

## ***Terms and Conditions for sale of Marine fuel***

*Except as may otherwise be negotiated by the parties and agreed to in writing, the following terms and conditions shall apply to all sales of marine fuels by Chemoil Adani Pvt Ltd. hereinafter "Seller"*

### ***1. Price***

*The price to be paid for marine fuel shall be as quoted by Chemoil Adani in reference to each transaction. Prices are in U.S. dollars exclusive of taxes and duties ex-wharf in metric tons corrected to 60 degrees F, 15 degrees C. All charges additional to price, such as, without limitation thereto, taxes, levies, duties, port charges and delivery charges, are for the account of Buyer. "Buyer" shall mean the vessel, vessel owner, operator or charterer, Master, Disponent owner, or any party requesting offers or quotations for ordering bunkers and/or services and any party on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made(if any).*

### ***2. Quality***

*Marine fuels to be supplied shall be the quality offered generally by Seller at the time and place of delivery for the particular grade or grades ordered by Buyer. Buyer shall have the sole responsibility for the selection of the proper grade or grades of marine fuels for use in the vessel nominated.*

*Two sets of samples of each delivery shall be taken at flange during delivery. The samples will be sealed and signed by vessel's master. One set shall be kept by the Buyer and the second set will be retained by the supplier as a reference sample and kept for a period of one month. Samples taken from Buyer's vessel tanks at any time cannot under any circumstances be used for analysis under this contract. It is the Buyer's responsibility to ensure that the marine fuel is properly sampled, sealed and signed by the ship's master. The seal numbers shall be inserted into the Bunker Delivery Receipts and by signing these, 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. In the event of a dispute in regard to the quality of the bunkers delivered, the samples drawn pursuant to this clause shall be deemed to be conclusive and final evidence for the quality of the product delivered.*

### ***3. Nomination and Deliveries***

*(a)The order for marine fuels shall be considered firm and binding upon Buyer's acceptance of price quoted by Chemoil Adani. Confirmation in writing by Seller of price may be provided Buyer but the absence of such confirmation shall not avoid the agreement of sale.*

*(i) Buyer's initial order for marine fuel shall provide Seller the following information:*

- The name or other designation of its vessel*
- The estimated arrival date at the specified port*
- The quantity and kinds of marine fuels to be delivered*

- *The method of delivery (i.e., into Buyer's vessel at terminal or by fuel barge)*

*(ii) Not less than two working days prior to the vessel's readiness to receive delivery, Buyer shall give Seller written notice of the exact date and time of delivery, the exact location of delivery and the exact quantities and kinds of marine fuel to be delivered.*

*(iii) If Seller is, on behalf of Buyer, requested to make any arrangements with and secure any permission of port authorities prior to making delivery, an appropriate and early notice from Buyer is required.*

*(iv) Buyer's initial order under (i) shall be deemed canceled if the notice provided for in (ii) is not received by Chemoil Adani when due.*

*(v) Chemoil Adani has the option to increase fuel prices if the vessel's actual arrival time is more than 48 hours after the arrival time specified in the notice required under (ii) above.*

*(vi) Any notice by Buyer that a maritime lien on the vessel may not be created because of the existence in Buyer's charter party of a Prohibition of Lien Clause, or for any other reason, must be given to Seller in the initial order for marine fuel, in which case no credit can be granted to Buyer and the marine fuel shall be paid for in cash or equivalent prior to delivery. Any notice of such restriction given by Buyer, its agents, ship's personnel or other person later than in the initial order shall not effect a modification of the terms of sale except that any granting of credit by Seller is rescinded on receipt of the notice, with full payment due forthwith.*

*(b) Where delivery is required during other than regular business hours, Buyer shall pay all overtime and extra expenses incurred by Seller or its agents or contractors.*

*(c) Where lighterage is employed, lighterage charges shall be for the account of Buyer. Lighterage will be charged on the quantity delivered to the Buyer's vessel in accordance with the rates and charges of the fuel barge contractor. Deliveries of light diesel, gas oil and other grade of marine fuel on two or more barges will be subject to separate charges.*

*(d) Seller shall not be liable for demurrage or for loss, damage or expense of any nature whatsoever incurred by Buyer due to any delay in delivery, or failure to make delivery, of marine fuels occasioned by the fuel barge contractor. Seller further shall not be liable for such demurrage, loss, damage or expense incurred by Buyer due to delays in furnishing a berth. In any situation not included above, Seller shall not be liable for delay in delivery, or failure to make delivery, of marine fuels unless Buyer proves that the delay or failure was solely caused by gross negligence on the part of*

