



IAN TAYLOR CHILE S.A.

GENERAL TERMS & CONDITIONS (Rev: 1-2013) SALE AND BROKERAGE OF MARINE FUELS, LUBRICANTS AND SIMILAR PRODUCTS

The following are the General Terms & Conditions under which Ian Taylor Chile S.A., whether acting as seller or broker, as the case may be, is prepared to enter into agreements with another party for the supply of marine fuels and/or lubricants and/or other similar products as set forth here below.

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this General Terms & Conditions the following terms and expressions shall have the meanings set out below:
- (a) **“Agreement”** means the concluded terms for the sale and purchase or brokerage of Bunkers, as the case may be, as set forth in sub-clause 4.3 herein;
 - (b) **“Bunkers”**: means the fuels, oils, lubricants and any other products of whatever type and description to be specified in the Agreement;
 - (c) **“Bunker Delivery Receipt”**: means the document signed by the Buyer or his representative and the Physical Supplier, representing and evidencing the receipt of Bunkers (other than lubricating oils or similar products) delivered to a Vessel pursuant to an Agreement;
 - (d) **“Buyer”** means: (i) any Party requesting offers or quotations from the Company for the provision of Bunkers and/or brokerage services by the Company in accordance with these Terms & Conditions; and /or (ii) any Party with which (or on whose behalf) the Company has agreed to enter into and made an Agreement, including, but not limited to, the Master, Owners, operators, managers, time charterers, bareboat charterers or voyage charterers of the Vessel;
 - (e) **“Company”**: means Ian Taylor Chile S.A. and its subsidiaries in Chile or abroad, whether acting as sellers or brokers, and their servants, agents, sub-contractors, and any other persons acting under the Company’s instructions;
 - (f) **“delivery”**: means the delivery of Bunkers by the Physical Supplier to the Vessel in accordance with the Agreement.
 - (g) **“ETA”**: means the estimated time of arrival of the Vessel at the Place of Delivery.
 - (h) **“ETD”**: means the estimated time of departure of the Vessel from the Place of Delivery.
 - (i) **“Nomination”**: means the written communication from the Buyer to the Company, whereby the Buyer confirms the acceptance of a Quotation.
 - (j) **“Order Confirmation”**: means the written confirmation from the Company to the Buyer, whereby the Company communicates its acceptance of a Nomination.
 - (k) **“Party”** or **“Parties”**: means a party or the parties to an Agreement, as appropriate.
 - (l) **“Physical Supplier”**: means the person instructed by or on behalf of the Company to physically supply or deliver the Bunkers to the Vessel, together with that person’s servants, agents, sub-contractors, successors, and assigns. The Physical Supplier may be the Company or any other third party.
 - (m) **“Place of Supply”**: means the port or other readily identifiable geographical location specified in the Agreement, wherein or adjacent to which the Point of Delivery is located.



IAN TAYLOR & COMPANY Shipping Agencies

- (n) **“Point of Delivery”**: means the precise place at which delivery is to be effected as provided in the Agreement or as may thereafter be confirmed, advised or revised by the Company or the Physical Supplier being, mooring, anchorage, or other point within, adjacent to or associated with the Place of Supply.
- (o) **“Port Agent”**: means the Vessel’s port agent at the Place of Delivery.
- (p) **“Price”**: means the price for the Bunkers supplied or the commission for the Services provided in accordance with the Agreement, as applicable.
- (q) **“Request for Quotation”**: means the communication from the Buyer to the Company, whereby the Buyer formally requests a Quotation from the Company, in respect of the supply of Bunkers or the provision of Services required by the Buyer.
- (r) **“Quotation”**: means the offer (and the terms and conditions thereof) made by the Company to the Buyer in response to or in connection with a Request for Quotation sent by the Buyer to the Company for the supply of Bunkers or the provision of Services, as appropriate.
- (s) **“Services”**: means the brokerage or other services provided by the Company to the Buyer, other than the sale of Bunkers.
- (t) **“Terms & Conditions”**: means these General Terms & Conditions;
- (u) **“Vessel”**: means the vessel, ship or any other type of watercraft to which Bunkers are to be delivered pursuant to the Agreement;
- (v) **“Working Days”**: means a calendar day, but excluding Saturdays, Sundays and legal and public holidays in Chile, unless otherwise agreed; and **“Working Hours”**, means the period during a Working Day between 09:30 hours and 17:30 hours Chilean (continental) local time, unless otherwise agreed.

