



1 of 4 GTCS Effective date 1<sup>st</sup> May, 2015

**General Terms & Conditions Of Sale "GTCS"**

**These General Terms & Conditions of Sale (GTCS) shall apply to all Contracts for the sale of Fuel on the following basis**

- 1) **Definitions:** The following expressions where mentioned in this these GTCS or in the Contract shall have the meanings as shown below:
  - a) "Buyer" means the entity and or any personnel of the Buyer that has contracted with the Seller to buy Fuel for and to supply the Vessel, which shall include its assignees or successors, and appears as Buyer in the Contract, reference to the terms Receiver, or Managers (the entity that is operationally or technically or commercially managing the Vessel), or Operators (the entity that may be commercially operating the Vessel), or Trader (the entity that is buying the Fuel from the Buyer and selling such to the Owner/Managers/Operator), or Owner (the owner of the Vessel), shall also mean "Buyer"
  - b) "Supply Place" means the location where the supply operation takes place.
  - c) "Supply Equipment" or "SE" or "SE's" means the Sellers barges, tankers, bulk plant, pipes and pumps as the case may be used to supply the Vessel.
  - d) "Contract" means the Contract between the Seller and the Buyer as recorded by the Seller, of which these GTCS shall be an integral part of
  - e) "Controlling Sample" means the sample or samples taken by an Independent Surveyor or by the Sellers personnel from the Sellers SE's before or at the time of delivery.
  - f) "Designated Bank Account" means the bank account that is designated by the Seller in its Invoice for receipt of the payment of dues that arise out of this Contract.
  - g) "Independent Surveyor" means an Independent Survey company or a surveyor appointed from time to time by the Seller in its sole discretion or jointly appointed by the Seller and the Buyer, as the case may be.
  - h) "Fuel or Fuels" means the grades of Fuel to be delivered or that has been delivered.
  - i) "Grade" means the grade of Fuel as outlined in the Appendix
  - j) "Arrival Notice" means the notice sent from the Buyer to the Seller that shall contain the following information (which may be updated as necessary): 1) Call sign, 2) Vessel's Name, 3) Owners, 4) Flag, 5) Agents, 6) Length Overall, 7) Gross Tonnage, 8) Net Tonnage, 9) Deadweight, 10) Ex-Names, 11) Expected time of arrival, 12) Lloyds Register Number, 13) Requirements, 14) Last 3 Ports, 15) Next Port, 16) Charterers, 17) Bareboat Charterers
  - k) "Seller" means the entity that appears as the Seller in the Contract, reference to the term Supplier, shall also mean "Seller"
  - l) "Vessel" means the Vessel and its crew owned, chartered, operated or managed or serviced by the Buyer or to which the Fuel is being delivered to, or to which the Buyer is contracting to buy the Fuel for
  - m) "Broker" means the entity that is acting as a broker or as brokers between the Buyer and the Seller in the Contract.
  - n) "Agent" means the entity acting on behalf of any of the Buyer or the Vessel.
  - o) "Master" means the representative of the Buyer and or the Vessel and or including any agent or any officer of and or on the Vessel even if not the actual master
- 2) **TERMS**
  - a) These GTCS supersede and cancel any previous general terms and conditions of sale of the Seller and shall be effective from the "Effective Date". No variation shall be of any effect unless agreed in writing by the Seller. In the event of any conflict between the Contract and any oral or any unsigned written variation by any staff of the Seller, these GTCS shall always prevail, any reference to the words Contract or GTCS shall mean the reference to the Contract
  - b) It is agreed that by this Contract the Buyer has bought and the Seller has sold the Fuel as per the terms of the Contract and the GTCS
- 3) **ORDER CONFIRMATION**
  - a) Should the Contract be entered into by any party acting as an Agent for the Buyer and or acting for or on behalf of the Buyer, whether such is disclosed or undisclosed, then such Agent in addition to the Buyer and or holder of any interest in the Vessel receiving the Fuel shall be jointly and severally liable for and guarantees the proper performance of all the obligations of the Buyer under this Contract, and shall be deemed as a principal and not only acting as an Agent
  - b) It is agreed that all orders of all supplies and/or deliveries are considered to be emanating from the Master of the Vessel even if relayed by the Buyer to the Seller and even if no written request from the Master of the Vessel exists, the dues and cost of such supplies and or deliveries shall be treated as a primary lien on the Vessel and shall be considered (as pari passu) similar to any primary debts similar to government and crew debts on the Vessel.
  - c) It is acknowledged and agreed that in cases where the Buyer is a Trader or a Manager or an Operator who is buying such Fuel for onward sale to an End User or for onward use by the End User's Vessel (the End User, for the purposes of this Clause, shall mean (collectively and individually) the Owner and or Manager and or Operator of the Vessel), the following shall apply: (i) the Buyer shall be deemed as being the Agent of the End User for all purposes and the Buyer represents and warrants to the Seller that it has so notified the End User thereof and has also notified the End User of the terms of the Contract and these GTCS and of this Clause 3 (c) in specific; and (ii) the Buyer and the End User shall be jointly and severally liable to the Seller for payment of the purchase price of such Fuel purchased by the Buyer for resale to the End User or for use by the End User's Vessel and the End User shall be liable to pay for Fuel supplied by the Seller and delivered to the Vessel; and (iii) the Buyer hereby assigns irrevocably and unconditionally to the Seller all its rights, title and interest to and in any monies owing by the End User or owing by the End User's Vessel in respect of such Fuel as evidenced by any invoice issued by such Buyer to the End User for such Fuel; and (iv) notwithstanding the issuance of any invoice by the Buyer to the End User, the Buyer agrees that the Seller may (at the Sellers' absolute discretion) demand of the Buyer and/or the End User directly that the End User effects direct payment for such Fuel from the End User's bank account to the Seller's bank