



# HANWA Co., LTD.

4-3-9 Fushimi-machi, Chuo-ku, Osaka-pref, 541-8585 Japan

## GENERAL TERMS AND CONDITIONS

### 1. THE GENERAL TERMS AND CONDITIONS

These general terms and conditions shall apply to the sale and supply of marine bunker oil and related products of whatever type or grade by HANWA CO., LTD. to any Buyer as defined below.

### 2. DEFINITIONS

In this document the following terms shall have the following meanings:

<b><i>BDN</i></b>	Bunker delivery note or bunker delivery receipt
<b><i>Buyer</i></b>	the party contracting to purchase and take delivery of the Products under the Contract
<b><i>Confirmation</i></b>	a written confirmation issued by the Seller to the Buyer setting forth the particular terms of the Contract
<b><i>Contract</i></b>	the agreement between the Seller and the Buyer for the sale, purchase, delivery and receipt of Products, which Contract shall comprise the General Terms and the Confirmation (including any schedule or appendix thereto)
<b><i>Contract Delivery Date</i></b>	the estimated date of delivery of the Products as stated in the Confirmation
<b><i>Delivery Date</i></b>	the date and time at which (i) the Receiving Vessel is ready to receive delivery of the Products at the delivery point; and (ii) the Buyer requests the Products to be delivered to the Receiving Vessel.
<b><i>General Terms</i></b>	these terms and conditions in force as of APR, 2013.
<b><i>Party</i></b>	the Buyer or the Seller (as the case may be), and “Parties” shall mean the Buyer and the Seller
<b><i>Products</i></b>	the marine bunker oil and related products of such type or grade as described in the Confirmation
<b><i>Receiving Vessel</i></b>	the vessel receiving the Products
<b><i>Seller</i></b>	HANWA CO., LTD. At 4-3-9 Fushimi-machi, Chuo-ku, Osaka-Pref, 541-8585 Japan.
<b><i>Supplier</i></b>	the supplier of the Products to the Seller

### 3. TERMS OF BUNKER TRANSACTION

- (a) The Contract shall be deemed to come into effect only upon the issue of a Confirmation from the Seller to the Buyer.
- (b) The General Terms shall form an integral part of the Contract. The Confirmation and the General Terms shall together constitute the entire agreement between the Parties in respect of the sale, purchase, delivery and receipt of the Products. No other prior offers, agreements, undertakings or representations, whether verbal or written, shall apply unless specifically referenced in the Confirmation.
- (c) In the event of an inconsistency between the particular terms of the Confirmation and the General Terms, the terms of the Confirmation shall prevail, save that Clause 18 of the General Terms shall at all times prevail over any term of the Confirmation that is inconsistent therewith.

#### **4. QUALITY**

- (a) Unless otherwise expressly specified in the Confirmation, the Products shall be of the quality generally offered by the Seller at the time and place of delivery, for the particular type(s) and grade(s) of Products ordered by the Buyer. Should the Confirmation specify a particular specification, the analysis of any test results conducted by an independent surveyor pursuant to Clause 6 shall make allowances for generally recognized industry standards of repeatability and reproducibility. All grades of Products may contain petroleum industry allowed, bio-derived components. Where a specification is expressed in the Confirmation as a maximum value, the Seller is not bound to a minimum value unless expressly stated in the Confirmation. Where a specification is expressed in the Confirmation as a minimum value, the Seller is not bound to a maximum value unless expressly stated in the Confirmation.
- (b) The terms of the Confirmation shall be conclusive as to the type, quality, quantity and other specifications of the Products. The Buyer shall have the sole responsibility for the selection of proper Products for use in the Receiving Vessel or other receiving facility, and ensuring that the description of the Products in the Confirmation is correct.
- (c) ANY IMPLIED CONDITIONS AND WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

#### **5. QUANTITY**

The quantity of Products sold pursuant to the Contract shall be as agreed between the Parties as per the Confirmation. Notwithstanding acceptance of the Buyer's order, the Seller's obligation to supply such quantities shall be subject to availability of Products from the Seller's source of supply at the time and place delivery is requested.