1.2 In these Terms & Conditions, a reference to:

- (a) a person includes a reference to (i) any individual, firm, body corporate, unincorporated association, partnership, state or agency thereof and (ii) that person's legal personal representatives, successors and permitted assigns;
- (b) a clause or sub-clause, unless the context otherwise requires, is a reference to a clause or sub-clause of these Terms & Conditions; and
- (c) words importing the plural shall include the singular and vice versa.

1.3 The headings used in these Terms & Conditions are inserted for convenience only and shall not be deemed to be any indication of the meaning of the clauses and sub-clauses to which they relate.

2. SCOPE OF APPLICATION.

2.1 **THESE TERMS & CONDITIONS SHALL APPLY, MUTATIS MUTANDIS, WHETHER THE COMPANY ACTS: (A) AS SELLER OF BUNKERS TO THE BUYER; OR (B) AS A BROKER ONLY, ON INSTRUCTIONS FROM AND FOR AND ON BEHALF OF THE BUYER, AS THE CASE MAY BE.**

2.2 These Terms & Conditions shall be deemed as being an integral part of any Quotation made by the Company and any Agreement which the Company, whether acting as seller or broker, may subsequently enter into with the Buyer even if these Terms & Conditions are incorporated by reference only and not materially attached to such Quotation or Agreement. By issuing a Nomination, the Buyer, inter alia, represents and warrants that it has read, understood and fully accepts these Terms & Conditions, without reservation or limitation whatsoever.

2.3 In the event of any conflict or inconsistency between any part of these Terms & Conditions and any part of any Quotation, Order Confirmation or Agreement made, given or entered into by the



IAN TAYLOR & COMPANY Shipping Agencies

Company (whether acting as seller or broker) with the Buyer, these Terms & Conditions shall always prevail, and shall override and cancel any terms and conditions incorporated in or referred to by the Buyer, whether orally or in writing, in any Request for Quotation, Nomination or in any other communication from the Buyer to the Company for all purposes whatsoever. In the event of any conflict or inconsistency between any part of the Nomination and any part of the Order Confirmation, the Order Confirmation shall always prevail.

2.4. These Terms & Conditions are subject to variation if the physical supply of Bunkers is undertaken by a Physical Supplier, in which event these Terms & Conditions shall be deemed as being varied accordingly and the Buyer shall be deemed to have irrevocably accepted the terms and conditions of the Physical Supplier which are hereby incorporated by reference, without any limitation or reservation whatsoever.

2.5. Where the Company acts as a Broker only, whether alone or in conjunction with another broker (co-broker), these Terms & Conditions shall be construed and applied accordingly, in which event any provision hereof which is absolutely inconsistent with or evidently inapplicable in respect of the Services, shall be deemed as having been severed and replaced by such customary or legal provisions as may be applicable in Chile in respect thereof.

3. BUYER'S AGENTS.

3.1 Unless the Party with whom the Company is corresponding specifically declares to the Company, prior to the Agreement, that the Party with whom the Company is corresponding is not the Buyer and at the same time provides to the Company the full name and address of the Buyer, then the Party with whom the Company is corresponding shall be deemed to be the Buyer.

3.2 Port Agents shall be deemed as being agents of the Buyer, even if not appointed by the Buyer.

4. THE AGREEMENT.

4.1 The Company's Quotations or estimates of costs shall be understood at all times as being conditional and subject to availability, and may be amended or changed by the Company at any time before the Company sends to the Buyer the Order Confirmation.

4.2 The Agreement shall be deemed to have been concluded and shall be valid and binding upon the parties once the Company, having received the Buyer's **Nomination**, issues to the Buyer the **Order Confirmation**.

4.3 **For the avoidance of doubt, it shall be understood that the Agreement includes, but it is not limited to, as the case may be: (a) the Company's Quotation; (b) the Buyer's Nomination; (c) the Company's Order Confirmation; (d) these Terms & Conditions; (e) if applicable, the terms and conditions of any Physical Supplier as provided in sub-clause 2.4; and (f) any applicable laws or regulations in force at the Place and Point of Delivery.**

4.4 Any sale of Bunkers shall require a **Request for Quotation** to be submitted in writing by the Buyer to the Company. The Buyer shall give the Company written confirmation of any verbal Request for Quotation on the same Working Day as it was verbally made. The Company, however, reserves the right in its absolute and unfettered discretion to reject any Request for Quotation, without the need to have or to give any reason therefor.

4.5 If, however, the Company decides to submit an offer or quotation, it shall send to the Buyer a **Quotation** at the earliest possible time. If the Quotation is found acceptable by the Buyer, it shall confirm the acceptance thereof by sending to the Company a **Nomination** in writing, including in the Nomination any and all information which the Company may require in the Quotation.

