



**GENERAL PROVISIONS (12-12)**  
**For MARINE FUEL SALES CONTRACTS**

**PURPOSE/DEFINITIONS:** These General Provisions are intended to be incorporated into and become a part of agreements (“Contracts”) between third parties and either Tesoro Refining & Marketing Company LLC, a Delaware limited liability company, Tesoro Alaska Company, a Delaware corporation, or Tesoro Hawaii Corporation, a Hawaii corporation (collectively “Tesoro”), covering the purchase and sale of Marine Fuel. A Contract will consist of typed, facsimile, telex or other written Specific Provisions, these General Provisions, attached Exhibits and any addenda or other terms that may be specifically incorporated by reference. In the event of any conflict between the Specific Provisions and these General Provisions, the Specific Provisions shall prevail over these General Provisions. No Contract shall be effective until the portion setting forth the Specific Provisions has been executed by an authorized representative of Tesoro, provided that these General Provisions may apply to all volumes of Marine Fuel actually delivered by Tesoro to a Receiving Vessel, regardless of whether a Contract has been so executed. The Parties expressly recognize and acknowledge that no Contract or performance thereunder shall create any sole source supply or purchase arrangement, general supplier-purchaser relationship or any franchise or distributor relationship.

**1. DEFINITIONS.**

“API” shall mean the American Petroleum Institute.

“ASTM” shall mean the American Society for Testing and Materials.

“Barge” shall mean any bunkering barge used to deliver Marine Fuel to a Receiving Vessel.

“Buyer” shall mean any Party receiving Marine Fuel under a Contract and shall include such Party’s brokers, agents and representatives acting on its behalf with respect to the sale or delivery of Marine Fuel under a Contract.

“Contract” shall mean an agreement between Tesoro and third parties, for the purchase and sale of Marine Fuel, including written Specific Provisions, these General Provisions, attached Exhibits and any addenda or other terms that may be specifically incorporated by reference.

“Delivery Date” means the date(s) agreed upon as the date(s) for delivery of the Marine Fuel, as set forth in the Specific Provisions. If the Specific Provisions establish a time window of more than one day when delivery may occur, then the Delivery Date shall include the entire period within that time window.

“Delivery Point” means the place agreed upon as the location for delivery of the Marine Fuel, as set forth in the Specific Provisions.

“Delivery Time” means the time on the Delivery Date established as the confirmed time for delivery of the Marine Fuel.

“EAR” shall have the meaning ascribed to such term in Section 20(d) below.

“Force Majeure” shall mean a cause beyond the reasonable control of a Party which may excuse timely performance, as set forth under Section 18.

“HSE Data” shall have the meaning ascribed to such term in Section 21 below.

“ICC” shall have the meaning ascribed to such term in Section 19(a)(i) below.

“ITAR” shall have the meaning ascribed to such term in Section 20(d) below.

“International Contract” shall have the meaning ascribed to such term in Section 19(a) below.

“Marine Fuel” shall mean the grade(s) of marine bunker oil, marine diesel, marine gasoil or heavy fuel oil set forth in the Specific Provisions, to be sold for use as fuel for marine vessels.

“Master” shall mean the Master of the Receiving Vessel.

“OFAC” shall have the meaning ascribed to such term in Section 20(d) below.

“Party” or “Parties” shall mean Buyer and/or Seller under a Contract.

“Point of Sale” shall mean the point where title and risk of loss are to pass, as may be set forth in the Specific Provisions.

“Purchase Price” shall mean the total price payable for Marine Fuel, as set forth in the Specific Provisions.

“Quality” shall mean the physical properties and chemical composition of Marine Fuel, including without limitation, the conformance of such Marine Fuel to applicable Specifications and the requirements of Section 3.

“Quantity” shall mean the volume of Marine Fuel agreed to be purchased by Buyer, as set forth in the Specific Provisions.



