

# SK Energy International Pte. Ltd.

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## **Standard Terms and Conditions of Sale Concerning the Supply of Marine Fuel by SK Energy International Pte. Ltd. ("SKEI") September 2012 Edition**

### **APPLICATION**

Unless it is otherwise agreed in writing between the Seller and the Buyer, these Standard Terms and Conditions ("**Standard Terms and Conditions**") shall apply and be incorporated into each Confirmation of Order, and together with such Confirmation of Order these Standard Terms and Conditions constitute a full and complete agreement (the "**Agreement**") for the sale of Marine Fuel between the Seller and the Buyer.

Unless expressly accepted in writing by the Seller, no terms and conditions of the Buyer and/or any other parties shall bind on the Seller and these Standard Terms and Conditions shall prevail over any such terms and be binding on the Buyer.

Where the Seller agrees expressly with the Buyer in writing for a particular term or terms to be included in the Confirmation of Order which are inconsistent with these Standard Terms and Conditions, such particular term or terms shall prevail over these Standard Terms and Conditions only to the extent of such inconsistencies.

### **1. DEFINITIONS**

In these Standard Terms and Conditions, unless the context otherwise requires, the following definitions and meanings shall apply:

- 1.1 "**Buyer**" means both (i) the Company(ies) named in the Confirmation of Order buying the Marine Fuel on their own behalf under a contract with the Seller and where the context requires shall include its employees, servants, agents and designated representatives and (ii) the registered owner of the Vessel to which Marine Fuel is being supplied, its bare-boat charterers and/or its charterers and/or managers and/or operators and/or the buyer and/or the disponent owner of the Vessel.
- 1.2 "**Seller**" means SKEI and shall include any of its branch offices, servants, agents, suppliers and designated representatives.
- 1.3 "**Marine Fuel**" means the different grades of bunker fuel oil, intermediate bunker fuels, marine fuel oil, thin fuel oil, marine diesel oil, light marine diesel fuel and gas oil or any other type and grade of oil delivered or contracted to be delivered or arranged to be delivered by the Seller.
- 1.4 "**Confirmation of Order**" means the confirmation issued by the Seller to the Buyer, confirming the terms of the sale and purchase of Marine Fuel, save that the price for the Marine Fuel specified therein shall only be valid seven (7) business Days from which the Confirmation of Order is issued. No binding contract shall exist until such Confirmation of Order is issued by the Seller to the Buyer.

- 1.5 "**Bunker Delivery Note (BDN)**" means a proprietary document of the Seller providing details of the quality and quantity of the Marine Fuel supplied to the Vessel of the Buyer.
- 1.6 "**Delivery Port**" means a port at which the Seller delivers or arranges for the delivery of Marine Fuel.
- 1.7 "**Company**" includes a body corporate, a natural person, an unincorporated body, a governmental-agency and/or a statutory corporation.
- 1.8 "**Vessel**" means the ship or vessel(s) nominated to take delivery, or taking delivery or having taken delivery of the Marine Fuel on behalf of the Buyer for which Marine Fuel is to be or has been arranged to be delivered by the Seller.
- 1.9 "**Business Day**" means any day, except Saturdays and Sundays, on which banks in Singapore are open for business.

## **2. ORDER AND CONFIRMATION OF ORDER**

- 2.1 Buyer shall submit an order for purchase of Marine Fuel to Seller which contains at least the following information: price, quantity, quality, name of Delivery Port, date of delivery, name of Buyer's Vessel, account to be charged and name of Buyer's local agent.
- 2.2 Seller shall, within the reasonable period of time after the receipt of Buyer's order, notify Buyer whether it accepts such order. If Seller wants to accept such order, Seller shall send Seller's Confirmation of Order to Buyer, and Buyer's receipt of the Confirmation of Order shall constitute formation of a contract for that individual order.

## **3. PRICE**

- 3.1 The price of Marine Fuel shall be the price quoted by the Seller and accepted by the Buyer as confirmed by the Seller in the Confirmation of Order.
- 3.2 Unless otherwise specified in the Confirmation of Order, the price shall be in United States Dollars and shall represent the price per metric ton for each grade of Marine Fuel specified in the Confirmation of Order. If the price in the Confirmation of Order is expressed in volume units, the price shall be converted to a price per metric ton at sixty (60) degrees Fahrenheit or fifteen (15) degrees Centigrade.
- 3.3 The price specified in the Confirmation of Order shall only be valid for a period of seven (7) Business Days from the issuance of the Confirmation of Order, beyond which the Seller may adjust the price upward at its absolute discretion to reflect any price frustration in the market.
- 3.4 The price quoted in the Confirmation of Order is an ex-wharf or ex-light/barge price and excludes any charges for wharfage, barging, mooring or other similar charges. In addition to the price quoted in the Confirmation of Order the Buyer shall pay the Seller for all and any taxes, levies, duties, expenses, delivery charges, wharfage, barging fees, road trucks, jetty fees and other costs (including without limitation, those imposed by the government or authorities at the place where the delivery takes place) arising out of and/or incurred in connection with the delivery of such Marine Fuel under the Agreement which shall be included in the Seller's invoice to the Buyer. The Buyer shall furthermore pay any extra costs arising out of and/or incurred in connection with deliveries made on Saturdays, Sundays and Public Holidays, and outside of normal working hours at the Delivery Port or place of delivery/work.

3.5 The price of Marine Fuel does not include any insurance against the risk of loss of or damage to Marine Fuel or any property. It is expressly understood and agreed that the Buyer will carry its own insurance at its own expense for the protection of the Marine Fuel after delivery and of the Buyer's property in the Delivery Port. All vessels, barges, trucks, or other modes of transportation selected by the Buyer shall maintain proper insurance coverage with reputable insurance companies. The Buyer will provide a certificate of insurance to this effect at no cost to the Seller upon the Seller's request.