4.6. The Company shall confirm its acceptance of the Nomination at the earliest possible time, by sending to the Buyer an **Order Confirmation** in writing, whereupon an **Agreement** shall be deemed as having been reached and concluded between the Parties.



IAN TAYLOR & COMPANY

Shipping Agencies

5. QUALITY & QUANTITY

- 5.1 The Buyer shall have the responsibility for the selection and acceptance of the Bunkers for its intended purpose. The quality of each grade of Bunkers shall be the usual Bunker quality of that grade being sold by the Physical Supplier at the time and Place of Delivery. The Buyer shall have the exclusive responsibility for ascertaining that the Bunkers are suitable and fit for use by the Vessel and also for any determination of compatibility of the Bunkers with other bunkers already on board of the Vessel. **Any warranties, conditions or representations, whether expressed or implied, as to the satisfactory quality, merchantability, fitness or suitability of the Bunkers for any particular purpose or otherwise, are expressly excluded.**
- 5.2 Unless otherwise expressly agreed in the Agreement, the quantity of the Bunkers to be delivered under the Agreement shall be the amount set out in the Order Confirmation, plus or minus 5% (five per cent) at the Company's option, with no other consequence than a similar variation to the corresponding invoice issued by the Company.

6. DETERMINATION OF QUALITY AND QUANTITY

- 6.1 The quality and quantity of Bunkers shall be determined by the Physical Supplier's personnel, using the Physical Supplier's equipment and in accordance with the Physical Supplier's customary methods and, in any case, according to the Bunker Delivery Receipt.
- 6.2 The quantity of Bunkers shall be determined exclusively from the gauge or meter on shore or from the ullage of the tanks of the barge or truck. Such determination shall be conclusive and binding. Any figures obtained by measuring Bunkers in the Vessel's tanks are agreed to be unsuitable or unreliable for this purpose and no claim for short delivery shall be based on them.
- 6.3 The Buyer may be present or represented when such quality determination and quantity measurements are taken, but whether or not the Buyer or Buyer's representatives accepts or declines to participate or be present, the Physical Supplier's determination of quality and quantity shall prevail and be binding.
- 6.4 Sampling of Bunkers shall be carried out by means of continuous drip whenever possible. The Buyer's representative shall have the responsibility to witness that such samples are drawn correctly, and will be provided with a representative sample of the Bunkers delivered that is properly sealed and labeled. An identical sample will be retained by the Company or the Physical supplier for **thirty (30) days** after the delivery. These samples will be the only evidence acceptable for the Parties concerning the quality of the marine fuel provided by the Company or the Physical Provider to the Buyer. **Any samples drawn from the Vessel's tanks shall not be valid as an indicator of the quality of Bunkers supplied to the Vessel.**
- 6.5 Adjustments in the volume of Bunkers delivered owing to a difference in temperature shall be made in accordance with the American Society for Testing and Materials and The Institute of Petroleum (ASTM-IP) petroleum measurement tables or, at the option of the Company or Physical Supplier, in accordance with the method of any other recognised standards authority.

7. DELIVERY OF BUNKERS

- 7.1 If the Company at any time and for any reason whatsoever, believes that there may be a shortage of Bunkers at the Place of Delivery it may allocate its available and anticipated supply of Bunkers among its buyers in such a manner as it may in its absolute discretion determine.
- 7.2 The Company shall not be required to deliver Bunkers into any of the Vessel's tanks or other places which are not regularly used for storage of Bunkers and shall not be required to deliver any Bunkers for export in respect of which a Government permit or license is required and has not been obtained. Where necessary, the Buyer shall be responsible for obtaining the government permit or license for the export of the Bunkers. If such a permit or license is not obtained then the Company and/or Physical Supplier shall be under no obligation to deliver the Bunkers and shall not be responsible for any loss or damage whatsoever resulting from such non-delivery.