account directly in lieu of payment of any invoice issued by the Buyer to the End User for such Fuel (in which event and upon receipt of the Seller of the payment from the End User, such payment shall be deemed as payment for the Buyer's invoice issued by the Buyer to the End User to the extent of the amount paid); and (v) the Buyer hereby irrevocably and unconditionally waives any rights to object to any such demand by the Seller under sub clause (3) (c) (iv) and shall be deemed to have accepted such demand upon notice given by the Seller to the Buyer and/or the End User; and (vi) the Buyer shall fully indemnify and hold harmless both the End User and the Seller in respect of all and or any actions the Buyer or any of its financiers or interests may commence or take against either of the End User or the Seller for all losses and or damages and or costs the Seller and or the End User may suffer as a result of any acts or omissions on the part the Buyer or any of its financiers or interests may commence or take against either of the End User or the Seller relating to the purchase and or resale of such Fuel; and (vii) save the assignment set out herein, the Buyer hereby warrants and undertakes that it has not and shall not assign or transfer any of its rights in the Fuel or the proceeds pursuant to any arrangement and or agreement with the End User to any party in any way or form; and (viii) The Buyer undertakes and warrants that the Buyer's arrangement and or agreement with the End User shall be subject to the same law and jurisdiction as this Contract and these GTCS are. It being agreed that should any of above provisions be and may or become invalid and/or unenforceable, the other provisions shall not be affected, furthermore, the parties shall, in place of any invalid and/or unenforceable provision, enter into a valid and enforceable provision as similar as possible in both legal and economic sense to such invalid and/or unenforceable provision.
- 4) **PRICE/PAYMENT/RISK AND PROPERTY**
  - a) The price of the Fuel delivered in accordance with the Contract shall be the price laid down by the Seller in the Contract for the appropriate grade of Fuel.
  - b) All amounts for any Fuel delivered under this Contract shall unconditionally and irrevocably become due and payable from the Buyer to the Seller and shall be considered as a lien on the Vessel
  - c) The Buyer shall become liable for the Fuel immediately upon the Fuel (upon delivery) passing the SE's rail, risk of the Fuel shall pass to the Buyer at that time.
  - d) Title in and to the Fuel delivered and or property right in and to such Fuel shall remain vested in the Seller until payment has been received by the Seller of all amounts due in connection with the respective delivery
  - e) Until full payment of all and any amounts due to the Seller for whatever nature has been made, the Buyer and or the Owner shall not be entitled to use the Fuel other than for the propulsion of the Vessel, nor mix, blend, sell, encumber, pledge, alienates, assign, or surrender the fuel or any rights in the Fuel to any party
  - f) In case of breach from the Buyer occurs, the Seller shall be entitled to (but not obligated to), at Seller's absolute discretion, to demand and take back the Fuel without prejudicial intervention and without prejudice to all other rights or remedies available to the Seller
  - g) In the event that the Fuel has been commingled with other products on the Vessel, the seller shall have the same rights as above to such part of the commingled product as corresponds to the quantity of the Fuel delivered
  - h) Payment shall be made in United States Dollars (or in any equivalent currency as the Seller may require) by telegraphic or telex transfer to the Designated Bank Account as designated by the Seller. If payment is made to any other account, the Buyer shall not be released from its obligation to make payment to the Seller. All payments shall be made net of transfer charges which shall be for the Buyers account, and shall be made without any discount or deduction and without set off or counter claim whether relating to any present or past agreements or Contracts
  - i) Any credit arrangements agreed to by the Seller shall be totally without prejudice to the Seller's right to require payment forthwith. The Seller may at any time request the Buyer to pay promptly or in advance for any delivery or Invoices irrespective of any prior agreement as regarding price and payment terms. The Seller reserves the right at any time to modify or terminate any credit arrangements and to call for immediate payment
  - j) Time is of the paramount essence in this Contract. If payment by the Buyer to the Designated Bank Account is delayed beyond the due date or beyond the date on which the Seller has set as being the due date, the Seller shall be entitled to pre-agreed damages at the rate of 2% per month or any part thereof from the date on which the payment was due until the date on which the full payment is received in the Designated Bank Account, in addition to any other rights the Seller may have under this Contract.
- 5) **ARRIVAL NOTICES**
  - a) The Buyer undertakes to send to the Seller within 24 hours from the time the Contract is entered into, by telex or by fax, an Arrival Notice, and thereafter 3, 2 and 1 day before the Vessels arrival at the Supply Place, (if the Contract is entered into such that the Arrival Notice within the stipulated timings in this paragraph are not possible, the Seller shall give such Arrival Notice at least 12 hours before the actual arrival of the Vessel at the Supply Place), should the Buyer give an incomplete or late or not give an Arrival Notice as stipulated herein for any reason, the Seller shall be entitled to cancel the Contract and shall not be liable to the Buyer for any consequences, losses or damages arising from such cancellation.
  - b) The Buyer shall not amend the estimated arrival time and date as stipulated in the Contract beyond 12 hours, if the Buyer does amend such beyond 12 hours or if the Vessel fails to arrive within 12 hours from the arrival date and time at the Supply Place as stipulated in the Contract, the Seller then shall have the right to revise the



## 2 of 4 GTCS Effective date 1<sup>st</sup> May, 2015

price as previously agreed in the Contract and the date of supply and other conditions and shall also have the right to cancel the Contract.