#### **4. DELIVERIES**

4.1 Wherever the Seller accepts delivery nominations, all such deliveries shall be within port limits, unless delivery outside of such port limits is agreed in advance in writing by the Seller.

4.2 The Seller shall use reasonable endeavours to deliver the Marine Fuel to the delivery location, on such date and at such time as are specified in the Confirmation of Order, but such date and time are approximate only on Seller's estimate and time for delivery shall not be of the essence. Delivery shall occur when the vehicle or craft transporting the Marine Fuel arrives at the delivery location.

4.3 All deliveries will be made ex-wharf or ex-light/barge in accordance with the instructions given by the Buyer or the master of the Vessel, subject to the Seller's agreement to such instructions, which agreement shall be reached before the delivery is commenced by the Seller. Without recourse available to the Buyer, the Seller is entitled to suspend delivery of the Marine Fuel until such agreement is reached, and if no such agreement is reached within three (3) days from the date of delivery intended under the Confirmation of Order, the Seller shall be entitled to terminate the Agreement but without prejudice to the Seller's rights to claim damages from the Buyer.

4.4 The Buyer shall give the Seller, unless otherwise agreed or requested by the Seller, at least five (5) Business Days' advance notice of the requested date of delivery and to provide the details of the delivery between 09:00 to 17:00 hours (Singapore time) by e-mail or telefax, unless waived by the Seller in writing. Such notice shall identify the Buyer and the Confirmation of Order and shall specify all delivery details, including but not limited to, the Delivery Port, name of Vessel, the agent of Vessel, its estimated time of arrival at the Delivery Port, approximate date of delivery, location of Vessel, method of delivery, confirmation of the grade and quantity of Marine Fuel ordered and any other information that the Seller requests.

4.5 The Buyer and/or the agent of the Vessel shall give the Seller at least Seventy-Two (72) hours' advance notice (which excludes Saturdays, Sundays and Public Holidays) between 09:00 to 17:00 hours (Singapore time) by e-mail or telefax, unless waived by the Seller in writing, of the date of the Vessel's arrival at the Delivery Port, name of Vessel, the exact quantity of Marine Fuel, exact location and exact time at which the delivery is required and any other information that the Seller requests.

4.6 Notwithstanding that the Seller may have issued a Confirmation of Order to the Buyer, the Seller's obligation to deliver the Marine Fuel is contingent on the Buyer giving the requisite notices under Clauses 4.4 and 4.5 above. If the Buyer does not give the requisite notices under Clauses 4.4 and 4.5 above, the Seller shall then, in its absolute discretion, have the option of terminating the Agreement. The Buyer shall indemnify the Seller on demand for any losses, costs and/or expenses that the Seller suffers (either directly or indirectly) as a result of the Buyer failing to give the requisite notices under Clauses 4.4 and 4.5 above, whether the Seller exercises its option to terminate the Agreement or not.

- 4.7 If the Vessel fails to arrive at the delivery location at the stated time of arrival as confirmed by the Buyer's notices given under Clauses 4.4 and 4.5 above, the Seller may, in its absolute discretion, revise the price and/or amend the Agreement and/or amend any and all terms of the Agreement and/or claim any additional costs or expenses incurred as a result. Alternatively, the Seller may, in its absolute discretion, choose to terminate the Agreement without prejudice to its right to claim damages from the Buyer.
- 4.8 If at any point prior to delivery it becomes apparent to the Buyer that the Vessel will be unable to arrive at the delivery location at the stated time of arrival, the Buyer shall notify the Seller immediately, providing the Seller with a revised ETA (estimated time of arrival) for the Vessel with such notice. Upon receipt of such notice and revised ETA, the Seller shall be under no obligation to accept such revised ETA and may, in its absolute discretion, revise the price and/or amend the Agreement and/or amend any and all terms of the Agreement and/or claim any additional costs or expenses incurred as a result. Alternatively, the Seller may, in its absolute discretion, choose to terminate the Agreement without prejudice to its right to claim damages from the Buyer.
- 4.9 Once a Confirmation of Order has been issued by the Seller, the Buyer may not cancel or change the order as confirmed. The Buyer shall be liable for all losses (including, but not limited to, loss of profits), costs or expenses (including, but not limited to, barging and storage costs) incurred (either directly or indirectly) by the Seller resulting from the failure of or delay by the Buyer to take delivery of or refusing to take delivery in part or in full of the quantity of Marine Fuel ordered under the Agreement. In addition, the Buyer shall pay the Seller a cancellation fee of US\$3.00 per metric ton for the Marine Fuel ordered under the Agreement which is not taken. Buyer shall pay such cancellation fee within seven (7) days following issuance of Seller's invoice for the cancellation fee.
- 4.10 Delivery of Marine Fuel by the Seller to the Buyer shall be carried out, inter alia, subject to any regulations, requirements and procedures (including any amendments and revisions thereof) as may be prescribed from time to time by any governmental authorities at the Delivery Port. The Buyer shall, in any event, be solely responsible for ascertaining, acquainting itself and complying with inter alia, all such regulations, requirements and procedures which are applicable at the Delivery Port and in complying with all relevant berth restrictions and requirements and the Buyer agrees to indemnify the Seller for any losses, costs and expenses which have been incurred by the Seller following the Buyer's failure to comply with such regulations, requirements and procedures.
- 4.11 Vessels shall be supplied as promptly as circumstances permit, but the Seller shall in no event be liable for any losses, damages, delay or demurrage, whatsoever and howsoever incurred by the Buyer due to and/or arising out of and/or in connection with any:
- (i) delay or congestion at the port or shore terminal;
  - (ii) weather/tide conditions;
  - (iii) administrative compliance;
  - (iv) port regulations;
  - (v) labour disputes or strikes;
  - (vi) public holidays at the Delivery Port;
  - (vii) any other commitment(s) of available barges;
  - (viii) unavailability (in the Seller's opinion) of a clear and safe berth or mooring;
  - (ix) priority orders;
  - (x) unavailability of supply of Marine Fuel;
  - (xi) any other cause whatsoever, provided it is beyond the Seller's reasonable control.