“Receipt” shall mean the document delivered by Seller or Seller’s Representative and acknowledged by the Master after delivery of Marine Fuel is completed, to confirm the Quantity and Quality of the Marine Fuel actually delivered.

“Receiving Vessel” means the vessel identified by Buyer to receive the Marine Fuel, as set forth in the Specific Provisions.

“Regulations” shall have the meaning ascribed to such term in Section 20(a) below.

“Seller” shall mean the Party selling Marine Fuel under a Contract.

“Seller Group” shall have the meaning ascribed to such term in Section 16(c) below.

“Seller’s Representative” shall mean any one or more persons or entities designated by Seller to perform any or all functions associated with deliveries of Marine Fuel, including without limitation, the operator of any Barge, dock mooring point, wharf or terminal through which deliveries are to be made.

“Specifications” shall mean the specifications and description of Quality of Marine Fuel to be delivered, as set forth in the Specific Provisions.

“Specific Provisions” shall mean a written document signed by an authorized representative of Seller that sets forth terms specifically applicable to a particular sale and delivery of Marine Fuel, to be incorporated into a Contract including these General Provisions.

“Taxes” shall mean all taxes, duties, tariffs, fees, imposts, assessments or levies which may be levied or assessed or otherwise applied, directly or indirectly, by a governmental entity to the sale, purchase, exchange, use, resale, transportation, delivery, inspection or handling of the Marine Fuel, including without limitation, any existing, new or increased excise taxes including federal manufacturing excise taxes, gross receipts taxes, environmental taxes, federal, state and local inspection fees, federal and state oil spill taxes or fees, state and local sales or use taxes, business and occupation taxes, and “oil company” taxes, however denominated by each taxing jurisdiction.

“Tesoro” shall have the meaning ascribed to such term in the preamble above.

“Working Days” shall mean calendar days, excluding Saturdays, Sundays and holidays recognized in the United States.

**2. SPECIFIC PROVISIONS.** If the Parties negotiate and agree to a sale of Marine Fuel under a Contract including terms specifically applicable to the particular sale and delivery of Marine Fuel, then the Seller shall prepare Specific Provisions for such sale, specifying the Receiving Vessel, the grade(s), Specifications and Quantity of Marine Fuel to be purchased, the Purchase Price, Delivery Date, Delivery Point, and delivery method and other applicable terms. The Specific Provisions should provide the name, fax number and address of each Party’s authorized representative to receive notices and to negotiate any proposed changes in a Contract. Until Seller executes and Buyer receives written Specific Provisions for a Contract, neither Seller nor Buyer shall have any rights, obligations or liability concerning such proposed purchase, provided however, that if Buyer or the Master of the Receiving Vessel should accept delivery of Marine Fuel into a Receiving Vessel, then the last written Specific Provisions executed by Seller shall constitute the Specific Provisions for a Contract covering the volume of Marine Fuel actually delivered as the Contract Quantity, but Seller shall have no obligation to deliver any additional volume of Marine Fuel under such Contract.

**3. QUALITY.**

(a) Standards. The Marine Fuel sold under each Contract shall be of a commercial Marine Fuel grade established by Seller generally for the time and delivery location. Buyer shall be solely responsible for selecting and nominating to Seller the proper grade of Marine Fuel for use in the Receiving Vessel, from the range of available Marine Fuel grades then being supplied by Seller. Buyer and the Master shall be responsible for confirming that the Specifications describe Marine Fuel that is suitable for use in the Receiving Vessel. THE MARINE FUEL SHALL CONFORM TO ANY SPECIFICATIONS THAT MAY BE SET FORTH IN THE SPECIFIC PROVISIONS OF EACH CONTRACT AND, UNLESS OTHERWISE SPECIFIED IN WRITING, SHALL CONFORM TO THE SELLER’S USUAL SPECIFICATIONS AT THE TIME OF DELIVERY FOR THE GRADE OF MARINE FUEL SO NOMINATED. ALL WARRANTIES OTHER THAN THOSE EXPRESSLY STATED HEREIN ARE EXPRESSLY EXCLUDED UNDER EACH CONTRACT, AND SELLER AND SELLER’S REPRESENTATIVE MAKE NO GUARANTIES OR WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS OR SUITABILITY OF THE MARINE FUEL FOR ANY PARTICULAR PURPOSE.