#### **6. MEASUREMENT, TESTING, CLAIMS**

- (a) Unless otherwise agreed by the Seller in writing, the quantity of Products delivered shall, save in the case of manifest error, be conclusively determined as follows:
  - (i) in the case of delivery ex-wharf, from the shore tank figures gauged by the Seller or Supplier immediately prior to and after loading;
  - (ii) in the case of delivery by bunkering barge or other marine vessel, from the official gauge or meter of the bunkering barge or marine vessel, or other flow meters approved by the Seller or Supplier; and

- (iii) in the case of delivery by tank truck or other land vehicle, from the tare weights measured on a weigh scale approved by the Seller or Supplier and that is certified by relevant authorities in accordance with applicable law, or by volume measured by flow meters approved by the Seller or Supplier.

In all cases, quantities calculated from the Receiving Vessel's soundings shall not be considered. Further, in the event of any inconsistency between these General Terms and the terms of the Supplier governing the method of measurement and calculation of quantity of Product, the Buyer acknowledges and accepts that the terms of the Supplier shall prevail. For the avoidance of doubt, the Seller is not obliged to notify the Buyer of any such inconsistency or provide the Buyer with such terms of the Supplier.

- (b) With respect to the quality of the Products supplied, samples shall be drawn at the time of delivery from the bunkering barge or tank truck effecting delivery, or in cases of delivery ex-wharf, from the shore tank. The method of sampling will be as per the method used by the local Supplier. These samples shall be conclusively deemed to be representative of the quality of the Products supplied to the Receiving Vessel. In the event of a claim by the Buyer, the sample(s) shall be tested and analyzed by an independent surveyor whose results shall be conclusive and binding on both Parties. The independent surveyor shall be appointed by mutual agreement, and the surveyor's fee shall be borne by the Party whose position is not upheld. In the event that Seller nominates an independent surveyor and Buyer takes no action within 48 hours to either approve the nomination or suggest an alternative surveyor, then Seller's choice of surveyor shall be binding and the results of any tests performed by such surveyor's testing facility shall be similarly binding on the Parties, regardless whether Buyer chooses to send a representative to such testing.
- (c) Any samples drawn by Buyer's personnel either at the time of bunkering or at any date after bunkering shall not be valid as an indicator of the quality of Products supplied. The fact that such samples may bear the signature of personnel aboard the delivery conveyance shall have no legal significance. Seller shall have no liability for any claims arising in circumstances where Buyer has commingled the Products on board the Receiving Vessel.
- (d) The Buyer waives any claim against the Seller with respect to the quality of the Products supplied unless the Buyer's claim is submitted to the Seller in writing within seven (7) days after the date of delivery of the Products, or such other longer period as the Seller may extend to the Buyer. Further, the Buyer shall be deemed to have waived any claim against the Seller with respect to the quantity of the Products supplied, if such claim is not expressly noted in writing on the BDN at the time of delivery or, in ports where such notation on the BDN is not permitted, presented in a separate letter to the local representative of the Seller or Supplier at the time of delivery. Should any timely claim submitted by Buyer not be settled to Buyer's satisfaction, any legal action by Buyer thereon shall be formally waived and time barred unless commenced under Clause 18 within 12 months of the delivery date or, in claims related to non-delivery, within 12 months of the Contract Delivery Date.
- (e) If Buyer submits a claim against the Seller with respect to the quantity or quality of the Products supplied, the Seller shall be entitled and the Buyer shall allow, or where the Buyer has chartered the Receiving Vessel, shall obtain authorization from the owner of the Receiving Vessel to allow, the Seller to board the Receiving Vessel and investigate the Receiving Vessel's records and to make copies of documents which the Seller may consider necessary for its investigations. Failure to allow boarding and/or to produce copies of documents shall constitute a final waiver and release of the Buyer's claim.
- (f) It is the duty of the Buyer to take all reasonable actions to eliminate or minimize any damages or costs associated with any Product which is alleged to not conform to agreed specifications. To this end Buyer shall cooperate with the Seller in achieving the most cost effective solution including the consumption of the Product after treatment and/or special handling. If the Product cannot be stored, transported or consumed by the Receiving Vessel because the Product is not in conformity with agreed specifications, Buyer's remedies shall be limited exclusively and solely to replacement of the non-conforming Products. If Buyer removes all or part of the Products without the prior written consent of Seller, then all such removal and related costs shall be solely for Buyer's account. IN