IAN TAYLOR & COMPANY Shipping Agencies

- 7.3** The Buyer shall be responsible for ensuring that the Company is kept fully advised in writing as to any amendments to the ETA or ETD of the Vessel, the Place of Delivery and/or the required delivery date and shall liaise fully with the Company and the Physical Supplier to ensure timely Delivery. Deliveries shall be made during Working Days and Working Hours at the Place of Delivery. However, if permitted by the regulations of the Place of Delivery and if requested by the Buyer and agreed to by the Company, deliveries may be made outside Working Days and/or Working Hours, in which event the Buyer shall pay all overtime and any other extra costs and expenses whatsoever thereby incurred.
- 7.4** The Buyer warrants that the Master, Chief Engineer and crew of the Vessel have been properly instructed and trained to carry out bunkering operations, according to the best ship operation and management standards and procedures.
- 7.5** Before commencement of the delivery of Bunkers, the Buyer agrees and warrants that: **(a)** the Vessel's scrubbers shall be inspected and safely and properly blocked (and shall remain blocked during the bunkering operation), which inspection and blocking shall be made by the Vessel's own crew; and **(b)** the Vessel shall ensure that all pipes and manifolds and receiving tanks are completely checked and ready to receive the Bunkers, including but not limited to ensuring proper opening/closing of relevant valves, without any risk for spillages, accidents etc.
- 7.6** Delivery may be effected in one or more consignments at the Point of Delivery, by such means as the Company shall deem appropriate in the circumstances. In the event of delivery by barge, the Buyer shall at its own expense provide a clear and safe berth for the barge(s) alongside the Vessel's receiving lines and shall provide all necessary facilities and assistance required to effect delivery. The Buyer agrees to pay and indemnify the Company against all claims and expenses in respect of any loss, damage or delay caused by the Vessel to any barge and/or its equipment. The Company shall be under no obligation to make any delivery where, in the opinion of the Company or the Physical Supplier, a clear and safe berth is not made available.
- 7.7** The Buyer shall make all connections and disconnections of the delivery hose to the Vessel, unless the custom of the Place of Delivery requires otherwise, but in any event it shall be the responsibility of the Buyer to ensure that the connection of the delivery hose to the Vessel has been properly, effectively and safely made. The Buyer shall ensure that the Vessel renders all customary assistance and provides sufficient tank space and equipment for a safe, prompt and full delivery of the Bunkers. The Buyer is responsible for ensuring that Bunkers are delivered at a safe rate and pressure and that all equipment utilised for that purpose has been duly and properly kept and maintained, tested and inspected and is by all means in a safe and adequate condition and proper working order.
- 7.8** Delivery shall be deemed completed when the Bunkers have passed the flange connecting the Physical Supplier's delivery facility with the receiving facilities provided by the Buyer. The Company's responsibility for the Bunkers shall cease and the Buyer shall assume all risks and liabilities relating thereto, including loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage of Bunkers and responsibility for loss, damage and any harm caused by pollution or in any other manner to third parties at the time the Bunkers leaves the Physical Supplier's delivery facility. The Buyer agrees to indemnify the Company and/or the Physical Supplier, without limitation, in respect of any liability, claim or demand for which the Buyer may be liable.
- 7.9** The Company will use its best endeavours to ensure that Bunkers are delivered promptly upon the Vessel's arrival, but the Company shall not be responsible for any loss, expenses, damage or increased costs incurred in consequence of the Vessel not being supplied promptly or otherwise being delayed or restrained for any reason whatsoever.
- 7.10** The Buyer is responsible for ensuring that the Vessel is ready to receive Bunkers at the Point of Delivery on the date and time agreed therefor. In the event that the Vessel's arrival at the Point of Delivery is or is likely to be delayed, the Buyer must so advise the Company and the Physical Supplier. The Buyer shall also ensure that the Port Agent at the Place of Supply is similarly



IAN TAYLOR & COMPANY Shipping Agencies

informed. At the Buyer's request the Company will use its best endeavours to supply a delayed Vessel on the terms originally agreed but the Company reserves the right to pass on to the Buyer all additional costs arising from the Vessel's delayed arrival.

- 7.11** The Buyer shall give to the Company and to the Physical Supplier, not less than **72, 48 and 24 hours advance notice (excluding non-Working Days at the Place of Supply)** of the Vessel's readiness to receive Bunkers. Notice must be given during Working Days and Working Hours. Notice given outside these hours will be deemed to have been given at 08:30 hours on the following Working Day. The Buyer shall instruct the Port Agent at the Place of Delivery to liaise with the Company and the Physical Supplier so as to ensure compliance with these provisions.
- 7.12** The Buyer shall promptly take delivery of the Bunkers when tendered and shall promptly withdraw the Vessel from the Supplying Vessel and/or Supplying Vehicle upon completion of delivery. If the Buyer or the Vessel causes delay in the use of the supplying vessel or supplying vehicle, the Buyer shall be responsible to the Company for any losses, costs, liabilities or any other expenses which the Company incurs thereby, including but not limited to, demurrage, calculated at the Physical Supplier's prevailing rate.
- 7.13** On completion of delivery, the Buyer (or his representative) and the Physical Supplier shall together sign a **Bunker Delivery Receipt**, as presented by the Physical Supplier. The Buyer and the Physical Supplier shall each retain an original of the Bunker Delivery Receipt for their records.
- 7.14** In the case of Bunkers which are to be delivered in **drums, pails or other similar means of storage**, such as, but not limited to, lubricating oils, it is agreed:
- (a) The Bunkers shall be deemed to have been so delivered when placed at the disposal of the Buyer at the pier or such other place as may have been agreed between the Parties, whereupon the Buyer or his representative shall sign or counter-sign a document provided by the Physical Supplier, acknowledging receipt of the Bunkers, in such form as may be customary or legally required at the Place of Delivery.
- (b) In addition to clause 15, it is agreed that the Company and/or the Physical Supplier shall not be liable for any delay in delivery of Bunkers in pails or drums or other similar means of storage which may be attributable to circumstances beyond the reasonable control of the Company and/or the Physical Supplier, including, but not limited to, civil unrest or commotion; strikes or labour disputes; road accidents; breakdown of trucks, vans or other means of transport used to deliver the Bunkers; road blocks; storms; and other similar circumstances, whether or not the same constitute or should be regarded as an event of Force Majeure.