- 4.12 The Buyer shall be responsible for making all connections and disconnections of the delivery hose(s) to the Vessel's bunker manifold and to ensure that the hose(s) are properly connected to the Vessel's bunker manifold prior to the commencement of delivery. The Buyer shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly the delivery of the Marine Fuel under the Agreement. Where delivery is undertaken ex-wharf, the Buyer shall promptly receive the delivery and withdraw the Vessel from shore terminal or wharf once delivery is completed.
- 4.13 The Buyer shall ensure that the Vessel is in possession of valid licences, permits and certificates required by relevant regulations pertaining to delivery, storage and use of the Marine Fuel and that:
- (i) the master of the Vessel advises the Seller in writing prior to delivery of (i) the maximum allowable pumping rate and pressure, and communication and shut-down procedures, and (ii) any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Marine Fuel; and
  - (ii) the Vessel has a free side clear of obstructions to allow the safe and proper mooring of the bunker tanker to deliver the Marine Fuel and render all necessary assistance which may reasonably be required to moor and unmoor the bunker tanker.
- 4.14 The Seller shall not be obliged to deliver or supply Marine Fuel into any tanks of the Vessel which are not regularly used for bunker storage or to deliver Marine Fuel for export for which the necessary permits or licenses have not been obtained.
- 4.15 If the Vessel is not able to receive the delivery promptly, or the Buyer or the Vessel causes any delay to the Seller's or the Seller's supplier's facilities in effecting deliveries, the Buyer shall pay demurrage to the Seller at the Seller's established rates based on current market and Seller's vessel/barge's deadweight, and reimburse the Seller for all other expenses in connection therewith.
- 4.16 In addition to the Buyer being responsible for payment of the purchase price and any costs or damages referred to in these Standard Terms and Conditions, in circumstances where the Buyer is not the owner of the Vessel the Seller reserves the right to claim against the owner of the Vessel for payment of the same to the extent that the owner of the Vessel would be liable under the law and legislation of the place: -
- (i) Where the owner of the Vessel is incorporated or maintains its principal place of business; and/or
  - (ii) Where the Vessel can be found.
- 4.17 In addition to the provisions of Clause 17 above, the Seller furthermore is hereby granted and will have and may assert a maritime lien or the like over the Vessel, its machinery and equipment to the extent that this is permitted under the laws which govern the Agreement or by the laws which apply in any jurisdiction where the Vessel is found and/or registered.

## **5. ENVIRONMENT**

- 5.1 The Buyer warrants that the Vessel now and at all times is and will be in compliance with all governmental, international convention and international shipping association trading and pollution standards and regulations. The Buyer further warrants that the Vessel will not be moored at a wharf or alongside other marine loading facilities of or chosen by the Seller unless free of all conditions, deficiencies or defects.

- 5.2 In case of any spillage (which for the purpose of this Clause shall mean any leakage, escape, spillage or overflow of Marine Fuel) at any stage of the delivery and transfer of Marine Fuel to the Vessel, the Buyer shall immediately take such actions as are reasonably necessary to effect against or mitigate any resulting pollution damage or as required by any governmental authorities. Such actions shall always be conducted in accordance with such local laws and regulations which may compulsorily apply.
- 5.3 In the event such incident is the result of any defect in the Vessel or its equipment or any fault or act of neglect of the master, crew, agent or representative of the Vessel, the Buyer agrees to cause the Vessel to assume any and all responsibility for penalties, clean-up expenses and any other costs of whatsoever nature that may be incurred, either directly or indirectly, as a result of such incident.
- 5.4 Notwithstanding the cause of such spill, Seller or its supplier is hereby authorized, at its option, upon notice to Buyer or Buyer's Vessel, to take such measures, either in cooperation with Buyer, or exclusively as the sole party, and incur such expenses (whether by employing its own resources or by contracting with third parties) as are reasonably necessary in the judgment of Seller or its suppliers to remove the oil and mitigate the effects of such spill. Buyer agrees to cooperate and render such assistance as is required by Seller in the course of such action.
- 5.6 Any expenses, damages, costs, fines and penalties arising from a spill shall be paid by the parties on the basis of the appropriation of liability agreed between the parties or determined in accordance with the laws of Singapore by a competent court in a jurisdiction at the election of the Seller.
- 5.7 If a third party, including but not limited to government agencies and public authorities, makes a claim against the Buyer and the Seller, whether jointly and/or severally, in connection with a pollution claim, the Buyer and the Seller shall settle the pollution claim on the basis of the appropriation of liability agreed between the parties or determined in accordance with the laws of Singapore by a competent court in a jurisdiction at the election of the Seller.
- 5.8 Buyer also agrees to give, or cause to be given, to Seller, all such documents and other information concerning any spill, or any program for the prevention thereof, which are requested by Seller, or required by law or regulation applicable at the time and place where Seller delivers Marine Fuel to Buyer.