- c) The Buyer may either accept such change or elect to cancel this Contract; in all cases the Seller shall be under no liability to the Buyer for any consequences, losses, costs or damages arising from such change or cancellation by the Seller.

### 6) DELIVERY

- a) Delivery shall be evidenced by the document presented by the Seller, the Buyer shall procure that the Buyer's representative and or agent shall sign such document
- b) It is hereby agreed that the Buyers representative (including the Master, Chief Engineer, Chief Officer or Surveyor) shall not place any remarks, protests, stamps (other than Vessels stamp), clarifications, notes, etc. on any documents presented to him or them for their signature, and if any such remarks, protests, stamps (other than Vessels stamps), clarifications, notes, etc. are placed on any documents presented by the Seller or the Sellers representatives, such shall not carry any evidential value and shall be void, invalid and shall not be binding on the Seller. It is agreed that refusal (whether verbal or in writing) by the Buyers representatives to sign any receipt upon presentation by the Seller or the Sellers representative, shall be construed and deemed as acceptance by the Buyer toward the contents of such receipts which shall be deemed and considered as duly signed and shall be sufficient evidence of the delivery of the Fuel and the quantity and quality of such Fuel, a signed statement by the Seller stating that the Buyer or Buyers representative refused to sign the receipt shall be conclusive evidence of such refusal and shall be binding between the Buyer and the Seller.
- c) The Buyer and Vessel and all of their personnel and Agents shall comply with all the relevant regulations applied at the Supply Place. If the Buyer or the Vessel or crew fail to abide by such regulations, the Seller shall be entitled to cancel the Contract in which case the Seller shall be under no liability to the Buyer for any consequences, losses or damages whatsoever arising from such cancellation. Furthermore, the Buyer shall be liable for all consequences, losses and or damages (including fines and penalties) suffered by the Seller as a result of the Buyers or the Vessel or its crew failing to observe any of such regulations.
- d) The Buyer shall indemnify the Seller in respect of any damage or loss which may be suffered by the Seller or their servants, agent or crew or on-shore personnel as a result of any actions or inactions and or negligence in regards to any of the ship to ship berthing and un berthing and or operations and or connections and disconnections of hoses or any part of the supply operation concerning the delivery and delivery of the Fuel from the beginning of any operation until the same shall have been completed and the refueled Vessel of the Buyer shall have been disconnected and separated from the Sellers SE's and until the departure of the Vessel from the Supply Place.
- e) Notwithstanding any other provisions elsewhere in the Contract, the Seller does not guarantee the pumping rate at which the Fuel is to be delivered to the Vessel. The Seller shall not be liable for any consequences; losses or damages howsoever caused arising from the rate at which the Fuel is pumped from the SE's to the Vessel or to the Buyer.
- f) The Seller shall not be in breach of their obligations hereunder to the extent that performance is prevented, delayed due to any reason, including but not limited to: (1) shortage of Fuel, (2) breakdown or under performance of the SE, (3) any conditions outside the control of the Seller.
- g) The Buyer undertakes to take delivery and leave the Supply Place with all due dispatch. In the event that the supply is delayed by the Buyer for whatever reason, or if after the supply to the Vessel, the Vessel fails to leave the Supply Place immediately, any loss or damage suffered by the Seller resulting from such delay, including any claims incurred or arising due to the delay in the supply of other vessels shall be borne and paid for by the Buyer to the Seller.
- h) Notwithstanding anything contained elsewhere herein, the Seller will affect the supply on a best endeavor basis as promptly and as practically possible and shall not be liable for any demurrage under any circumstances or for any delay in supply caused due to whatever reason, or for any eventual or consequential losses and or damages that may be suffered by the Buyer or the Vessel
- i) The performance provided herein shall not be a basis for any claim by the Buyer, even though the occurrence of such contingency in question may have been foreseen or be foreseeable at the time of entering into the Contract or subsequently became foreseeable.