8. SPILLAGE.

- 8.1** The Buyer represents and warrants that the Vessel will be properly crewed, equipped, maintained and operated in compliance with all applicable laws and regulations, so as to avoid any leakage, spillage, overflow or water or land pollution (hereinafter referred to as a "spill"). The Vessel shall at all times be in constant communication with the Physical Supplier's delivery personnel during the entire bunkering operation. The Buyer assumes full and exclusive responsibility for the direction of the pumping operation.
- 8.2** If a spill occurs while the Bunkers are being delivered, the Buyer shall promptly take such action as is necessary to immediately stop the spill and to remove the spilled Bunkers and mitigate the effects of such spill. Without prejudice to the generality of the foregoing the Company and/or the Physical Supplier is hereby authorised in its full discretion, but at the expense of the Buyer, to take such measures and incur such expenses (whether by employing its own resources or by contraction with others) as are necessary in the judgment of the Company and/or the Physical Supplier to remove the spilled Bunkers and mitigate the effects of such spill. The Buyer and the Vessel shall fully cooperate and render such assistance as is required by the Company and/or the Physical Supplier in the course of these actions. All expenses, claims, costs, losses, damages,



IAN TAYLOR & COMPANY Shipping Agencies

liability and penalties arising from spills shall be borne by the Party that caused the spill by a negligent act or omission. If both parties have acted negligently, all expenses, claims, losses, damages, liability and penalties, shall be divided between the Parties in accordance with the respective degree of negligence. The burden of proof to show the Company and/or the Physical Supplier's negligence shall be on the Buyer. The Buyer shall give the Company all documents and other information concerning any spill or any programme for the prevention thereof that is required by the Company and/or the Physical Supplier, or may be required by any law or regulation applicable at the time and Place of Delivery.

9. TITLE AND OWNERSHIP / LIEN.

9.1 Title to, ownership of and property of the Bunkers shall pass on to the Buyer only after the Price and any other charges incidental thereto have been paid to the Company in full as provided in these Terms & Conditions. Until that time, the Buyer shall hold the Bunkers and store them in such a way that they can be identified as Company property, keeping it separate from the Buyer's own property or that of any other person.

9.2 Until full payment of any amounts due to the Company as aforesaid, the Buyer shall not be entitled to use the Bunkers for purposes other than the propulsion of the Vessel and shall not mix, blend, sell, encumber, pledge, alienate, surrender or deliver in any way the Bunkers to any third party or other vessel. If, however, Bunkers sold to the Buyer are subsequently mixed or blended with other bunkers or fuels on board the Vessel, the Company shall have a lien over such part of the mixed bunkers which is equal to the quantity of Bunkers delivered to the Buyer.

9.3 The sale of Bunkers shall be made not only on the account of the Buyer but also on the account of the Vessel. The Buyer warrants that the Vessel's owner has given the Buyer express authority to purchase the Bunkers. The Buyer further warrants that the Company has the right to assert and enforce a lien against the Vessel or any sister or associated vessel for the Price plus, without limitation, accrued interests and any other costs and expenses related to the enforcement of the lien. The Buyer expressly warrants that he has the authority of the Vessel's owner to pledge the Vessel's credit as aforesaid. The Vessel is ultimately responsible for the debt incurred through the Agreement. The Company's right to apply and enforce a lien will not be affected, altered, waived or impaired in any way by the application to the Bunker Delivery Receipt of any disclaimer stamp or other similar statement, declaration or reservation whatsoever.