## **6. QUANTITY AND MEASUREMENT**

- 6.1 The quantities of Marine Fuel supplied under the Agreement shall be those specified in the Confirmation of Order, subject always to the availability of quantities and grades of such Marine Fuel on the date of delivery at the delivery location.
- 6.2 Quantity of the Marine Fuel delivered by the Seller shall be measured and determined at the Seller's option from the gauge or meter of shore or barge tanks. Such determination shall be conclusive and binding on the parties and shall be used for Seller's invoicing purpose, regardless of any measurements taken by the Vessel. The quantity shall be measured and calculated in accordance with prevailing API/ASTM-IP Petroleum Measurement Tables, and adjusted if necessary to 60°F/15°C.
- 6.3 The Buyer shall have the right to have its representative or an inspector appointed by the Buyer and acceptable to the Seller be present to witness the measurement of quantity of Marine Fuel at the time of delivery, provided that any costs and expenses for the Buyer's representative or inspector shall be borne by the Buyer, and the Buyer shall be responsible for any delays caused or occasioned by the Buyer's representative or inspector, including but not limited to demurrage at the Delivery Port. The Seller's

determination of quantity shall be conclusive and binding on the Buyer, whether the Buyer is represented or not.

- 6.4 The Buyer shall be responsible for ensuring that the bunker manifold of the Vessel into which the Marine Fuel is to be deposited is suitable in all respects, and complies with all relevant regulation and is capable of accommodating the full quantity of Marine Fuel ordered by the Buyer.
- 6.5 The Buyer must notify the Seller of any dispute in relation to the quantity of Marine Fuel delivered at the time of delivery in an appropriate Notice of Protest. Any remarks on the Bunker Delivery Note shall not be a valid notice. If the Buyer fails to present a Notice of Protest, any such claim as to the quantity of Marine Fuel delivered shall be fully extinguished, and the Buyer shall be time barred from commencing any proceedings for any claim for damages and/or loss and/or costs of whatsoever nature and howsoever caused against the Seller in relation to the quantity of the Marine Fuel delivered.
- 6.6 In addition to the requirements of Clause 6.5 above, any claim as to shortage in quantity shall be presented by the Buyer to the Seller in writing, with all supporting documentation, within ten (10) days from the date of delivery, failing which any such claim shall be fully extinguished, and the Buyer shall be time barred from commencing any proceedings for any claim for damages and/or loss and/or costs of whatsoever nature and howsoever caused against the Seller in relation to the quantity of the Marine Fuel delivered.

## **7. SAMPLING**

- 7.1 The Seller shall arrange for three (3) samples of each grade of Marine Fuel to be drawn throughout the delivery of such grade of Marine Fuel. The Buyer shall have the right to have its representative or an inspector appointed by the Buyer and acceptable to the Seller be present to witness the sampling and sealing of Marine Fuel, provided that any costs and expenses for the Buyer's representative or inspector shall be borne by the Buyer, and the Buyer shall be responsible for any delays caused or occasioned by the Buyer's representative or inspector, including but not limited to demurrage at the Delivery Port. The absence of the Buyer or its representative shall not prejudice the validity of the samples taken.
- 7.2 The samples shall be taken at the point selected by the Seller at the time of delivery.
- 7.3 The samples shall be drawn using a mutually acceptable sampling device and method. If the Buyer does not express any request on sampling device and method, then the Seller's determination shall be conclusive and binding upon the Buyer.
- 7.4 The three (3) samples of Marine Fuel drawn shall be sealed and labelled indicating the Vessel's name, delivery location, product name and date of sampling signed by the Seller's representative and the master of the Vessel or its authorised representative. The samples with seal number marked on the Bunker Delivery Note shall be the only valid samples.
- 7.5 Two of the samples shall be retained by the Seller after delivery of the Marine Fuel to the Vessel for sixty (60) days, or such period of time at the Seller's election and the other one sample shall be given to the master of the Vessel.
- 7.6 If the Marine Fuel is delivered by more than one bunker tanker, the sampling procedure shall be repeated as outlined by this Clause 7.

## **8. QUALITY AND CLAIMS**

- 8.1 The Buyer shall solely bear the responsibility and risk for the selection and nomination of the grades of Marine Fuel (including without limitation determination of compatibility with the machinery, equipment and Marine Fuel used or to be used by Buyer's Vessel) and the Seller does not warrant and is not under any obligation to inspect whether the Buyer's selection and nomination is suitable for use by the Vessel in question or any other receiving facility.
- 8.2 The Seller shall bear no responsibility whatsoever for any information which it has given to the Buyer on the characteristics of the Marine Fuel. Any information provided by the Seller to the Buyer shall not in any event be taken to be a specification of the Marine Fuel to be and/or has been supplied under the Agreement.
- 8.3 THE SELLER MAKES NO GUARANTEE, WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF QUALITY, MERCHANTABILITY, FITNESS OR SUITABILITY, THE RESULTS OBTAINED FROM THE USE OF ANY OF THE MARINE FUEL, FOR PARTICULAR USE OR OTHERWISE, except that the Marine Fuel shall meet the specifications of ISO 8217:2005(E) or any other specifications for Marine Fuel as set out in the Confirmation of Order, subject to variance.
- 8.4 The Buyer must notify the Seller of any dispute in relation to the quality of the Marine Fuel delivered in an appropriate Notice of Protest. Any remarks on the Bunker Delivery Note shall not be a valid notice. If the Buyer fails to present a Notice of Protest any such claim as to the quality of Marine Fuel delivered shall be fully extinguished, and the Buyer shall be time barred from commencing any proceedings for any claim for damages and/or loss and/or costs of whatsoever nature and howsoever caused against the Seller in relation to the quality of the Marine Fuel delivered.
- 8.5 The Buyer shall formally lodge a claim with the Seller in writing specifying the full details of the claim together with all available supporting documents as to the quality of the Marine Fuel delivered within twenty (20) days from the date of its delivery. If the Buyer fails to do this, all the Buyer's rights to such a claim shall be extinguished and the Buyer shall be time barred from commencing any proceedings for any claim for damages and/or loss and/or costs of whatsoever nature and howsoever caused against the Seller in relation to the quality of the Marine Fuel delivered.
- 8.6 Following any Notice of Protest and/or claim pertaining to the quality of Marine Fuel delivered under the Agreement, the Seller shall arrange for an analysis of its retained sample of Marine Fuel by a qualified and independent laboratory agreed upon between the Seller and the Buyer. Any claim pertaining to the quality of Marine Fuel must be based on the results of these tests and analysis, which shall be carried out as soon as possible after the Notice of Protest and/or claim is made to the Seller.
- 8.7 The Seller shall provide the laboratory with one or more of the samples retained by it. The analysis of the Seller's samples shall be conclusively deemed to be representative of the quality of the Marine Fuel supplied to the Vessel.
- 8.8 The costs of any tests and analysis carried out by the independent laboratory shall be borne by the Buyer if the results are in favour the Seller or by the Seller if the results are in favour of the Buyer. Such results shall be conclusive and binding on and as between the Seller and the Buyer.
- 8.9 The Buyer's submission of any claims shall not relieve the Buyer from its obligation to make full payment for the Marine Fuel in accordance with the Agreement. The Buyer agrees that any claim relating to the delivery (either quantity or quality) does not constitute a valid defence or set-off against the Seller's claim to any amount withheld