ANY EVENT, SELLER'S LIABILITY HEREUNDER FOR ANY CLAIMS, WHETHER ARISING FROM QUALITY, QUANTITY, ACCIDENT, DELAY, SPILL OR OTHER CAUSE, SHALL NOT EXCEED THE PRICE OF THAT PORTION OF THE PRODUCT SOLD HEREUNDER ON WHICH LIABILITY IS ASSERTED. FURTHERMORE, NO LIABILITY WILL BORNE BY SELLER FOR (1) ANY DEMURRAGE OR OTHER VESSEL DELAY OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM THE EXERCISE OF SELLER'S RIGHT TO SUSPEND AND/OR TERMINATE DELIVERY OF PRODUCT, OR (2) ANY ACTS OR OMISSIONS OF AGENTS AND/OR SUBCONTRACTORS OF SELLER, INCLUDING, WITHOUT LIMITATION, SUPPLIERS, FUEL TRANSPORTERS OR FUELING AGENTS.

## 7. DELIVERIES

- (a) The Buyer or Buyer's agent shall notify Seller or Seller's agent 72, 48 and 24 hours before the arrival of the Receiving Vessel at the delivery point. After the Receiving Vessel has arrived at the delivery point, the Buyer or Buyer's agent shall give the Seller or Seller's agent notice of the Delivery Date. The duration of any notice given hereunder shall exclude Sundays and public holidays at the delivery point.
- (b) The Contract Delivery Date is not guaranteed, and time shall not be the essence in respect thereof. Notwithstanding, the Buyer shall procure that the Delivery Date is on a date as close to the Contract Delivery Date as circumstances permit.
  - (i) If the Delivery Date is on the same date as the Contract Delivery Date (or, if the Contract Delivery date is expressed as a range of dates, on a date falling within that range of dates), then the Seller shall be obliged to deliver the Products on the Delivery Date.
  - (ii) If the Delivery Date is up to 48 hours prior to or after the Contract Delivery Date (or, if the Contract Delivery Date is expressed as a range of dates, from up to 48 hours prior to the first date of that range of dates to up to 48 hours after the last date of that range of dates), then the Seller shall, within 24 hours of receipt of notice of the Delivery Date:
    - (AA) confirm acceptance of the Delivery Date and thereupon be obliged to deliver the Products on the Delivery Date, at the agreed price; or
    - (BB) notify the Buyer of the Seller's rejection of the Delivery Date, and terminate the Contract without prejudice to any other rights the Seller may have.
  - (iii) If the Delivery Date is more than 48 hours prior to or after the Contract Delivery Date (or, if the Contract Delivery Date is expressed as a range of dates, more than 48 hours prior to the first date of that range of dates to more than 48 hours after the last date of that range of dates), then the Seller shall, within 24 hours of receipt of notice of the Delivery Date:
    - (AA) confirm acceptance of the Delivery Date and thereupon be obliged to deliver the Products on the Delivery Date, at the agreed price; or
    - (BB) notify the Buyer of any change in price of the Products, of which the Buyer's acceptance within 24 hours shall bind the Seller to deliver the Products on the Delivery Date, at the amended price; or
    - (CC) notify the Buyer of the Seller's rejection of the Delivery Date, and terminate the Contract without prejudice to any other rights the Seller may have.
- (c) All deliveries shall be made during normal working hours of the Supplier at the port of delivery unless otherwise requested by the Buyer and agreed by the Seller in writing. If the Buyer requests for delivery to be at a time outside the normal working hours of the Supplier at the delivery point, the Seller shall take all reasonable efforts to procure such delivery of the Products at such time if so

permitted by applicable port regulations and if otherwise feasible, provided that the Buyer shall pay all overtime and additional expenses incurred by the Seller or any Supplier in connection therewith.