10. PRICE OF BUNKERS AND SERVICES

10.1 Quotations are based on the price level of Bunkers and any applicable taxes, duties, charges and any other costs and expenses existing or applicable at the time when the Agreement is concluded. Any subsequent change or increase on the price level of Bunkers and any applicable taxes, duties, charges and any other costs and expenses whatsoever and any additional costs and expenses borne by the Company as a consequence of having to change the Physical Supplier after the conclusion of the Agreement, shall be added to the Price. The Company shall give notice to the Buyer as to any such circumstances within a reasonable time after it becomes aware of the existence thereof.

10.2 Unless otherwise agreed, the Price shall be calculated and payable in dollars, lawful currency of the United States of America. All Prices are exclusive of Value Added Tax (VAT) and any other applicable taxes or duties, unless specifically stated otherwise. The Buyer shall pay any and all additional costs and expenses which are or should be for the account and expense of the Buyer, including, but not limited to, agency fees; wharfage, berthing and other port fees, costs or expenses; clean-up costs; overtime; pilotage; calling costs and expenses; barging; overtime and demurrage.

10.3 The Buyer or his representative shall attend or be present at the time of delivery of the Bunkers and obtain at that time all information relating to the delivery, including the exact quantities and precise specifications of Bunkers delivered. Unless otherwise requested by the Buyer prior to despatch by the Company of the Order Confirmation, the Company shall be under no obligation



IAN TAYLOR & COMPANY
Shipping Agencies

at any time to produce to the Buyer any evidence of delivery of the Bunkers to the Vessel. It is expressly agreed that the furnishing by the Company of proof of delivery is not a pre-requisite or condition whatsoever for payment of the Price.

- 10.4** When the Company is acting as a broker only, the Buyer shall pay the Company a commission for the Services in accordance with the Agreement.
- 10.5** Unless otherwise agreed between the parties and expressly set out in the Order Confirmation:
- (a) Payment of the Price shall be made in full on the due date, in United States' dollars, to the bank account designated by the Company in the Order Confirmation, in readily available funds, free and clear of any banking charges or any other deductions whatsoever.
 - (b) Timely payment of the Price shall be deemed as being of the essence of the Agreement. Any delay in payment of any amount due to the Company for whatever reason under the Agreement, shall entitle the Company, without prejudice to any other rights or remedies which the Company may have under the Agreement, to charge interests over the outstanding amount per day of delay, according to the highest interest rate applicable in respect of financial operations in foreign currencies as determined by the competent Chilean authority (*interés máximo convencional*). Fractions of a day shall count as one day.
 - (c) If at any time the reputation, standing, creditworthiness, liquidity or solvency of the Buyer or any subsidiary, parent, associate or affiliate thereof should give the Company reasonable cause for concern, the Company, without prejudice to all other rights and remedies available to it under these Terms & Conditions may, by giving written notice to the Buyer, withdraw, terminate or suspend, as the case may be, any credit or special payment terms granted to the Buyer and all sums outstanding shall thereupon fall due for immediate payment.
 - (d) The Buyer expressly agrees and acknowledges that all payments to be made or credited by it under or in connection with the Agreement shall be calculated without reference to any set-off or counterclaim whatsoever and shall be made free and clear of and without any deduction for or on account of any set-off or counterclaim whatsoever.

11. CLAIMS

- 11.1** Any and all claims in connection with the **quantity of Bunkers** delivered must be notified by the Buyer or the Master of the Vessel to the Company and the Physical Supplier, immediately after completion of delivery in the form of a letter of protest. If the Buyer or the Vessel's Master fails to present such immediate letter of protest to the Company or the Physical Supplier, such claim shall be deemed to have been waived and shall be absolutely barred for all purposes whatsoever. Furthermore, any eventual statements or remarks made by the Buyer or the Master on the Bunker Delivery Receipt (or any other document evidencing receipt in the case of Bunkers delivered in drums, pails or similar means of storage), including a "No Lien" stamp or similar declaration, shall have no effect or value whatsoever.
- 11.2** Any and all claims concerning the **quality of the Bunkers** delivered shall be submitted to the Company in writing within **15 (fifteen) days** after delivery with a clear statement as to the nature or the claim(s) together with sufficient supporting documentation, failing which any rights to complain or to claim compensation of whatever nature shall be deemed to have been waived and absolutely barred for all purposes. Complaints and/or claims for deficiency in quality shall be resolved by means of tests made as soon as possible, by a mutually acceptable independent laboratory, using any one of the samples taken at the time of delivery of the Bunkers. The Parties shall make their best efforts to amicably appoint an independent laboratory to perform the tests. If, however, no agreement can be reached on the choice of laboratory within **five (5) Working Days** following either Party's notification to the other of its decision to have the sample tested, the Company shall be at liberty to send the sample to a reputable and independent laboratory of its choice for the tests to be conducted, and those tests results will be final and binding upon the Buyer and the Company as set out above.