### 7) QUALITY

- a) The Buyer shall have the sole responsibility for the nomination of the Grade of Fuel required for and delivered to the Vessel
- b) Fuels sold shall conform to only those specifications outlined in the Appendix of these GTCS which individually are consistent with the relevant ISO Standard, the Fuels shall be used solely for the operation of the Vessels machinery in its normal trade, all Fuels delivered shall be used solely for the operation of the Vessel originally receiving it.
- c) Subject only to the stipulations in this clause and notwithstanding any other provisions herein, Fuels are delivered without any guarantees or warranties, express or implied, as to merchantability, fitness or suitability for any particular purpose or any particular machinery or otherwise whether or not made known to the Seller at any time prior to or after delivery. The Seller does not make any representations or warranties, express or implied as aforesaid, as to any other specifications or limitations or characteristics that are not contained in the Appendix of the Grade of Fuel actually delivered. The Buyer agrees and confirms that it shall not request (or present any claim for damages as a result of) any specification and/or characteristic of the Fuel that is not expressly referred to in the Appendix. Furthermore, the Buyer accepts that it is his sole responsibility to ensure that the Fuel supplied is fit for the particular engine on board the Vessel and that in the exercise of this responsibility he is not relying on any expertise, actual or presumed, of the Seller in this regard. If, and to the extent that the Buyer retains any right of action against the Seller notwithstanding the provisions of this clause then the Buyer agrees to waive any such right and fully indemnify the Seller in relation to the consequences of the same
- d) The Buyer may not alter the Grade of Fuel requested, never the less if the Grade originally agreed is not available at the time of delivery, the Seller shall inform and consult with the Buyer to supply an alternative Grade of Fuel available at that time always within the Grades outlined in the Appendices for different Grades. The Seller shall not be liable for any consequences or losses and or damage whatsoever resulting from delivery to the Vessel of the alternative Grade of Fuel different from that originally agreed. It is further agreed that in the event that the Fuel delivered complies to any of the Grades as outlined in the Appendices, the Seller will not be liable in any way for any consequences or losses or damage whatsoever and the Buyer will not be entitled to reject delivery of the Fuel. In all cases the maximum liability the Seller will be subjected to shall be by compensating the Buyer by way of up to 5% reduction in the cost of the Fuel delivered. Apart from the above-mentioned compensation, the Seller shall not be liable for any other consequences and or damages whatsoever resulting from the failure of the Fuel delivered to comply with the specifications of the Grade agreed.
- e) The Parties may agree and select and appoint an Independent Surveyor. The Buyer may request from the Seller in writing to appoint an Independent Surveyor upon which the Seller may appoint an Independent Surveyor, the cost for such appointment shall be to the account of the Buyer. Further, any appointment of an Independent Surveyor by the Buyer contrary to the provisions contained herein shall be invalid, and the findings shall be of no evidential value, nor binding upon the Seller.
- f) It is agreed that in the event that the density of the Fuel is within plus or minus .005 of the Sellers declared density as compared with the tested density of the Controlling Sample; the Seller shall not be liable for any compensation to the Buyer on variation, or reduction in the quantity or value of the Fuel.
- g) It is agreed by the Buyer that the Seller shall not be liable for any consequential loss/damage if any sustained by the Buyer, or the Vessel as a result of any deviation in the specification of the Fuel delivered from the Grade agreed. The Seller is hereby fully indemnified by the Buyer against such loss and damage.
- h) It is agreed by the Buyer that if it is proven by analysis of the Controlling Sample that the Fuel supplied to the Buyer or the Buyer Vessel by the Seller does not meet that of the Grade of Fuel agreed, the Buyer shall not make any deduction, and pay the full invoice amount on its due date. The Buyer hereby absolves and indemnifies the Seller from any and all direct or indirect or any consequential damages and losses due to above reason caused to the Buyer and or the Agent/Trader/Broker/Owner/Manager/Operator/Charterers and/or to any machinery/ equipment of the Vessel or any other losses or damages of whatsoever nature.

### 8) SAMPLES

- a) Seller shall arrange four identical representative samples (the Samples) of each Grade of the Fuel to be drawn throughout bunkering operation from the manifold witnessed by the Representatives of the Seller and the Buyer
- b) Samples will be designated as; (i) Marpol Sample; (ii) Controlling Sample; (iii) Supply Equipment Sample; (iv) Receiving Vessel Sample
- c) Samples shall be securely sealed and provided with labels showing Supply Equipment and Receiving Vessel names, product name, delivery date, delivery place, and seal number.
- d) The Controlling Sample shall be the only Sample by which the quality of the Fuel delivered is established. Results of tests/analysis of such Controlling Sample establishing the properties/specifications of the Fuel delivered shall be the only conclusive evidence ascertaining the properties/specifications of the fuel delivered which shall be binding between the Buyer and Seller as to the quality of the Fuel delivered.
- e) Test(s) carried out at Buyer's request shall be at Buyer's cost; furthermore, the Buyer shall pay for the cost of test(s) carried out as a result of a quality dispute where the result of such test(s) proves that the quality is in conformity with the agreed Grade. Test(s) shall be carried out in a mutually agreed laboratory
- f) Testing and or results of any test(s) on any other Samples other than the Controlling Sample - whether or not such were sealed and or whether or not such were taken at the same time as the Controlling Sample - shall be of no evidential value whatsoever, and shall not be binding on the Seller and shall not be capable of giving rise to any claim of whatsoever nature against the Seller.

### 9) VALIDITY OF CONTRACT

- a) Notwithstanding anything contained herein, the Buyer hereby unconditionally agrees that even if it is proven that the Fuel supplied was not in accordance with the Grade of Fuel agreed or that the Seller has defaulted in executing any of its obligations under the Contract, such shall not violate and nullify any part of the Contract in any way, neither shall it affect the duties, liabilities and obligations of the Buyer towards the Seller, irrespective of any claim made or proven of whatsoever nature by the Buyer.