- (d) Seller shall not be liable for any delays due to congestion at the delivery point or, if applicable, congestion at any other point where the Seller or Supplier receives Products for delivery to the Buyer, prior commitments of available barges/trucks, or discretionary decisions of the local transportation provider as to the vessel's order of placement in the daily barge program. In the case of delays not caused by the above circumstances, and which can be attributed to the negligence of Seller, Seller will, subject to Clause 6(f), reimburse Buyer for extra port costs such as shifting, pilotage and berthing, but will not be liable for the costs of demurrage, off-charterhire or for indirect, special, incidental other consequential damages. In all other circumstances of delay, the Buyer shall be responsible for all demurrage or additional expenses incurred by the Seller including mooring and unmooring charges and port dues.
- (e) Buyer shall provide free of cost a clear safe berth, position or anchorage alongside the Receiving Vessel's receiving lines. Seller shall be under no obligation to make deliveries when in its sole opinion, or when in the sole opinion of a Supplier, a clear and safe berth, position or anchorage is not available. The Buyer shall make all connections and disconnections of the delivery hose to the Receiving Vessel or barge or coastal tanker nominated on behalf of the Buyer and shall render all other necessary assistance and equipment to promptly and safely receive the Products.
- (f) Buyer shall ensure that the Receiving Vessel is in possession of all certificates and permits required for compliance with all relevant regulations pertaining to the docking and receipt of the Products at the port of supply. The Buyer represents and warrants that it has given the Seller reasonable prior notice in writing of any special conditions, difficulties, peculiarities, deficiencies and defects in respect of and particular to the Receiving Vessel and/or delivery equipment which might adversely affect the delivery of the Products. The Seller shall not be liable for any claim, loss, damages or expenses incurred or suffered by the Buyer in connection with the Buyer's breach of such warranty. Without prejudice to the generality of Clause 12, the Buyer shall indemnify and hold harmless the Seller from any claim, loss, damages or expenses incurred or suffered by the Seller in connection with the Buyer's breach of such warranty.
- (g) Delivery of the Products shall be deemed to have been completed, and risk and title of the Products transferred, when the Products pass the flange connecting the delivery hose to the intake line of the Receiving Vessel. Products delivered by other methods shall be considered to be delivered and risk and title transferred when passing over the rail of the Receiving Vessel. The Buyer shall assume all risks including loss, damage, deterioration, evaporation or shrinkage to the Products so delivered.
- (h) Upon completion of the delivery in the manner aforesaid, the master of the Receiving Vessel or an authorised representative of the Buyer shall confirm the delivery by signing a BDN. The Seller shall not be deemed to have any constructive knowledge of the authority or lack thereof of any purported representative of the Buyer, and shall be under no duty to verify the authority of such purported representative. The Buyer shall be bound by the BDN upon the Seller's receipt of the BDN.
- (i) The Buyer shall be liable for any loss and expenses incurred by the Seller resulting from the Buyer's failure to accept the full quantity of Products within a reasonable time from the time of delivery.

## 8. PRICES

- (a) The unit price to be paid for Products sold pursuant to the Contract shall be as agreed between the Parties in the Confirmation.
- (b) If the price stated in the Confirmation is quoted in volume units, the conversion to standard volume shall be at 60 degrees Fahrenheit or at 15 degrees Celsius, or otherwise as stated in the Confirmation or other notice in writing by the Seller.
- (c) Unless otherwise specified, the price stated in the Confirmation shall be in U.S. Dollars, ex-wharf

and shall represent only the gross purchase price of the Products. The Buyer shall pay any additional expenses or costs such as barging, demurrage, wharfage, port dues, duties, taxes, fees and any other costs including, without limitation, those imposed by port or other governmental authorities. If the price stated in the Confirmation is quoted as "delivered", then the price shall represent the gross purchase price of the Products and the cost of transportation, but does not include demurrage and other costs as indicated above.