by the Buyer. The Buyer further agrees that the Seller may immediately recover any amount withheld from full payment from the Buyer.

8.10 When the Buyer submits a claim pertaining to the quality of Marine Fuel delivered under the Agreement, the Seller shall be entitled and the Buyer shall allow, or where the Buyer has chartered the Vessel, shall obtain the owners' authorisation to allow the Seller or the Seller's agent to board the Vessel and investigate the Buyer's claims, including but not limited to the inspection of the Master's logs and/or the Vessel's engine records and taking copies of these or any documents which the Seller considers necessary for its investigations, and shall have access to the Vessel's engine spaces. The Buyer shall under no circumstances deny the Seller access to such documents and/or refuse copies to be produced. Failure to allow boarding, access and/or to produce copies of documents shall constitute a complete defence to any claim brought by the Buyer.

## **9. PAYMENT**

9.1 Payment shall be made at the Seller's place of business, by means of telegraphic transfer according to the payment instructions in the invoice.

9.2 Payment shall be made so that the funds are cleared funds in the account of the Seller within thirty (30) days of the date of delivery of the Marine Fuel. Such payment shall be for the full invoice value, without any set-off, counterclaim, deduction, withholding or discount. Payment shall be made free of bank charges. If payment falls on a non-Business Day, payment shall be made on or before the business day prior to the due date.

9.3 If a final invoice cannot be, or is not, submitted in time for payment, Seller may invoice Buyer on a provisional basis based upon all known pricing information at the time of provisional invoicing. A final settlement invoice will be submitted to Buyer by Seller as soon as practicable thereafter. Any resultant overpayment or payment shortage shall be settled between Seller and Buyer within five (5) Business Days of issuance of the final settlement invoice.

9.4 If the purchase price has been agreed in a currency other than United States Dollars, the Buyer shall at all times bear any and all currency fluctuation risks and the Buyer shall consequently indemnify the Seller in United States Dollars for any shortfall arising from the conversion of this other currency into United States Dollars at the time of payment when compared to the prevailing rate of the conversion on the date of the subject invoice together with any bank charges. Any gains resulting from an improvement in the currency conversion between the date of the subject invoice and payment shall go to the Seller.

9.5 If the purchase of the Marine Fuel is contracted for by an agent of the Buyer, then such agent as well as the principal shall be jointly and severally bound by and be fully liable for obligations of the Buyer in the purchase of the Marine Fuel, whether such principal be disclosed or undisclosed.

9.6 The purchase price and other charges shall be payable by the due date specified in the Seller's invoice, unless otherwise agreed or unless the Agreement is lawfully terminated (in which case the amounts become immediately due and payable). In case that payment is not received, whether in part or in full, interest shall accrue on any outstanding amounts at the U.S. Prime Rate posted by the Wall Street Journal as of the original due date (or, in case of no posting on such date, the subsequently posted rate) plus two percent (2%) per annum, calculated on a daily basis starting from the next day of the original due date until full payment of all amounts due has been received by the Seller.

- 9.7 The Buyer shall not be entitled, without the Seller's consent in writing, to offset any claims against the Seller whether in law or equity, whether or not these claims are connected, and/or whether or not they arise out of the consignment concerned or the Agreement.
- 9.8 If the Buyer has not effected payment within thirty (30) days from the date of delivery or by the due date stated in the Seller's invoice, the Buyer shall within one (1) week upon request forward an admission of debt worded in such a way that the document may be used as a basis for execution in the country where the Buyer is incorporated or maintains a principal place of business.
- 9.9 If at any time the Seller is of the opinion before delivery to the Buyer that adequate assurance of the Buyer's ability to perform its obligations under the Agreement is lacking and/or become doubtful, or that the financial ability of the Buyer is impaired or unsatisfactory, the Seller may, in its sole and absolute discretion, request the Buyer to pay cash in advance or to put up security acceptable to the Seller, and the Seller may refuse and/or withhold delivery until the Buyer complies with such requests, or failing the Buyer's compliance with such request within five (5) Business Days from the date of request, the Seller shall be entitled to terminate the Agreement but without prejudice to the Seller's rights to claim damages from the Buyer. In such circumstances, the Buyer shall have no recourse against the Seller.
- 9.10 All overdue payments may be applied, at the sole and absolute discretion of the Seller, first towards the settlement of interest outstanding before application to the principal payment sums under the Agreement or any other contract between the Buyer and Seller.
- 9.11 The Buyer shall be liable for all legal fees, costs and any expenses incurred by the Seller in connection with the recovery of any amount that is due under the Seller's invoices. In particular, the Buyer agrees to reimburse the Seller on a full indemnity basis for all legal costs incurred by the Seller in connection with enforcement of the Seller's rights under the Agreement.