### 10) QUANTITY

- a) The quantity of Fuel delivered by the Seller to the Buyer shall be measured by measuring or measurements taken on the SE's tanks or shore tanks or by SE's meters only by SE's personnel which shall be conclusive evidence of the quantities delivered and shall be included in the receipt to be signed by a representative of the Buyer without any remarks. Measurements by any other means taken on board the Vessel shall not be binding on the Seller and shall have no evidential value as between the Seller and the Buyer. If the Buyers representative fails to sign the receipt, the Buyer shall be deemed to have agreed and accepted the quantity of the Fuel delivered as stated in the receipt signed by the Sellers representative.
- b) The Buyer shall have the right to call upon an Independent Surveyor to measure the quantity of Fuel delivered; the Independent Surveyor shall be appointed by the



## 3 of 4 GTCS Effective date 1<sup>st</sup> May, 2015

Seller or jointly appointed by both the Buyer and the Seller and shall only measure the SE tanks or shore tanks or by SE's meters only to determine the quantity and shall issue his survey report. If such Independent Surveyor is requested by the Buyer they shall pay the Independent Surveyors expenses and costs in relation to the measurement of the quantity of Fuel delivered. The measurements carried out by the Independent Surveyor shall be conclusive evidence of the quantities delivered and shall be included in the receipt to be signed by a representative of the Buyer without any remarks.

Measurements by any other means taken on board the Vessel shall not be binding on the Seller and shall have no evidential value as between the Seller and the Buyer; both the Sellers and Buyers representatives shall have the right to witness the measurement operations.

- c) Notwithstanding any other provisions, the Seller has the option (entirely at their discretion), to supply up to 10% more or less than the quantity agreed. If the Seller chooses to do so, the Seller will not be liable in any way for any consequences, losses and or damage in respect of such action, the Buyer shall be committed to pay for any additional quantity which shall be subject to all the terms of the Contract.

### 11) CLAIMS

- a) Notice of any claim made by the Buyer shall be given in writing fully documented with all supporting documents to the Seller at their address and be received by them within (21) twenty one days from the date on which the delivery was completed, or (if no delivery took place) within (21) days from the intended time of delivery stated in the last complete Arrival Notice tendered by the Buyer. Unless the Buyer gives notice of any claim pursuant to this clause, within the time limit, all claims by the Buyer of whatsoever nature shall be automatically extinguished and absolutely time barred and waived against the Seller. Notwithstanding the above, any claims in respect of differences in quantity by the Buyer shall be made to the Seller at the supplying facility at the time of delivery and shall be confirmed in writing within seven days thereof, if such claim in respect of quantity is not made at the time of supply, then such claim shall be considered as invalid and the Buyer confirms that it indemnifies and holds harmless the Seller against such claim.
- b) Notwithstanding any other provisions herein, in the event of any claim made by the Buyer, the Buyer shall include in the notice of such claim the following: (i) an express statement that a dispute has arisen out of the Contract (ii) the nature of the dispute (iii) refer expressly to this sub-clause and to the clause on which the Buyer is relying upon to render its claims. The Buyer agrees that lack of strict compliance with such notice shall be construed as waiver by the Buyer of its claim which shall be deemed to have been void, barred and nullified
- c) Notwithstanding any other provisions herein, it is agreed that no claim shall be admissible if the Fuel delivered has been commingled and or mixed together with any other fuels on the Vessel at any time
- d) If the Buyer gives notice of any claim within the time limit and in the proper format concerning the properties or specification of the Fuel (a "Quality Claim"), the Buyer must within seven days of giving notice of the Quality Claim notify the Seller in writing that they wish one or more of the properties or the specifications to be tested, the Buyer may only ask for the specification that is disputed and such must be one of the specifications stipulated in the Appendix for the Grade of Fuel supplied, which upon receiving such notice shall be tested by an analysis of the Controlling Samples to be conducted by the Independent Surveyor, the choice of the appointment of the Independent Surveyor and the laboratory where the test (s) are to be conducted shall be at the sole discretion of the Seller. The Buyer or his representative shall be entitled to attend the testing of the Controlling Sample, the Buyer may give authority for the Independent Surveyor to conduct the test in his absence. If the Buyer neither appoints a representative nor authorizes tests to proceed in his absence, the Buyer shall be deemed to have accepted and be bound by the results of the tests. If the Buyer fails to notify the Seller that it requires the Controlling Sample to be tested within the above mentioned seven days of the notice of claim given pursuant to this Clause, the Quality Claim will be extinguished and absolutely barred and waived as against the Seller. It is expressly agreed by the Buyer that any claim of whatsoever nature made by them, based on any sample obtained or analyzed contrary to the stipulations of this Clause, shall be invalid, void, barred and not have any evidential value and not be binding on the Seller.
- e) Provided that the Buyer has given proper notice of any claim as per this Clause and in the case of Quality Claim, the Buyer (and in such case only) shall only then be entitled to commence legal action against the Seller within 60 days of the date of the notice. If no legal proceedings have been commenced by the Buyer against the Seller within 60 days of the above-mentioned date, all claims against the Seller shall be extinguished and absolutely waived and time barred, and the Buyer shall not be entitled to commence legal proceedings of any nature against the Seller.
- f) The Buyer shall pay the amount invoiced on its due date promptly in accordance with the set payment and credit terms without the right of set-off or counter claim. If the Buyer has any claim of whatsoever nature against the Seller, the Buyer shall under no circumstances, make any deduction from the invoice amount, and shall pay it in full; any deduction in payment of the invoice made by the Buyer for whatsoever reason, shall be considered as a breach and a default by the Buyer under the Contract, and in such event the Buyer shall be deemed to have automatically waived and lost all its rights to make or pursue any claim against the Seller of whatsoever nature whether notified or not to the Seller and shall have lost their right to any other legal recourse whatsoever, and shall be bound to pay the full invoice amount forthwith even if the grounds of claim are related with the deduction. The Buyer shall be liable for all the direct and indirect losses and damages and for all consequential losses and damages of whatsoever nature suffered by the Seller for such action.
- g) The Buyer expressly agrees that they shall not have any right to arrest any assets including but not limited to any bank accounts or vessels owned/operated/chartered/managed by the Seller or any of its associated or affiliated, or other interests anywhere in the world pursuant to any dispute, the Buyer shall be fully liable for all the consequential losses or damages whatsoever caused to the Seller by such action. Further, the Buyer shall automatically be deemed to have waived all their rights to make any claim of whatsoever nature against the Seller if the Buyer attempts to or does arrest any assets as described herein
- h) The Buyers hereby agrees that in the event of any breach of any terms of this Contract by the Buyer, including but not limited to, stipulations of this Clause by the Buyers, the Buyers shall also be deemed to have waived their rights to claim restitution of any overpayment, if such restitution of overpayment is resultant to any finding based on the result of a sample other than the Controlling Sample, test of which has been made in accordance with the Contract.
- i) Notwithstanding any other provisions herein to the contrary, Sellers liability in relation to any claims and or losses and or damages (including any possible consequential damages) suffered by the Buyer or any third party arising as a result or consequence of the Contract and or the supply of the Fuel, and regardless as to whether such losses and or damages (and or any consequential damages) were caused by fault or negligence on the side of the Seller or any of their personnel, representatives or subcontractors, and shall be limited to an aggregate absolute maximum sum equivalent to TEN percent of the Fuel delivered and or sold