## 9. PAYMENT

- (a) Unless otherwise provided in the Confirmation, all sales shall be payable by cash within 30 days from the calendar date on which delivery of Products under a relevant BDN is completed, in immediately available U.S. dollars and in such manner as the Seller may designate in the invoice, without discount, set-off, or deduction. Any letters of credit required by the Seller to be procured by Buyer in favor of Seller shall be in a form and substance acceptable to Seller and issued only by a bank acceptable to Seller. For the avoidance of doubt, the date on which delivery of Products under a BDN "is completed" is the calendar date on which pumping of the Products under a BDN is completed, as specified on the relevant BDN. If the date stated on a BDN does not specify whether such date is one on which the pumping of the relevant Products commences or is completed, then that date shall be taken to be the calendar date on which the pumping of the relevant Products is completed. A "calendar date" shall, with reference to the location where delivery takes place, commence at 0000hrs and shall end at 2359hrs.
- (b) The Seller may send invoices to the Buyer via mail, fax, e-mail or by hand or by any other means permitted by law. In the event that delivery documents are not available, Seller may invoice based on email or facsimile advice of delivery details in lieu of delivery documents. Notwithstanding any outstanding disputes between the Parties in connection with the Contract, the Buyer must make timely payment of the full amount due. The Buyer agrees that full and timely payment by the Buyer for the Products is necessary to facilitate the Seller's full and timely payment to the Supplier for the said Products, and that the Seller is not obliged to secure other source of funds in order to pay the Supplier. Accordingly, the Buyer acknowledges that its failure to pay the full amount when due may result in the Seller's failure to pay the full amount due on the relevant due date to the Supplier. Under the terms of the Seller's contract with the Supplier, such failure by the Seller may result in a loss or waiver of the Seller's claims against the Supplier, including claims for non-conforming product supplied by the Supplier. In such circumstances, the Buyer agrees that its failure to pay the full amount due to the Seller by the due date shall constitute a waiver of any claims by the Buyer against the Seller.
- (c) Past due amounts shall accrue interest at a rate of 6% per annum or at the rate of 3% per annum above the three-month LIBOR at the date when the payment became due (whichever rate is higher), calculated from the date when the payment became due to the date actual payment is received. All payments received from Buyer after an invoice is overdue shall first be applied to interest, legal collection costs and administrative fees incurred before they will be applied to the principal amounts. Without prejudice to the Seller's right under sub-clause (h) below, Buyer may not designate application of funds to a newer invoice so long as there are any unpaid amounts under a previous invoice. Any waiver by Seller of interest charges or administrative fees on a particular invoice shall not be construed as a waiver by Seller of its right to impose such charges on subsequent invoices.
- (d) If the payment due date falls on a weekend or any bank holiday in the country where payment is to be remitted, payment must be made on the first prior available banking day.
- (e) Each Party is responsible for its respective banking charges.
- (f) The Buyer agrees to pay on a full indemnity basis, in addition to other charges contained herein, all costs and expenses incurred by the Seller for the collection of amounts due from the Buyer, including, but not limited to, the cost of bonds, legal and other fees, fees associated with enforcing a lien, attachment or other available right, whether in law, equity or otherwise.
- (g) All unpaid invoices from Seller to Buyer shall immediately be considered overdue, upon the

occurrence of any of the following events: (i) any vessel owned or operated by Buyer is arrested or attached by Seller or a third party for unpaid debts; or (ii) there is a change in the financial circumstances or structural organization of Buyer sufficient to cause Seller to reasonably believe that its likelihood of receiving payment from the Buyer is jeopardized or that its security interest in any of Buyer's owned or operated vessels is jeopardized.

- (h) If more than one invoice payable by the Buyer is past due at the same time, Seller shall be entitled, at its sole discretion, to specify the particular invoice to which any subsequent payments from the Buyer shall be applied.
- (i) Seller reserves the right, in addition to all other rights and remedies available to it under applicable law, in equity, or otherwise, to suspend further deliveries of the Products, and demand payment of all outstanding balances, if the outstanding balances due from Buyer (including estimates of unbilled sales) exceed the Buyer's applicable credit limit, or if the Buyer fails to make any payment as herein provided or otherwise defaults under the General Terms.

## 10. CREDIT AND SECURITY

- (a) Products supplied pursuant to the Contract are sold and effected on the credit of the Receiving Vessel, as well as on the promise of the Buyer to pay, and it is agreed and the Buyer warrants that the Seller will have and may assert a maritime lien against the Receiving Vessel for the amount due for the Products delivered. This maritime lien shall extend to the Receiving Vessel's freight payments for that particular voyage during which the Products were supplied and to its freights on all subsequent voyages. Disclaimer of lien stamps placed on a BDN shall have no effect towards the waiver of such lien.
- (b) In the event of a breach of the warranty set forth in sub-clause (a) above before delivery, the Seller shall be entitled to terminate the Contract and, without prejudice to any other rights it may have, impose a cancellation fee pursuant to Clause 11 below.
- (c) If the purchase of Products is contracted for by an agent, then such agent, as well as the principal, shall be bound by and be fully liable for obligations of the Buyer under the Contract, whether such principal be disclosed or undisclosed.
- (d) All sales made under the Contract are made to the registered owner of the Receiving Vessel, in addition to any other parties that may be listed as Buyer in the Confirmation. Any Products ordered by an agent, management company, charterer, broker or any other party are ordered on behalf of the registered owner of the Receiving Vessel and the registered owner of the Receiving Vessel shall be liable as a principal for payment of invoices issued by the Seller under the Contract.