## **10. FORCE MAJEURE**

- 10.1 Except with respect to the obligations for payment of money due hereunder, neither party shall be liable or be in breach of any provision hereof for any failure or delay on its part to perform any obligations hereunder if the failure or delay results from events or circumstances beyond its reasonable control, including, without limitation: -
- (i) any governmental act or compliance with any law, order, request, or control of any governmental authority or person purporting to act thereof whether or not such law, order, request or control is later determined to be invalid (including compliance with or implementation of any order, request, plan or programme of any authority created by governments); or
  - (ii) the interruption, unavailability or inadequacy of Marine Fuel or any constituent thereof, or any facility of production, manufacture, storage, transportation, distribution or delivery because of wars, hostilities, public disorders, acts of enemies, sabotage, strikes, lockouts, labour or employment difficulties, fires, acts of God, accidents, breakdowns, weather conditions, or
  - (iii) the failure, cessation, termination or curtailment in whole or in part of any of the existing or contemplated sources of supply of the Seller of Marine Fuel, or the crude oil or petroleum products from which such Marine Fuel is derived; or

(iv) any other cause whatsoever, whether similar or dissimilar to those enumerated above, beyond the reasonable control of such party.

10.2 The Seller shall not be required to remove any such cause or replace the affected source of supply or facility, and, in the event of an actual or anticipated shortage of supply that directly or indirectly prevents the Seller from fulfilling its own requirements as well as those of its customers including its affiliated companies and the Buyer, the Seller may allocate available quantities of Marine Fuel to it, its customers and the Buyer in its absolute discretion.

10.3 In the event that any governmental authority imposes any form of price control, rationing, allocation, or other emergency measures on the Seller's sales of Marine Fuel at the port where the Buyer desires to take delivery of the Marine Fuel and has contracted with the Seller for the same, then the Seller has the right to:-

(i) suspend delivery of any Marine Fuel under the Agreement for such periods as the Seller may determine are required to resolve uncertainties raised by such governmental actions, alternatively to cancel such delivery and/or terminate the Agreement if the Seller is of the opinion that the period of time required for such uncertainties to be resolved may be indeterminate or unforeseeable. In the event of such termination of Agreement, the Seller shall be relieved of its obligations to perform hereunder; or

(ii) allocate such quantities of Marine Fuel to the Buyer as the Seller may determine to be appropriate in its absolute discretion and in respect of any shortfall of the contractual quantity, the Seller shall be entitled to suspend delivery of such shortfall for such period as the Seller may determine is required to resolve uncertainties raised by such governmental actions or alternatively to cancel any further delivery of such shortfall if the Seller is of the opinion that the period of time required for such uncertainties to be resolved may be indeterminate or unforeseeable, in which event the Seller shall be relieved of any further obligations to perform under the Agreement in respect of this shortfall.

10.4 In no event shall the Seller be obligated to purchase Marine fuel or its equivalent from others in order to enable it to deliver Marine Fuel to the Buyer.

10.5 Where the Seller exercises the right to cancel or suspend any further delivery of such shortfall, the Buyer shall only be liable to pay for the quantity delivered and if full payment has already been made by the Buyer in respect of the contractual quantity, the Seller shall refund the Buyer the value of such shortfall from the contractual price which has been paid.

## **11. TERMINATION BY DEFAULT**

11.1 Without prejudice to the foregoing, the following shall constitute events of default by the Buyer, entitling the Seller to terminate by written notice to the Buyer any Agreement for the sale of Marine Fuel forthwith and claim damages against the Buyer:-

(i) Failure by the Buyer to perform any obligations under the Agreement and to remedy such breach within five (5) days of being notified of such breach; and/or

(ii) The Buyer suspending any payment to its creditors, ceasing to carry on business or entering into an arrangement or composition with its creditors;

(iii) Any application is made or proceedings commenced, or any order or judgment being given by any court in respect of the Buyer for:

- a. its liquidation, winding up, bankruptcy, insolvency, dissolution, administration or re-organisation or other similar event, whether voluntary or not;
- b. the appointment of a receiver, liquidator, trustee, administrator, administrative receiver or similar functionary, of all or part of its assets.

(iv) Any act done or event occurring which, under the applicable law thereof, has a substantially similar effect to any of the acts or events outlined above.

11.2 All sums owed under the Agreement by the Buyer shall become immediately due and payable upon termination of the Agreement.

11.3 Without prejudice to the foregoing, in the case of the Seller lawfully cancelling any order or terminating the Agreement prior to delivery or in the case of the Buyer cancelling any order or terminating the Agreement for any reason or the Buyer failing to receive the Marine Fuel in accordance with the Agreement, the Buyer shall pay to the Seller the difference between the purchase price of the Marine Fuel under the Agreement and the market price as at the date of termination, together with a cancellation/termination charge of US\$3.00 per metric ton plus any other losses arising as a result of the Buyer's default.

11.4 Termination of the Agreement shall not affect each party's rights, liabilities and obligations to the extent accrued prior to termination.

## **12. RISK OF LOSS AND TITLE**

12.1 Risk in the Marine Fuel being supplied under the Agreement shall be transferred from the Seller to the Buyer, as it passes through the flange connecting the Vessel's bunker manifold with the loading facilities provided by the Seller. At such point, the Seller's responsibility shall cease and the Buyer shall be responsible for any and all risk of loss, damage, deterioration or evaporation as to the Marine Fuel delivered.

12.2 Title to the Marine Fuel shall remain with the Seller and pass to the Buyer only upon payment of the price of the Marine Fuel delivered pursuant to the Agreement. Until such time as payment is made, on behalf of itself and the Vessel, the Buyer agrees that it is in possession of the Marine Fuel as bailee of the Seller. If, prior to payment, the Seller's Marine Fuel is co-mingled with other marine fuels on board the Vessel, title to the Marine Fuel shall remain with the Seller corresponding to the quantity of the Marine Fuel delivered. If the Buyer co-mingles the Marine Fuel with bunkers owned by a third party and the total co-mingled bunkers are reduced through use to an amount less than the amount delivered under the Agreement, title in the unused Marine Fuel will remain with the Seller on a pro rata basis calculated using the amounts as they were when originally co-mingled.