### 12) CANCELLATION

- a) i. BY THE BUYER  
If the Buyer purports to cancel the Contract for whatever reason [including but not limited to the Buyers right to cancel] less than 48 hours prior to the time of delivery given in the last complete Arrival Notice tendered by the Buyer pursuant to this Contract, the Buyer shall immediately pay to the Seller 2.5% of the total value of the Fuel due to be delivered at the intended time of delivery.
- b) ii. BY THE SELLER  
In addition to the Sellers right to cancel the Contract in accordance with its terms and conditions, the Seller shall have the right to cancel the Contract for any reason in its sole judgment and discretion up to 24 hours prior to the intended time of delivery given in the last complete Arrival Notice tendered by the Buyer, if the Seller decides that for any reason in its sole judgment and discretion that the Contract should be cancelled pursuant to this clause, the Sellers decision shall be conclusive and binding on the parties to the Contract, the Seller shall pay to the Buyer 2.5% of the value of Fuel of the intended delivery. This payment shall be by way of full and final compensation for all losses or damage suffered as a result of the cancellation of the Contract under this sub-clause. If the Seller exercises its right to cancel pursuant to any other provisions in the terms and conditions, the Seller shall be under no liability to the Buyer for any consequences or loss or damage whatsoever arising from the cancellation
- c) iii. BY EITHER PARTY  
If the Contract is entered into 24 hours or less prior to the intended time of delivery, either party shall have the right to cancel the Contract, but only upon condition that it shall immediately pay to the other 1 % of the value of the Fuel due to be delivered by way of compensation for any damages suffered by reason of the cancellation as full and final compensation

### 13) ENVIRONMENTAL PROTECTION

- a) If an escape, spillage or discharge of oil ("Spill") occurs while a delivery of Fuels being made to the Vessel, the Buyer and the Agent/Trader/Broker/Owner/Manager/Operator/Charterers of the Vessel signally and jointly shall promptly take all such action as is reasonably necessary to remove the oil and mitigate the effects of such spill. However, notwithstanding the cause of such Spill, the Seller is hereby authorized at his option to take such measures either in cooperation with the Buyer or exclusively as the sole party and incur such expenses (whether by employing his own resources or by contracting with others) as are reasonable in the sole judgment of the Seller to remove the oil and mitigate the effect of such spill. If the Seller has exercised its option to remove the oil and mitigate the effect of such Spill, the Buyer agrees to cooperate and render such assistance as is required by the Seller in the course of such action. The party that caused the said Spill by its act or omission shall pay for any expenses, damage, costs, fines and penalties arising from the Spill. Should the Buyer allege the spill arose through Sellers negligence, the Buyer shall be required to prove such beyond reasonable doubt. The Buyer agrees to give or cause to be given to the Seller upon demand all such documents and other information concerning any Spill, which are requested by the Seller or are required by laws or regulations applicable at the time and place where the Seller delivers Fuel(s) to the Buyer