## 11. CANCELLATION CLAUSE

If subsequent to the Confirmation, the Buyer cancels the order for any reason whatsoever, including circumstances entirely outside of Buyer's control, then Seller without prejudice to any other rights it may have, shall be entitled to recover:

- (a) any cancellation fees imposed by the Supplier;
- (b) any difference between the contract price of the undelivered Product and the amount received by the Seller upon resale to another party (or, if another buyer cannot be found, any market diminution in the value of the product as reasonably determined from available market indexes);
- (c) all expenses or costs incurred by the Seller for the delivery to any third party of the undelivered Product, such as barging, demurrage, wharfage, port dues, duties, taxes, and fees; and
- (d) all costs and damages arising from any underlying physical or derivative paper contracts which

Seller has entered into in order to effect supply of the undelivered Product.

## **12. TERMINATION OF CONTRACT**

Either party may immediately terminate all or part of this Contract or any other agreement between the parties without taking notice, demand or any other procedures, if any one of the following events occurs to the other party, and may claim damages against the other party:

- (a) Either party fails to perform any momentary or other obligation to the other party.
- (b) Either party suspends payments, is unable to pay debts, receives a warning from a cleaning house, has its bill or check dishonored or files objection to avoid its bill or check from being dishonored.
- (c) With respect to any bill or check drawn, endorsed, accepted or guaranteed by either party and delivered to the other party or any other actual payment is not made on its due date for any reason.
- (d) Either party is demanded to pay its delinquent taxes and other public charges or is subject to the execution of collection procedures due to its delinquent taxes and other public charges.
- (e) A petition for a temporary restraining order including a provisional seizure and provisional disposition, compulsory execution or an auction for exercise of a security interest is filed or likely to be filed against either party.
- (f) A petition for commencement of civil rehabilitation , corporate reorganization, bankruptcy, liquidation, special liquidation, dissolution or other similar legal proceedings is filed against either party by itself or any other party or a petition for commencement of voluntary liquidation or other similar proceeding is filed or likely to be filed for either party.
- (g) Either party reasonably acknowledges that the other party is substantially changed due to a change in its organization, representatives, offices, shareholder or members, merger, assignment of business or any other changes reasonably acknowledges that it is difficult to continue this Contract or any other agreement between the parties even if the other party is changed formal rather than substantial due to inheritance or the conversion from a sole proprietorship to a company.
- (h) Either party is ordered to suspend its operations or has its business license or business registry revoked by any governmental or regulatory authorities.
- (i) There are reasonable grounds to believe that either party's financial situation worsens or is likely to worsen.
- (j) Either party breaches any provision of this Contract or any other agreement between the parties.

## **13. SUSPENSION OF DELIVERY AND REQUEST OF ADVANCED PAYMENT**

In the event that any ground listed in each item of the preceding article has arisen to Buyer, Seller at its option may suspend further deliveries and/or require payment of cash before each delivery.

## **14. ACCELERATION AND LIEN**

In the event that any ground listed in each item of Article 12 has arisen to Buyer, Buyer shall lose the benefit of terms and become liable to immediately pay in cash upon request from Seller and Seller will have any may assert a lien against the vessel to which Marine Fuel under this Contract was originally delivered or any other vessel or vessels that are owned by Buyer.

## **15. INDEMNITY**

The Buyer shall defend, indemnify and hold the Seller harmless with respect to any and all liability, loss,

claims, expenses, or damage the Seller may suffer or incur by reason of, or in any way connected with, the breach of the Contract by the Buyer, and/or the acts, omissions, fault or default of the Buyer or its agents in the purchase, receipt, use, storage, handling or transportation of the Products in connection with the Contract.

