplated by the Seller's supplier is interrupted, unavailable or inadequate for any cause whatsoever is not within the immediate control of the Seller or the Seller's supplier, including (without limitation) if such is caused by:

9.1.1. Act of God.

9.1.2. Act of war. Act of public enemies.

9.1.3. Quarantine restrictions.

9.1.4. Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.

9.1.5. Riots and civil commotions.

9.1.6. Saving or attempting to save life or property at sea.

9.1.7. Any other cause arising without the actual fault or privity of the party being in breach of the Agreement, or without the fault or neglect of the agents or servants thereof.

9.2. The Seller or the Seller's supplier 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 or the Seller's supplier's normal practices. The Seller or the Seller's supplier shall not be required to make any deliveries omitted in accordance with this clause at any later time.

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

9.4 In the event that the Seller, as a result of force majeure, can only deliver a superior grade of bunkers, the Seller is entitled to offer the said grade, and the Buyer must accept delivery thereof and pay the applicable price.

9.5. The circumstances mentioned above and duration thereof shall be evidenced by the certificate issued by the competent authorities at the place where such circumstances took place, such as by national Chambers of Commerce, etc.

## **10. LIABILITY**

10.1. Liabilities of the Seller for consequential damages is excluded. In any event and notwithstanding anything to the contrary herein, liability of the Seller shall under no circumstances exceed the invoice value of the Bunkers supplied under the relevant agreement to the relevant Vessel.

10.2. The Buyer shall be liable towards the Seller and herewith undertakes to indemnify the Seller for any and all damages and/or costs suffered or otherwise incurred by the Seller due to a breach of contract and/or fault or neglect of the Buyer, its agents, servants, (sub)contractors, representatives, employees and the officers, crews and/or other people whether or not onboard of the respective vessel(s). The Buyer furthermore undertakes to hold the Seller harmless in case of any third party institutes a claim of whatever kind against the Seller with direct or indirect relation to any agreement regulated by these terms and conditions. Third party shall mean any other (physical or legal) person/company than the Buyer.

10.3. No servant or agent of the Seller (including independent (sub)contractors from time to time employed by the Seller) shall be liable to the Buyer for loss, damage or delay, while acting in the course of or in connection with its employment and/or agency for the Seller. Without prejudice to the above every exemption, limitation, condition and liberty herein contained, and every right, exemption from liability, defense or immunity of whatever nature applicable to the Seller or to which it is entitled hereunder shall also be available and shall extend to protect every such servant, representative or agent of the Seller acting as aforesaid.

## **11. ARREST OF THE VESSEL**

11.1. Notwithstanding anything to the contrary herein and without prejudice to any rights or remedies otherwise available to the Seller, the Buyer, by its acceptance of these conditions, expressly authorizes the Seller to arrest the Vessel in question, or any other Vessel owned or operated by the Buyer, under any applicable jurisdiction as security for the obligations of the Buyer. 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. Any 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.

11.2. The Seller shall have the right to obtain a payment guarantee from the Owner as set forth in Clause 6.3. If such guarantee has been given by the Owner and the Owner has not paid the outstanding amount to the Seller within 5 (five) business days after proper written notice has been received, the Seller has the right to arrest the Vessel or any other Vessel owned or operated by the Owner. The Seller shall further have the right to dispose of such Vessel as set forth in Clause 10.1 above.

## **12. SPILLAGE, ENVIRONMENTAL PROTECTION**

12.1. If a spill occurs while the Product is being delivered, the Buyer shall promptly take such action as is necessary to remove the spilled Product and mitigate the effects of such spill.

12.2. Without prejudice to the generality of the foregoing the Seller is hereby authorized 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 contraction with others) as are necessary in the judgment of the Seller to remove the spilled Product and mitigate the effects of such spill. The Buyer shall cooperate and render such assistance as is required by the Seller in the course of the action. All expenses, claims, costs, losses, damages, liability and penalties arising from spills shall be borne by the party that caused the spill by a negligent act or omission. If both parties have acted negligently, all expenses, claims, losses, damages, liability and penalties, shall be divided between the parties in accordance with the respective degree of negligence.

12.3. The burden of proof to show the Seller's negligence shall be on the Buyer. The Buyer shall give the Seller all documents and other information concerning any spill or any program 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.

## **13. LAW AND JURISDICTION**

13.1. The Agreement shall be governed by English law and any dispute arising out of or in connection with this Contract shall be referred to and finally settled by arbitration in London in accordance with the Arbitration Act 1996 or

any statutory modification or reenactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three (3) 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 fourteen (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 give notice that it has done so within the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to 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.

13.2. For the sole benefit of the Seller it is further agreed that the Seller without prejudice to any rights hereunder of the Seller or any claim raised pursuant to Clause 13.1. above 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 or the Owner (pursuant to a payment guarantee). In such circumstances the proceedings shall be governed by the law (substantive and procedural) of such jurisdiction.

#### **14. INSURANCE**

The Buyer is responsible for effecting and maintaining 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 Agreement.

#### **15. LICENSES, PERMITS AND APPROVALS**

Either party is responsible for obtaining respective necessary permits, licenses and approvals required to enable either party to execute all their rights and obligations under the Agreement.

#### **16. WAIVER**

Failure to enforce any right by any party to the Agreement against any other party shall not be a waiver of the right or in any way affect the validity of the Agreement. In particular, granting of any additional time by the Seller to make payment or waiving or reducing of any financial or other charges shall not prevent the Seller from exercising any of its contractual rights at any time thereafter.

#### **17. VALIDITY**

17.1. These terms and conditions shall be valid and binding for all offers, quotations, prices and deliveries made by Bunker holdings limited, any associated company, representative or agent as of April 2, 2007, or at any later date.

17.2. These terms and conditions are available on the website [www.transbunker.com](http://www.transbunker.com), on which site as well the Sellers may notify of any further amendments, alterations, changes or verifications to same. Such amendments, alterations, changes, etc. are deemed to be a part of the entire terms and conditions once same have been advised on the website.