*the Seller. In any case, damages recoverable from Seller for delay in delivery or failure to make delivery shall be limited to direct damages for additional time in port and shall not include any consequential damages whatsoever, including, without limitation thereto, detention, demurrage, charter hire, crew wages, towage, pilotage, lost profits, barge delivery charges and increased costs or expenses in obtaining replacement fuel.*

*(e) Marine fuel is delivered hereunder not only on the credit of Buyer but also on credit of the vessel receiving delivery of marine fuel, and it is agreed and Buyer warrants that Seller will have and may assert a maritime lien against the receiving vessel for the amount of the purchase price of said marine fuel together with all delivery and other charges forming part of the agreement of sale.*

*(f) Delivery into Buyer's vessel at terminal need not be made whenever, in Seller's opinion, clear and safe berth for the vessel is not available, or when, for any other reason, delivery would, in Seller's opinion, be unsafe or inadvisable.*

*(g) Delivery into Buyer's vessel by barge need not be made whenever, in the opinion of Seller or the fuel barge contractor, safe passage or clear and safe berth for the barge, whether alongside Buyer's vessel or otherwise, is not available, or when, for any other reason, in the opinion of Seller or the fuel barge contractor, delivery would be unsafe or inadvisable.*

*(h) On Buyer's cancellation of a nomination, or portion thereof, , Chemoil Adani shall be entitled to a fee of \$3.00 per metric ton or the lost fuel value, whichever is greater, by way of liquidated damages and as compensation for Seller's relinquishing its rights under the agreement. Lost fuel value shall be considered the difference between the contract price per metric ton and market value of fuel at time of cancellation as determined by Platts Bunkerwire mid-point on the day of cancellation for the closest relevant market.*

*(i) The parties hereto agree that determining the amount of damages to Seller arising from cancellation would be impracticable and extremely difficult and for that reason the above rate of compensation is considered fair and equitable.*

#### **4. Title**

*Delivery shall be deemed completed and title for the product shall pass to Buyer at the permanent intake connection of Buyer's vessel, whether product is delivered ex-wharf or by fuel barge. At either location, however, pumping shall be performed under the direction of Buyer or Buyer's vessel personnel. Title in to the bunkers delivered and/or property rights in and to such bunkers shall remain vested in the Seller until full payment has been received by the Seller of all amounts due in connection with the respective delivery. Until full payment of any amount due to the Seller has been made, the Buyer shall not be entitled to use the bunkers other than for the propulsion of the vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the bunkers to any third party*

*or other vessel. In case of breach hereof by the Buyer, the Seller is entitled to take back the bunkers without prior juridical intervention, without prejudice to all other rights or remedies available to the Seller. In the event that the bunkers have been mixed with other bunkers on board the vessel, the Seller shall have the right of lien to such part of a mixed bunker as corresponds to the quantity or net value of bunkers delivered. In case the bunkers, in part or full, are no longer present or can no longer be identified or distinct from other bunkers, the Seller has the right to attach the vessel and/or sister ship and/or any other asset of the Buyer (or the owner of the vessel) whereby situated in the world without prior notice. Where title in and to the bunkers delivered has passed to Buyer and/or any third party before full payment has been made to the Seller, the Buyer shall grant a pledge in such bunkers to the Seller. The Buyer shall furthermore grant a pledge in any other bunkers present in the respective vessel, including any mixtures of the delivered bunkers and other bunkers. Such pledge would be deemed to have been given for any and all claims, of whatever origin and of whatever nature that the Seller may have against the Buyer.*

#### **5. Inspection and Measurements**

*(a) Buyer, at his own expense, shall have the right to appoint an approved petroleum inspector to inspect the marine fuels before delivery, but sampling shall be done prior to product leaving Seller's shore tanks.*

*(b) The quantity of fuels delivered shall be determined by measurements of shore tanks or gauges at the point of delivery ex-wharf, at Seller's sole option, and Buyer will be charged on the basis of these measurements, regardless of amounts delivered by barge to Buyer's vessel. Buyer has a right to have its representative present during measurement to verify same, but in the event no such representative attends, determination of quantity shall be made solely by Seller, and such determination shall be conclusive.*