## 16. CONTINGENCIES

- (a) The Seller shall not be in breach of its obligations in the event that performance of the Contract is prevented, delayed, or made substantially more expensive as a result of any one or more of the following contingencies (each a “**Contingency Event**”), whether or not the occurrence of such Contingency Event may have been foreseen or foreseeable at the time of contracting and regardless of whether the impact of such Contingency Event on the Seller’s ability to perform the Contract is direct or indirect:
- (i) labor disturbance, whether involving the employees of the Seller, Supplier or otherwise, and regardless of whether the disturbance could be settled by acceding to the demands of the labor group;
  - (ii) change of laws or regulations of any governmental authority;
  - (iii) compliance with a request or order of any governmental authority or port authority or any person purporting to act on behalf thereof;
  - (iv) shortage or interruption in production, processing, storage or transportation of Products from the Seller's contemplated source of supply, not shown by the Buyer to be due to the Seller's lack of diligence;
  - (v) earthquake, adverse weather conditions, fire, explosion, piracy, and other perils of navigation or perils of the sea (including collision);
  - (vi) acts of war, blockades, embargoes, riots or other civil disturbances; or
  - (vii) any cause beyond the reasonable control of the Seller, whether or not foreseeable.
- (b) If performance of the Contract is prevented or delayed (whether directly or indirectly) by a Contingency Event, the obligations of the Seller which are affected by the Contingency Event shall be suspended during the continuance of the Contingency Event and any period reasonably required for restoration of any damage.
- (c) Without prejudice to the generality of Clause 13(b), if the supply of Products from any Supplier or any facility of the Seller, or that is otherwise available to the Seller, is curtailed or cut off or is otherwise inadequate to meet the Seller’s obligations to its customers (whether or not due to a Contingency Event), the Seller shall have the option during such period of curtailment, cessation or inadequacy to allocate among its customers such Product (if any) as may then be available to the Seller from such existing sources of supply, in such manner as it sees fit. The Seller shall not be liable to the Buyer insofar as any such allocation results in a shortfall or delay in supply of Products to the Buyer. For the avoidance of doubt, Seller shall not be obligated to purchase or otherwise obtain supplies of the Products to make up inadequate supplies or to replace the supplies so curtailed or cut off. In no event shall Seller be obligated to make up deliveries omitted or curtailed hereunder, and any such deficiencies in deliveries shall be deducted from the quantity of Products to be supplied under the Contract with no liability to either party therefor.
- (d) If performance of the Contract is made substantially more expensive (whether directly or indirectly) by a Contingency Event, the Seller shall have the option either to
- (i) reduce or stop deliveries during the continuance of the Contingency Event and any period reasonably required for restoration of any damage; or

- (ii) continue deliveries and increase prices in fair proportion to the increased cost of operation as a result of the Contingency Event.

The Buyer shall be bound to pay all prices so increased pursuant to sub-clause (c)(ii).

- (e) The Buyer shall bear the Seller's costs of demurrage or delay resulting from a Contingency Event.
- (f) If the Contingency Event lasts for more than 10 days, Seller shall be entitled to terminate the Contract by notice to the Buyer.
- (g) Nothing in this provision shall be deemed to excuse the Buyer from its obligation to make payments for Products received.

## 17. TAXES AND ASSESSMENTS

- (a) The Buyer will, in addition to the purchase price, pay the Seller the amount of all excise, gross receipts, import, motor fuel, superfund and spill taxes, and all national, local and other taxes (collectively, "**Taxes and Assessments**") or the foreign equivalent as determined in the sole, absolute and unfettered discretion of Seller (other than taxes on Seller's income), and paid or incurred by the Seller directly or indirectly with respect to the Products and/or on the value thereof insofar as the same are not expressly included in the price quoted. Any additional Taxes and Assessments incurred by Seller arising from the Contract and imposed by any governmental and/or any regulatory authority after delivery as a result of an audit, whether domestic and/or international, shall be borne solely by Buyer.
- (b) The Buyer will present the Seller with any required documentation, including but not limited to registrations, exemptions, certifications, claims, refunds, declarations or otherwise, in a form and format, and on or before whatever due date as the Seller shall require as evidence of compliance with Clause 14(a). Further, the Buyer shall indemnify and hold the Seller harmless for any damages, claims, liability or expense the Seller might incur due to the Buyer's failure to comply with this requirement.

## 18. SAFETY AND ENVIRONMENTAL PROTECTION

- (a) It shall be the sole responsibility of the Buyer to comply and advise its personnel, agents and/or customers to comply, both during and after delivery, with all the health and safety requirements applicable to the Products and to ensure so far as possible that any user of such Products avoids without limitation any frequent or prolonged skin contact with the Products. The Seller accepts no responsibility for any consequences arising from failure to comply with such health and safety requirements or arising from such contact. The Buyer shall protect, indemnify and hold the Seller harmless against any damages, expense, claims or liability incurred as a result of the Buyer, or any user of the Products, or its customers failing to comply with the relevant health and safety requirements.
- (b) In the event of a spill or discharge occurring before, during or after bunkering, the Buyer shall immediately notify the appropriate governmental authorities and take whatever action is necessary, and pay all costs to effect the clean-up. Failing prompt action, the Buyer authorizes the Seller and Supplier to conduct such clean-up on behalf of the Buyer at the Buyer's risk and expense, and the Buyer shall indemnify and hold the Seller and Supplier harmless against any damages, expense, claims or liability arising out of any such spill or clean-up unless such spill or clean-up shall be proven to be wholly caused by Seller's gross negligence.
- (c) The Buyer warrants that the Receiving Vessel is in compliance with all governmental trading and pollution regulations. The Buyer further warrants that the Receiving Vessel will not be moored at a wharf or alongside other marine loading facilities of the Seller or Supplier unless it is free of all

conditions, deficiencies or defects which might impose hazards in connection with the mooring, unmooring or bunkering of the Receiving Vessel.