12.3 During the time that title to and interest in any Marine Fuel remains in the Seller, if the Buyer sells any of such Marine Fuel, the Buyer must hold so much of the proceeds of sale as relates to such Marine Fuel as trustee for the Seller, and, until payment of the amounts due to the Seller, must place that part of the proceeds in a separate bank account and hold them to the order of the Seller.

12.4 During the time that title to and interest in any Marine Fuel remains in the Seller, without prejudice to any other rights or remedies arising out of any breach of contract by the Buyer, the Seller may, on termination of the Agreement in any of the circumstances set out in the Agreement, repossess all or any of such Marine Fuel. All costs incurred by the Seller or its agent in repossessing Marine Fuel from the Buyer must be borne and reimbursed by the Buyer.

12.5 This Clause 12 is without prejudice to such rights as the Seller may have to enforce its right of lien against the Vessel or to otherwise obtain security by seizure, attachment or arrest of assets under the Agreement and the laws of the governing jurisdiction against the Buyer or the Vessel in the event of non-payment.

### **13. LIABILITY AND INDEMNITY**

13.1 Notwithstanding any other provisions of the Agreement to the contrary, in no event shall the Seller be liable in contract, tort or otherwise to the Buyer for any special, incidental, indirect, consequential or punitive loss or damages, including, without limitation, loss of profit or business and demurrage charges at any port, even when such loss or damages have been caused by the fault or negligence of its personnel, representatives, suppliers and/or (sub)contractors.

13.2 Notwithstanding any other provisions of the Agreement to the contrary, the Seller's total liability to the Buyer in respect of any claims on any individual order, whether arising from quality, quantity, accident, delay, spill, pollution or any other cause whatsoever and regardless of any legal theory, whether in contract, torts, strict liability or otherwise, shall be limited to the invoiceable amount for the Marine Fuel contracted to be delivered as confirmed in the Confirmation of Order for that single order.

13.3 Without prejudice to the generality of the foregoing, the Seller shall not be liable for:

- (i) any loss of hire and/or loss of freight howsoever caused; and/ or
- (ii) demurrage howsoever caused; and/ or
- (iii) loss of profits, loss of business, economic losses or any other similar losses whatsoever and howsoever caused, whether such losses are direct or indirect.
- (iv) any acts or omissions of the Seller's agents and/or subcontractors including but not limited to those transporting the Marine Fuel and/or fueling agents.

13.4 The Buyer shall defend, indemnify and hold the Seller and its suppliers harmless with respect to any and all liabilities, losses, claims, expenses or damages the Seller and its suppliers may suffer or incur either directly or indirectly, by reason of, or in any way connected with:

- (i) the acts, omissions, fault or default of the Buyer or its agents or its representatives in the purchase, receipt, use, storage, handling or transportation of the Marine Fuel under the Agreement;
- (ii) the failure of the Buyer, its employees, agents, brokers, authorized representatives or subcontractors, to comply with all applicable laws, ordinances, rules and regulations of any government or agency having jurisdiction,

including, without limitation, legal fees and disbursements on a full indemnity basis.

### **14. DOCUMENTS**

14.1 Upon the Seller's tender of the Marine Fuel and before commencement of the delivery, the authorized personnel of the Vessel shall sign any related document as requested by the Seller or its representative, upon gauging before pumping.

14.2 Upon completion of the delivery and prior to disconnecting the transfer hose, the authorized representative of the Vessel shall sign the Bunker Delivery Note and any other related document as requested by the Seller or the Seller's representative.

## 15. NOTICES

15.1 Any notice to be given by one party to the other party under, or in connection with, the sale of Marine Fuel under the Agreement shall be in writing. It shall be served by sending it by e-mail to the following e-mail address, by fax to the following fax number, or by hand, pre-paid recorded delivery, special delivery or registered post to the following address, respectively set out in below and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause).

For the Seller:	SK Energy International Pte. Ltd. 4 Shenton Way, #11-02/04 SGX Centre 2, Singapore 068807
Attn:	<b>[INSERT NAME]</b>
Fax:	(65) 6221 1225
E-mail:	<b>[INSERT NAME]</b>

For the Buyer:	As per the details contained in the Confirmation of Order
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Any notice so served by hand, fax, post or e-mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of e-mail, at the time of delivery;
- (d) in the case of prepaid recorded delivery, special delivery or registered post on the 2<sup>nd</sup> Business Day following the date of posting,

provided that in each case where delivery by hand, e-mail, post or fax occurs after 6pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day.

## 16. ASSIGNMENT

16.1 The Buyer may not assign its rights, benefits or obligations, or delegate its performance under the Agreement without the prior written consent of the Seller.