#### **6. Claims**

*(a) Any claim by Buyer as to shortage in quantity must be noted on the marine fuel delivery receipt signed by Master or Chief Engineer at time of delivery. Any claim by Buyer with respect to deficiency in quality of marine fuels delivered by Seller, or claim by Buyer that Seller delivered improper or the wrong kind of marine fuels, must be made as soon as possible, and in no event more than 30 days from date of delivery to the Buyer's vessel. On making claim, Buyer shall furnish to Seller a sample of the marine fuel delivered by Chemoil as well as all necessary information, including all analysis made by Buyer and/or vessel interests of the product, as shall be required by Seller to satisfactorily evaluate the claim. Buyer shall immediately give Seller all reasonable opportunity to inspect the vessel, including, without limitation, its engines, fuel tanks, equipment, logs, records and copies of communications, including communications between vessel and Buyer (and/or between vessel and owner or operator) as well as communications to and from fuel testing organizations consulted by Buyer or vessel interests. If these conditions are not met within said 30 day period, Buyer shall be time-barred from making claim. See further Article 9(e).*

*(b) Seller shall not be responsible for any claim arising from the commingling of marine fuel delivered by Seller with other fuel or substances aboard Buyer's vessel or aboard the fuel barge.*

*(c) Claim of any nature does not relieve Buyer of responsibility to make full and timely payment of all amounts billed by Seller as provided in Articles 1 and 8.*

*(d) In any case, claims of the Buyer shall be time barred unless legal proceedings have been initiated before the competent Court within twelve months after the date of delivery or the date that the delivery should have commenced pursuant to the written confirmation from the Seller.*

#### **7. Bonded Marine Fuels**

*Marine fuels in Bond, when available to Seller, may be delivered, provided Buyer qualifies to receive such fuel. Buyer shall reimburse Seller for any tariff, tax, duty, penalty or other charges subsequently assessed for any reason, including the failure of Buyer to furnish the necessary qualifying proof within 30 days of delivery.*

#### **8. Payment**

*(a) Payment by Buyer in U.S. dollars, without discount or deduction of any kind, shall be due upon receipt by Buyer or the vessel (or the vessel's owner or operator) of written, telegraphic or other notification of quantities delivered and amounts due. Subsequent adjustments, if any, will be made upon receipt by Seller of the marine fuel delivery receipt. Payment shall be made in full, without set off, counter claim, deduction and/or discount, free of bank charges, to the bank account indicated by the Seller on the respective invoice.*

*(b) If Seller considers Buyer's financial condition inadequate, or for any other reason, Seller may require cash payment in advance or security acceptable to Seller before delivery.*

*(c) Seller may, at its option, grant credit to Buyer on the following terms:*

*(i) Credit can only be granted if it is secured by a maritime lien on the vessel in accordance with Article 3(e).*

*(ii) Buyer shall make full payment within 30 days of date of delivery, defined as the date pumping of the product aboard Buyer's vessel is completed*

*(iii) If full payment is not received within 30 days, the amount overdue shall be subject to interest charged at the rate of 18 percent per annum, 1 1/2% per month, or the maximum rate permitted under law, whichever is less. Interest shall be paid from the date of delivery until the date payment is received by Seller;*

*(iv) If credit is granted to Buyer, Seller may withdraw such credit at any time, for any reason, and require full payment upon delivery or at any time after delivery. If credit is withdrawn and payment is not made upon demand, interest shall be payable from date of delivery at the rate set forth in Article 8(c)(3).*

*(v) If payment is not made within 30 days, or if credit is withdrawn and payment not made upon demand, Buyer shall be liable for reasonable attorneys' fees and collection expenses whether or not suit is filed. If suit is filed, Buyer shall be liable for all court costs in addition to reasonable attorneys' fees and expenses. Said charges, together with interest, shall constitute a part of the Seller's maritime lien on the vessel under Article 3(e).*

*(d) Should marine fuels be ordered by an agent, then such agent, as well as the principal, shall be bound by, and liable for all obligations as fully and as completely as if he were himself the principal, whether such principal be disclosed or undisclosed, and whether or not such agent purports to contract as agent only.*

#### **9. Limitations of Seller's Liability**

*(a) Seller contracts to supply marine fuel only upon the basis of the liabilities as set forth below, unless otherwise negotiated by the parties and agreed to in writing. The Seller shall not be liable for damages of whatever nature, including physical injury, nor for delivery of bunkers or services, no matter whether such damages or delay has been caused by fault or negligence on the side of the Seller. The Seller shall furthermore not be liable for damages or delay as described above when such damages or delay has been caused by the fault or negligence of its personnel, representatives or sub-contractors. Liability 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.*