## 19. ADDITIONAL PROVISIONS

- (a) Unless otherwise indicated by the Buyer in writing, all claims, notices and other communications hereunder shall be served by one Party to the other Party by mail, overnight courier, facsimile or electronic mail at the address designated by that other Party in writing. Either Party may by fifteen (15) days' prior written notice to the other Party change the address, facsimile number or electronic mailing address details at which notices or other communications are to be given to it.
- (b) No waiver of any of the provisions of this Agreement shall be effective unless it is in writing and signed by the Party against whom it is asserted, and any such waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver of any breach.
- (c) A failure or delay in exercising any right, power or privilege under the Contract will not be presumed to operate as a waiver of such right, power or privilege thereunder, and a single or partial exercise of any right, power or privilege under the Contract will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege thereunder or the exercise of any other right, power or privilege thereunder.
- (d) The Seller may assign any right or obligation arising under the Contract. The Buyer shall not assign any right or obligation arising under the Contract without the prior written consent of the Seller.
- (e) If any part of the Contract is deemed by a court of competent jurisdiction to be invalid, all other conditions and provisions hereof shall remain in full force as if the invalid portion had never been part of the original agreement.
- (f) The headings used herein are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting the General Terms.
- (g) The terms of the Contract shall not be altered or amended except by an instrument in writing signed by or on behalf of both Parties. Notwithstanding the aforesaid, Seller may amend the General Terms from time to time at its sole discretion provided that any such amendment shall not apply to contracts made prior to the effective date of the altered or amended General Terms, unless the parties to such contract otherwise agree in writing.
- (h) No ambiguity in any provision of the Contract shall be construed against a Party by reason of the fact it was drafted by such party or its counsel. Acceptance of, or acquiescence in, a course of performance rendered under the Contract shall not be relevant or admissible to determine the meaning of the Contract, even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. The terms of the Contract shall be binding upon and shall inure to the benefit of the Parties and their respective legal representatives, permitted assigns and successors.
- (i) Each Party shall not, without the prior written consent of the other Party, disclose or permit to be disclosed the terms of the Contract and any confidential information, documents and/or materials which it may acquire in relation to such other Party's business in the course of performing the Contract. Notwithstanding anything herein to the contrary, the provisions of this Clause 16(i) shall survive for three years following the termination of the Contract, provided that this provision is strictly without prejudice to any prior accrued breach or any rights or remedies that may arise by reason of any such accrued breach.
- (j) The Contracts (Rights of Third Parties) Act 2001 of Singapore shall not under any circumstances apply to the Contract and any person who is not a party to the Contract (whether or not such person shall be named, referred to, or otherwise identified, or form part of a class of persons so named,

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referred to or identified, in the Contract) shall have no right whatsoever under the Contracts (Rights of Third Parties) Act 2001 to enforce the Contract or any of its terms. Without prejudice to the aforesaid, the rights and obligations set out in the Contract are for the exclusive benefit of Seller and Buyer. Buyer shall look solely to Seller for due performance hereunder.

**20. WAIVER OF IMMUNITIES:**

Buyer expressly and irrevocably waives, to the fullest extent permitted by applicable law, any and all immunity on the grounds of sovereign immunity or other similar grounds from any action or proceeding which may be commenced or asserted by the Seller in connection with the Contract.

**21. LAW AND JURISDICTION**

The Contract shall be governed by the law of the Republic of Singapore and each of the Parties hereby irrevocably submits to the non-exclusive jurisdiction of the courts of the Republic of Singapore. Buyer agrees that Seller shall be entitled to assert its rights of lien or attachment or other rights, whether in law, in equity or otherwise, in any jurisdiction where it finds the Receiving Vessel.

HANWA CO., LTD.  
BUNKER OIL DEPT.  
GENERAL TERMS AND CONDITIONS