### 14) LIEN

- a) Where the Fuel is delivered on credit, and in addition to any other security contained herein, it is expressly agreed that the Seller is agreeing to do so relying on the faith and credit of the Vessel, further the Fuel is delivered and this Contract is entered into based upon the faith and credit of the Vessel, it is further agreed and acknowledged that a lien over the vessel is created for the total invoiced amount(s), the Buyer, if not the Owner of the Vessel, hereby expressly warrants that they have full authority from the Owner to pledge and encumber the Vessel's credit as aforesaid, and that they have given notice of these terms to the Owner of the Vessel, the Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien or liens attaching to the Vessel, further more, and notwithstanding that the Buyer shall remain liable to the Seller for all amounts, expenses, costs, losses and damages payable to the Seller under the Contract, deliveries of Fuels are expressly made on the faith and credit of the Vessels credit to which delivery is made and the Seller shall have a lien against such Vessel (no matter who the present and or future owners may be) and her sister vessels, and against her reserves of Fuels for all amounts, expenses, costs, losses and damages due to the Seller, and may assert their lien at any time and at any place or jurisdiction in the world in any manner including but not limited to arrest of any assets or Vessels owned, operated,



## 4 of 4 GTCS Effective date 1<sup>st</sup> May, 2015

chartered, managed by the Buyer Agent/Trader/Broker/Owner/Manager/Operator/Charterers of the Vessel for any sums due. The amount due shall become a maritime lien against the Vessel immediately upon delivery of the Fuel to the Vessel.

- b) Where product is supplied to a Vessel, and in addition to any other security, and as this Contract is entered into and product is supplied upon the faith and credit of the Vessel, it is therefore agreed and acknowledged that a lien over the Vessel is thereby created for the price of the Fuel supplied and that the Seller in agreeing to deliver Fuel to the Vessel does so relying upon the faith and credit of the Vessel. The Buyer, if not the Owner of the Vessel, hereby expressly warrants that they have full authority of the Owner Agent/Trader/Broker/Owner/Manager/Operator/Charterers to pledge the Vessel in favor of the Seller as aforesaid and that they have given notice of the provisions of this Contract to them. The Seller shall not be bound by any attempt by any person to restrict, limit, or prohibit its lien or liens attaching to a Vessel.

### 15) INDEMNITY

- a) Without prejudice to anything else herein, the Buyer indemnifies the Seller against all losses, damages or injury howsoever caused to any person or property arising from any acts or omissions on the part of the Buyer or their servants, agents, officers or crew or other persons acting under their supervision, direction or control. Further, the Buyer indemnifies the Seller and holds the Seller harmless against all claims of whatever nature made by the Agent/Trader/Broker/Owner/Manager/Operator/Charterers of the Vessel
- b) Notwithstanding any other provision herein, in case the Buyer or any of the Agent/Trader/Broker/Owner/Manager/Operator/Charterers or any other party having any interest in the Vessel (who may or may not be named in the Contract) makes any claim of any nature arising out of the supply of Fuels to the Vessel against the Seller in any jurisdiction, the Buyer agrees to fully indemnify and hold harmless the Seller for any such claim or judgment against it, including legal fees involved in defending the claim. The Buyer agrees to pay the Seller on a full indemnity basis immediately upon the Seller becoming under an obligation to satisfy any claim or judgment brought against them by such party
- c) The Buyer agrees that during discussions on any dispute of whatever nature arising or while any amounts remain outstanding and due from the Buyer to the Seller, and if the Buyer or the registered owner at the time of the supply during such time causes the ownership, flag or name of the Vessel changed, such changes shall not invalidate any claim or rights of the Sellers under the Contract against the Buyer and the said Vessel, and the Sellers shall have every right to seek all legal recourses, including but not limited to arrest of the Vessel and her cargo or any other assets of the Buyer, at the sole costs and consequences of the Buyer. It is also agreed by the Buyer that such change / changes shall automatically nullify any/all claims which may have been made by the Buyer against the Seller for any reasons.

### 16) WAIVER

- a) No delay or omission or waiver by the Seller to exercise any right or power under the terms of the Contract shall impair such right or power or be construed as a waiver of or as acquiescence in any time agreeing to waive any right or power, such waiver shall be revocable by the Seller at any time and the right or power shall once again be exercisable as if there had been no such waiver.

### 17) ASSIGNMENT

- a) The Seller shall have the right with or without notice to assign all or any of their rights and obligations hereunder, any assignment by the Buyer of their due rights and obligation under the Contract without Sellers express approval/confirmation in writing shall be null and void, and not binding on the Seller.

### 18) INDEBTEDNESS

- a) In the event of any default by the Buyer in the payment of any indebtedness to the Seller or other default in or breach of its obligations to the Seller or in the event of any distress or execution levied upon the Buyers property or assets or his making any agreement or composition with his creditors or his committing any act of bankruptcy or if a petition or receiving order or analogous proceeding is levied against the Buyer or if any resolution for this winding up is passed or presented or if a Receiver is appointed over its undertaking, property or assets or should the Buyer's financial conditions become unsatisfactory in the Seller's sole judgment, then the Seller shall have the right at any time, without prejudice to any other right and remedies, to cancel the Contract forthwith and Seller shall not be liable for any consequences, losses and / or damages however arising from such cancellation. The Seller shall also have the right to take such steps against the Vessel, any sister or associated vessels, the registered Owners of the Vessel and the Buyer as circumstances lawfully permit.

### 19) NOTICE AND NOMINATIONS

- a) Unless otherwise expressly agreed in writing by the Seller, notices hereunder shall be sent from the Buyer to the Seller at the address mentioned in the Contract. Any notice to be sent to the Buyer shall be sent to the last address of the Buyer known to the Seller.