IAN TAYLOR & COMPANY Shipping Agencies

- 11.3** If the Buyer submits a claim against the Company with respect to the quality or quantity of the Bunkers supplied, the Company or the Company's nominated representative shall be entitled to board the Vessel and investigate the Vessel's records, log books, engine logs, etc., and to make copies of any such document which the Company or the Company's nominated representative may consider necessary to assess the merits of the claim, and the Buyer shall instruct (or where the Buyer has chartered the Vessel request the Owner to instruct) the Master, officers and crew of the Vessel to provide full assistance and support in any such manner as the Company or the Company's nominated representative may require. Failure to allow boarding and/or to produce the required copies of documents and/or lack of full cooperation by the Vessel's Master, officers and crew shall constitute a waiver of the Buyer's claim.
- 11.4** In each and every case, any and all claims of the Buyer shall be time-barred unless legal proceedings have been commenced against the Company and/or the Physical Supplier before the competent court in accordance with clause 19 hereof, and notice of same legally served, within **12 (twelve) months** from the date of delivery of the Bunkers.

12 BREACH OF THE AGREEMENT AND INDEMNITY

- 12.1** The Company may terminate the Agreement at any time, in whole or in part, at its own discretion upon the breach of any provision of the Agreement.
- 12.2** The Buyer shall indemnify the Company and/or the Physical Supplier against and defend and hold them harmless from all losses, liabilities (whether civil or criminal), costs, controls, restrictions, charges, fees (including, without limitation, legal and accountancy fees and disbursements), expenses, payments, penalties, fines, general and/or liquidated damages, or other sanctions of a monetary nature whatsoever suffered or incurred by the Company and/or the Physical Supplier and arising directly or indirectly in any manner out of any default by the Buyer in the performance of any of the obligations expressed to be assumed by it in the Agreement or any other acts, omissions or defaults on the part of the Buyer or on the part of any of the persons for whom the Buyer is responsible, including, but not limited to, its servants and employees; the Master, officers or crew of the Vessel; or the Buyer's agents, brokers or representatives, and the Buyer shall indemnify the Company and/or the Physical Supplier against and defend and hold them harmless from all losses, liabilities (whether civil or criminal), costs, controls, restrictions, charges, fees (including, without limitation, legal and accountancy fees and disbursements), expenses, payments, penalties, fines, general and/or liquidated damages, or other sanctions of a monetary nature whatsoever suffered or incurred by the Company and/or the Physical Supplier and arising directly or indirectly in any manner out of any such acts, omissions or defaults.
- 12.3** Any act, omission or default which if it were an act, omission or default of the Buyer would be a breach of the Agreement on its part shall be deemed to be such an act, omission or default for which the Buyer is responsible if done, omitted or committed by any person, firm or company who controls, is under common control with, or is controlled by the Buyer.

13. DELAYS AND CANCELLATION.

- 13.1** Notwithstanding anything else to the contrary herein and without prejudice to any other rights or remedies otherwise available to the Company hereunder, the Buyer expressly agrees that the Company shall have the right, at its sole discretion, to cancel the Agreement, or to adjust the Price in the event the Vessel is suffering a delay exceeding 48 hours from the date of delivery of the Bunkers set out in the Nomination.
- 13.2** If the Buyer for whatever reason (including circumstances entirely outside Buyer's control) cancels the Agreement, where an Order Confirmation has been sent by the Company the Buyer shall be liable for any and all losses suffered and liabilities incurred by the Company and/or the Physical Supplier as a result of the cancellation.



14. LIABILITY OF THE COMPANY AND COMPENSATION

14.1 The Company and/or the Physical Supplier shall not be liable to the Buyer for any loss or damage of whatsoever nature and howsoever occurring out of or in connection with the performance or non-performance of the Agreement or for any other reason, cause or circumstance whatsoever, whether in contract, tort or otherwise, including, but not limited to, loss of prospective profit, anticipated cost savings, loss of contracts or any other indirect, special, incidental, consequential, punitive or exemplary damages of any kind whatsoever, even if caused by or attributable to the negligence of the Company, the Physical Supplier or their respective employees, agents, servants or sub-contractors.