*(b) Seller is not liable for any loss, damage, expense or delay resulting from strikes or labor difficulties whatsoever and wheresoever occurring or for stoppage or delay of work due to causes beyond its control. See also Article 3(e).*

*(c) Seller is not liable for supplying defective or improper marine fuel, or marine fuel other than as ordered by Buyer, unless the same is directly and solely caused by the negligence of Seller's own employees, which negligence must be affirmatively proved. In such event, Seller's liability, if any, is strictly limit to the cost of replacement of the defective or improper or wrong kind of marine fuel at the date and port furnished. Buyer acknowledges and warrants that it is Buyer's responsibility to test the fuel provided and to insure that it is proper in all respects prior to the use of such fuel on Buyer's vessel. Accordingly, Seller shall not be responsible for any damage to Buyer's vessel, including, without limitation thereto, its machinery or tanks or their contents, caused by use of defective, improper or the wrong kind of marine fuel. Under no*

*circumstances will Seller be liable for any consequential damages whatsoever including, without limitation delay, detention, demurrage, charter hire, crew wages, towage, pilotage, port or wharf charges, lost profits, barge delivery charges and increased costs or expenses for obtaining replacement fuel.*

*(d) Seller is not liable for damage to Buyer's vessel or other property, caused by acts other than the supplying of defective or improper fuel, or for any other loss sustained by the vessel, its owners, charterers, underwriters, or other parties in interest, in contract, tort or otherwise, unless the same is directly and solely caused by the negligence of Seller's own employees, which negligence must be affirmatively proved. In such event, Seller's liability, if any, is strictly limited to repair of such damage as was directly caused by the sole negligence of Seller's employees and Seller shall not be liable for any consequential damage whatsoever including, without limitation, delay, detention, demurrage, charter hire, crew wages, towage, pilotage, port or wharf charges, lost profits, barge delivery charges and increased costs or expenses for obtaining replacement fuel.*

*(e) Seller shall be discharged from all liability for defective workmanship, material or marine fuels, or for other loss or damage, unless the same is discovered and claim in writing made to Seller within 30 days after the marine fuels were delivered to the vessel or the vessel damaged by Seller's employees as above described and litigation is commenced within one year after the Seller delivered the marine fuels or Seller's employees otherwise damaged Buyer's vessel or other property.*

***(f) Indemnification and Hold Harmless:*** *Buyer shall indemnify and hold harmless Seller, the fuel barge contractor and their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of services or the providing of marine fuel under this contract, including claims, damages, losses, penalties or expenses arising under any air, water quality or hazardous waste statute, regulation or ordinance, hereinafter referred to "pollution claims", providing that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than Buyer's vessel and its appurtenances) including the loss of use resulting there from, or to pollution claims, and (b) is caused in whole or in part by any negligent act or omission of Buyer, the vessel or vessel interests, their agents or employees or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not such claim, damage, loss, or expense is also caused in part by the Seller, the fuel barge contractor, their agents or employees.*

*(g) The foregoing is in lieu of all warranties and liabilities of Seller, express or implied*

#### **10. Environmental Protection**

*(a) In the event of a spill during fueling, Buyer and the vessel shall, at their own expense, immediately take what action is necessary to give prompt notice to the*

*official bodies and to effect cleanup. Failing prompt action, Buyer and the vessel authorize Seller and/or the fuel barge contractor to conduct and/or contract for such cleanup at Buyer's and vessel's expense.*

*(b) Buyer warrants that the marine fuel purchased hereunder is for the operation of the receiving vessel and that vessel only. Buyer shall hold Seller harmless as to any claims, expenses, losses, taxes or penalties arising from Buyer's breach of this warranty, including attorney fees.*

*(c) Buyer warrants that the vessel fueled is in compliance with all national, state and local statutes, regulations and ordinances, including those requiring proof of financial ability in regard spills of oil and hazardous materials. Buyer shall hold Seller harmless as to any delays, claims, losses, expenses or penalties arising from breach by Buyer of this warranty, including attorney fees.*

*(d) It is the responsibility of the Master to Notify the Seller of any conditions, difficulties, peculiarities, deficiencies or defects with respect to engines, boilers, fuel tanks, piping, navigation equipment, mooring lines, tackle, gear, and any other types of equipment, which might jeopardize or impose hazards or problems in connection with handling, mooring, unmooring or bunkering of the vessel. Buyer's vessel will not be moored at wharf or alongside any other marine loading facilities, or a fuel barge brought alongside the Buyer's vessel, unless said vessel is free of the aforesaid conditions, difficulties, peculiarities, deficiencies or defects.*