### 20) JURISDICTION

- a) This Contract shall be construed and be subject to the laws of the country at which the supply took place (Supply Place) and shall be subject to the jurisdiction of the competent court of such country
- b) It is agreed by the Buyer that the Seller, and without any prejudice to the Sellers rights under this Contract, shall have exclusive option and power to initiate any other legal proceeding against the Buyer as they deem fit and necessary at any time in any jurisdiction of the world to assert their lien over the Vessel or other assets of the Agent/Trader/Broker/Owner/Manager/Operator/Charterers or any other entity holding interests in the Vessel and or arrest the Vessel and its cargo at any port of the world and or subsequently initiate and pursue any other legal proceedings in the same or any other jurisdiction as the Seller deems fit and proper to peruse and seek relief and seek judgment and to secure and realize their outstanding amounts, costs, expenses, losses, damages, payable to them under this Contract in which case the Seller agrees that such jurisdiction as chosen by the Seller shall be applicable to this Contract
- c) It is agreed by the Buyer that the contents in this sub-clause shall not, in any way negate or invalidate or prejudice the power conferred upon the Seller by this Clause, neither give rise to any conflict of laws and shall not amount to any breach of terms of the Contract. Any award or decision or judgment secured by the Buyer against the Seller from any other jurisdiction except in the Country where the supply took place, shall not be binding on the Seller and the Buyer hereby indemnifies the Seller against any direct or indirect damages or losses and any consequential losses or damage or costs incurred by the Seller due to such legal proceedings

### 21) MISCELLANEOUS

- a) Waivers of performance by one party of the obligations of the other party under this Contract, or default by such party of any of its obligations hereunder shall not operate as a waiver of performance of any other obligations or any further default. The terms and conditions stipulated herein shall extend to be binding upon and insure to the benefit of the heirs, successors, administrators, legal representatives and permitted assigns of the parties hereto. The descriptive headings herein are for convenience only and shall not affect the meaning or construction of any provision of the Contract. The Contract constitutes the entire understanding between the Buyer and the Seller and supersedes all prior agreements, representation or warranties. Spelling mistakes or grammar mistakes and or headings of the various clauses shall not affect or change the meaning or construction of the Contract in any way, the reference to the singular or the plural shall be construed as the same, the Buyer including any party having any interest in the Vessel agree that they shall not be capable of denying knowledge of these GTCS or the Contract in any defenses or claim and shall not be capable of raising any claim for damages or losses based on tort or negligence against the Seller, the Buyer confirms and warrants that the owners and the operators of the Vessel (and or any other party having any interest in the Vessel or the Receiving Facility) are fully aware of this Contract and the GTCS, and that they have agreed that the Buyers enter into this Contract and have further agreed that by doing so they are considered as if they have ordered and contracted for the Fuel and or Goods themselves and are therefore jointly liable with the Buyer for the proper performance of the Buyer of the Buyers obligations including but not limited to the payment obligations, furthermore, the Buyer warrants and represents that all of its personnel communicating with the Seller whether by phone, or fax, or telex or e-mail or by letters are fully authorized to bind the Buyer in regards to the Contract and any other matters concerning the Contract

### 22) EXCEPTIONS / FORCE MAJEURE

- a) The Buyer recognizes that the supply of Fuels and the crude oil from which it is derived is subject to fluctuations and interruptions and that the Sellers sources of supply are uncertain. Vessels will be supplied on a best endeavor basis as promptly as circumstance permit but the Seller shall not be liable for any delay arising for any reason whatsoever or for any consequences, losses or damages whatsoever resulting from any delays in delivery of part or all of the Fuels ordered.
- b) In the event that several vessels are in the Supply Place at any one time for the purpose of taking delivery of Fuel, the Seller will endeavor (but without obligation) to deliver on a first-come first-serve basis, but will nevertheless at all time reserve its right to deliver the Fuels to vessels in such order as it shall in its absolute discretion think fit, the Buyer acknowledges that these GTCS are sent with the Contract and hence the Buyer shall not be entitled to claim against the Seller by reason of the Seller exercising its option pursuant to this sub-clause .
- c) Should there be a delay, curtailment or interference with the availability of any of the Sellers sources or anticipated source of the supply wherever situated, the Seller shall not be required to increase supplies or obtain supplies from other sources or to purchase Fuels to replace the supplies so curtailed or interrupted. A signed statement issued by the Seller stating that there is a shortage of Fuels (whether temporary or permanent) shall be conclusive evidence and binding as between the Buyer and the Seller.
- d) No failure, omission or delay by the Seller to carry out or observe one or more or any terms of the Contract shall give rise to any claim against the Seller or be deemed a breach of Contract if such failure, omission or delay arises directly or indirectly from any cause beyond the control of the Seller including, but without limitation to the generality of the foregoing, any government regulations or embargo interfering or affecting, directly or indirectly with the supply of Fuels or the crude oil from which it is derived the Sellers supplies of Fuels, any suspension or reduction in production of Fuel oil by the Seller's main subsidiary or anticipated suppliers occurring at any time, any acts of God, strikes, lock outs, work stoppage or other industrial disturbance, war, warlike activities, commotion, riot, disturbances, fires, insurrections, quarantine, restrictions, epidemics, lightning, earthquakes, storm, explosions and or any other like events.