14.2 If, notwithstanding the foregoing, the Company and/or the Physical Supplier is nevertheless found to be liable to the Buyer, the total amount payable by way of compensation, other than in respect or death or personal injury, shall not exceed the Price charged for the Bunkers supplied or the Services provided to the Buyer under the Agreement; provided, however, that it shall be a pre-condition for the payment of any such compensation by the Company, that all sums due to or otherwise payable to the Company from the Buyer are fully paid and settled before payment of any such compensation.

15. FORCE MAJEURE. The Company and/or the Physical Supplier and/or the Buyer shall not be liable for any failure to fulfil any term or condition of the Agreement if fulfilment has been delayed, hindered or prevented by an event of **Force Majeure**. Nothing in this provision, however, shall be deemed to excuse the Buyer from its obligation to make payments for Bunkers received or Services rendered. The term Force Majeure shall be understood and construed in accordance with the definition of article 45 of the Chilean Civil Code, which definition shall be deemed to include, but will not be limited to, any limitation, restriction or interruption to existing or contemplated sources of supply of Bunkers or the means of supply thereof.

16. BUYER'S INSURANCE.

16.1 The Buyer shall be fully and exclusively responsible for effecting and maintaining in force adequate insurance which fully protects the Buyer, the Company, the Physical Supplier and any third parties from all risks, hazards and perils associated with or arising out from the Agreement and the delivery of Bunkers.

16.2 Whilst the Bunkers remain the Company's property as provided in clause 9 hereof, the Buyer shall insure it against any loss or damage and, in the event of such loss or damage, the Buyer shall hold the proceeds of such insurance on behalf of the Company as trustee of the Company.

16.3 Insurance deductibles, if any, shall be for the exclusive cost and account of the Buyer.

17. ASSIGNMENT. The Buyer shall not assign or transfer or purport to assign or transfer any of its rights or obligations under the Agreement, unless with the prior written consent of the Company. The Company, however, may at any time in its unfettered discretion assign the Agreement to any third party, without limitation, restriction or condition whatsoever.

18. GENERAL MATTERS.

18.1 The Company shall be entitled, in its unfettered discretion, to amend these Terms & Conditions in any manner and at any time as it deems fit. Any amendments to these Terms & Conditions shall be notified by the Company to the Buyer before concluding any Agreement.

18.2 No failure or delay on the part of the Company in exercising any right, power or remedy under these Terms & Conditions and/or any Agreement shall operate as a waiver thereof or a waiver of any other rights, powers or remedies nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise of any such right, power or remedy or the exercise of any other right, power or remedy. No waiver by the Company shall be effective unless it is given in writing.

18.3 The rights, powers and remedies conferred on the Company by these Terms & Conditions or any



Agreement are cumulative, may be exercised as often as the Company thinks fit and are in addition to (and are not exclusive of) any rights, powers or remedies provided by law.

- 18.4** If at any time any provision of these Terms & Conditions is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, or any indication to that effect is received by the Company and/or the Buyer from any competent authority, the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality or, at the discretion of the Company, such provision may be severed from these Terms and Conditions.
- 18.5** Where any matter requires the acceptance, confirmation, instruction, approval or consent of the Company such acceptance, confirmation, approval or consent shall not be deemed to have been given unless given in writing by a duly authorised representative of the Company. The Company may give or withhold any acceptance, confirmation, approval, instruction or consent in its unfettered discretion.

19 **LAW & JURISDICTION**

- 19.1** These Terms & Conditions and the Agreement made between the Company (whether acting as seller or broker) and the Buyer, shall be governed by (and shall be construed) in accordance with the laws of the **Republic of Chile**. Subject to sub-clause 19.2 hereof, any and all disputes which may arise under or in connection with these Terms & Conditions or any Agreement relating hereto or for any other reason whatsoever, shall be submitted to **arbitration in the city of Valparaiso, Chile** in accordance with article 1203 of the Chilean Code of Commerce. The arbitrator shall be especially empowered to resolve any matter relating to his/her competence and/or jurisdiction.
- 19.2** For the sole and exclusive benefit of the Company, whether in its capacity as seller or broker, as the case may be, it is further agreed that the Company, without prejudice to any rights hereunder of the Company, shall have the right to proceed against the Buyer or the Vessel in such jurisdiction as the Company in its sole and unfettered discretion sees fit for the purpose of securing payment of any amount due to the Company from the Buyer, in which case the proceedings shall be governed by the laws of such jurisdiction (substantive and procedural).

IAN TAYLOR CHILE S.A.
Blanco 937, Office 601
Valparaiso, Chile

Tel: +56 - 32 226 1000
Fax: +56 - 32 266 1100
E-mail: chile@iantaylor.com
www.iantaylor.com