#### **11. Disclaimer Warranties**

*Any implied warranties whatsoever, whether statutory or otherwise, including the warranties of merchantability and fitness for a particular purpose or of condition and any oral or implied agreements inconsistent with this Agreement are expressly excluded and disclaimed.*

#### **12. Arbitration**

*(a) Any controversy or claim between Buyer and Seller, or between Buyer and the fuel barge contractor, relating solely to the quality or quantity of marine fuels delivered or to be delivered hereunder or to the sum payable for such fuel shall be settled by arbitration and proceedings shall be governed by the provision of Indian Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof, from time to time in force.*

*(b). Hearing shall be in Ahmedabad, India and the time and place selected by the arbitrators.*

*(c) Arbitration shall not prevent either party's recourse to suit to obtain or enforce discovery nor shall it relieve Buyer of its obligation to make full payment for the marine fuels billed to Buyer, which payment shall be without prejudice to the rights of either party in the arbitration. Failing payment for the marine fuels delivered, Seller may institute suit for collection whether or not Buyer calls for arbitration, which suit*

*likewise shall be without prejudice to the rights of either party in arbitration. Such suit for collection shall not be subject to stay pending arbitration.*

*(d) Any dispute between Buyer and Seller, or between Buyer and the fuel barge contractor, which is not resolved through arbitration, shall be resolved in an action brought in the Court of Ahmedabad, India 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 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 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.*

### **13. Governing Law**

*This Agreement shall be governed and construed in all particulars by the principles of general maritime law as applied in the Courts of India.*

### **14. General Storage**

*(a) If in Seller's opinion there is a shortage or there are shortages of supply of products, whether or not of the quality or grade designated by Buyer, at any of its present or future regular sources of supply or at any of those of its Supplier or Suppliers, with the result that Seller is unable to meet its requirements for sale to customers of all kinds, Seller may allocate, on any reasonable basis according to its own discretion, its available products among its customers both under this contract and, at Seller's option, regular customers not then under contract.*

*(b) Notwithstanding the provisions of subsection( a), Buyer shall not be relieved of any obligations under Articles 1, 3 and 8 above to pay for the product delivered hereunder.*

### **15. Notice**

*The address of Chemoil Adani Pvt Ltd for the purpose of receiving notice is "Adani House", Nr. Mithakhali Circle, Navarangpura, Ahmedabad – 380009 Telephone +91 79 25555765, 25555266, fax +91 79 25555611. Buyer's address shall be that used in communications with Seller or care of the owner or operator of the vessel if Buyer is neither of these interests. Notices hereunder shall be given in writing or by telex or telegram or fax.*

### **16. Assignability**

*This Agreement is not assignable by Buyer except with the written consent of Seller. Seller may cause deliveries under this Agreement to be made to Buyer by others and may assign the duties, obligations, rights, benefits, and privileges of this Agreement in whole or in part, to others without notice to or consent from Buyer.*

### **17. General Provisions**

*(a) In the event Seller's capacity to perform becomes impracticable for any reason, including, but not limited to, a request or suggestion by any official body relating to*

*supplies, priorities, rationing or allocations of any product, Seller may reduce or stop deliveries in such a manner as it may in its sole discretion determine and shall be relieved of its obligation to perform hereunder.*

*(b) All rights and remedies of Seller hereunder are cumulative, and election of one remedy shall not exclude another.*

*(c) This writing supersedes all previous Standard Terms and Conditions of Sale of Marine Fuel by Chemoil Corporation and sets forth the final and exclusive expression of the parties' agreement unless it is modified in writing, which modification must be signed by Chemoil. It supersedes all oral or implied agreements. Any disclaimer, notice or other writing by Buyer or vessel interests or their agents on the marine fuel delivery receipt, or any other document, seeking unilaterally to alter or amend any part of this Agreement shall be ineffective.*

*(d) If any part of this Agreement is declared invalid for any reason, this ruling shall not affect the validity of the rest of the Agreement or any other part thereof.*

*(f) Barge rates provided Buyer for Buyer's account are based upon normal barge availability. In the event that these facilities are fully committed, other barges, if available, will be engaged at such rates as are applicable.*

*(g) Buyer may request modification of the terms of this Agreement no later than when placing its initial order for marine fuels, but at Seller's discretion the prices offered by Seller may be raised in consideration of such modifications, including any increase in Seller's liabilities thereby.*