16.2 The Seller may assign any of its rights and obligations under the Agreement.

16.3 In the event that payment of the purchase price for the Marine Fuel delivered is not received in full by the Seller within the relevant due date (the "**Due Date**"), upon notice from the Seller to the Buyer the Buyer irrevocably agrees that, effective from the Due Date, an assignment shall take place of all the Buyer's rights, interest and claims, including rights of action in rem against the receiving Vessel and/or claims in personam against her owners and/or bareboat charterers and/or time charterers and/or voyage

charterers and/or managers, arising in connection with their (i.e. the Buyer's) sale of such Marine Fuel to any receiving Vessel(s) and/or her owners/bareboat charterers/time charterers/voyage charterers/managers. No further agreement is required from the Buyer for such an assignment to take effect in law and/or equity. For the avoidance of doubt, the Seller may then if it so wishes bring any action (including any action in rem against the receiving Vessel of the Marine Fuel) in the Buyer's name or jointly in the names of the Seller and the Buyer. The Buyer irrevocably consents to have itself named as the plaintiff or co-plaintiff in such action and hereby authorises the Seller to take all steps in connection with the commencement and continuance of such an action, including the terms on which any such claim may be settled, whether in its sole name or jointly. A receiving Vessel refers to the vessel to which the Buyer shall deliver or agree to deliver or has delivered, pursuant to any contract of sale or supply of Marine Fuel between him (i.e. the Buyer) and any third party (including the owner or bareboat charterers of such a vessel and/or time charterers and/or voyage charterers and/or managers). In these circumstances, the Buyer agrees to use all reasonable efforts to comply with requests made by the Seller for copies of documents in the Buyer's possession, custody or control in relation to the assigned claim and the Buyer further agrees that it will execute any further document(s) reasonably required by the Seller in order validly to exercise these rights against a third party. It is hereby agreed that the Seller has the sole right to retain for itself any money recovered from a third party pursuant to this Clause. Any claim brought against a third party under this Clause shall be entirely without prejudice to the other claims or rights the Seller may have against the Buyer under the Agreement, which claims or rights shall remain in full force and effect. The recovery of any money under this Clause from a third party shall not reduce or by way of set off be allowed to diminish the amounts which may be owed to the Seller by the Buyer under the Agreement.

## **17. WAIVER**

17.1 No delay or omission of the Seller in exercising any right, power privilege or remedy in respect of the Agreement shall impair such right, power, privilege or remedy. Nor shall any delay or omission be construed as a waiver of such right, power, privilege or remedy, nor shall it preclude any further exercise of it or the exercise of any other right, power, privilege or remedy.

17.2 Any waiver by the Seller of any breach of any term of the Agreement shall not be binding unless such waiver is expressly made in writing and signed by the Seller. Such signed waiver shall only apply to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

## **18. LIENS**

18.1 Any sale of Marine Fuel made on credit shall be made on the credit of the Vessel as well as on the credit of the Buyer.

18.2 The Seller shall have and may assert a lien on the Vessel for all amounts owed to the Seller for Marine Fuel provided to the Vessel, including claims for damages arising out of or in connections with the Buyer for any breach of the Agreement. For the avoidance of doubt, the Buyer shall not be entitled to cancel the effect of any such lien by any wording on the delivery receipt or otherwise.

18.3 Notwithstanding anything to the contrary contained in the Agreement, the Seller shall be entitled to assert its lien or attachment in any country where it finds the Vessel. The laws of the United States of America, or or those of any other jurisdiction which the Seller elects, shall apply to the determination of the existence and validity of a maritime lien, regardless of the country in which the Seller takes legal action.

## **19. SEVERABILITY**

19.1 It is understood and agreed by the parties that if any of the provisions of the Agreement is or shall become invalid or illegal under the laws of the particular state, county, or jurisdiction where used or enforced, such invalidity or illegality shall not invalidate the whole Agreement, but the Agreement shall be construed as if not containing the particular provision or provisions held to be invalid or illegal, and the rights and obligations of the parties shall be construed and enforced accordingly.

## **20. GOVERNING LAW AND JURISDICTION**

20.1 The Agreement shall be governed by and construed in accordance with the laws of Singapore, excluding (to the greatest extent permissible by law) any conflict of law rules that would cause the application of the laws of any other jurisdiction.

20.2 Any dispute, claim or controversy arising out of or relating to the Agreement, whether in contract, tort, equity or otherwise and whether relating to the meaning, interpretation, effect, validity, breach, termination, performance or enforcement of the Agreement shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC**") for the time being in force, which rules are deemed to be incorporated by reference in this Clause 20. The arbitration shall be conducted in English unless agreed by the parties otherwise. The arbitration tribunal shall consist of one arbitrator. If the parties have not agreed upon the arbitrator within thirty (30) days after either party's filing of the request for arbitration, then the arbitrator shall be appointed by the Chairman of the SIAC at the request of either party. The arbitral award shall be final and binding on the parties. Judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant party or its assets.

## **21. HEALTH AND SAFETY**

21.1 The Seller hereby advises the Buyer that it enforces a company drug and alcohol policy in its facilities and on board its vessels. The Buyer's personnel must comply with this policy at all times while in such facilities or on board such vessels. The selling, possession, distribution use or being under the influence of alcohol or any controlled substance or dangerous drugs other than those medically prescribed is prohibited.

21.2 The Buyer acknowledges that it is aware that Marine Fuel contains materials which may be detrimental to health and that frequent or prolonged contact with Marine Fuel may cause adverse health consequences. The Buyer shall ensure that its employees and agents, personnel of the Vessel and other relevant persons who are likely to come into contact with such materials take proper precautions, comply with all relevant health and safety procedures and regulations, and seek timely medical advice. The Seller shall not be liable to any of the aforementioned persons in respect of any damages, claims, expenses or costs arising from their failure to take proper precautions, comply with relevant health and safety procedures and regulations, and seek and act on medical advice and the Buyer shall indemnify and hold the Seller harmless from such damages, claims, expenses or costs (including legal costs on a fully indemnity basis).

## **22. ENTIRE AGREEMENT AND MODIFICATION**

22.1 The Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, understanding, promises and representations concerning the subject matter hereof, whether written or oral, and shall also be deemed as a complete exclusive statement of the terms and conditions of the agreement for the subject matter hereof between the parties hereto. No modification of, addition to or waiver of any of the terms of the

Agreement shall be effective unless contained in writing signed by each of the parties hereto. The Agreement shall not be modified or added to by the printed terms and conditions of the Buyer's purchase order, acknowledgement, quotation, confirmation, invoice or whatsoever or a similar nature. [End]