(b) Quality Samples. Seller shall arrange, as necessary, for two (2) identical one (1) liter or quart representative samples of each grade of Marine Fuel to be drawn during the delivery operation in accordance with Seller's Representative's normal sampling procedures at the time of delivery onto the Receiving Vessel. Both Seller and Buyer or their respective representatives may witness such sampling and the sealing of such samples. The samples shall be drawn at a point to be mutually agreed upon between Seller and Buyer or their respective representatives or, failing agreement, at the point customarily used by Seller or Seller's Representative. All sampling shall be performed in accordance with ASTM D-4057, latest edition and MARPOLE Annex 6 requirements. The samples shall be securely sealed, labeled with the Receiving Vessel's name, the identity of delivery facility, grade of Marine Fuel, delivery date and place, and seal number (if available), and authenticated with the Receiving Vessel's stamp and signed by Seller's Representative and the Master or his authorized representative, if they so choose. One (1) sample shall be retained by Seller for sixty (60) days after delivery of the Marine Fuel to the Receiving Vessel and one (1) sample shall be retained by the Receiving Vessel or Buyer.

#### 4. QUANTITY.

(a) Determination. Buyer may initially nominate a volume of Marine Fuel that Buyer desires to purchase, and if Seller agrees to deliver such nominated volume, then such nominated volume shall be the Quantity set forth in the Specific Provisions. Unless otherwise provided in the Specific Provisions, Seller will sell and deliver to Buyer, and Buyer shall accept and receive a volume within one and one half percent (+/-1½%) of the stated Quantity, at the scheduled time and place of delivery.

(b) Measurement. The volume of Marine Fuel actually delivered under a Contract shall be determined by Seller or Seller's Representative from the tank gauges of the Barge (in the case of barge delivery), the onshore storage tank or pipeline meter from which delivery is made (in the case of pipeline delivery), or the vehicle meter (if delivery is made by vehicle). Buyer and Seller shall both have the right to be present or represented when such measurements are taken, and each shall have reasonable opportunity to verify the volume delivered. Unless the Specific Provisions provide otherwise, the volume of Marine Fuel delivered shall be measured and calculated in accordance with the latest ASTM or API test methods. All measured volumes shall be adjusted to those conditions in accordance with ASTM test methods and API volume correction tables.

#### 5. CLAIMS AND DISPUTES ABOUT QUANTITY OR QUALITY.

(a) Quantity Claim. Any claim or dispute concerning the volume of Marine Fuel delivered must be specifically identified by Buyer or the Master in a written document delivered to Seller or Seller's Representative at the time of delivery. Such written document shall be either the Receipt or the letter of protest referred to in Section 10 below, provided however, that within thirty (30) days of the Delivery Date, Buyer may challenge whether Seller accurately calculated, in accordance with proper ASTM and API procedures, the actual delivery volume using the information stated on the Receipt. Any measurement claim or dispute that is not timely identified in such manner shall be deemed to be waived and absolutely barred, and measurements and calculations of volume by Seller or Seller's Representative shall otherwise be conclusively presumed to correctly set forth the volume of Marine Fuel delivered and sold.

(b) Quality Claim. Any claim of a defect in the Quality of any Marine Fuel delivered must be identified in a written document delivered to Seller. Such written document shall be either the Receipt or the letter of protest referred to in Section 10 below, or, if such Quality defect is not identified at the time of delivery, by a document promptly delivered to Seller after the circumstances giving rise to such claim have been discovered. Unless Buyer notifies Seller of a claim concerning a defect in the Quality of any Marine Fuel delivered or any alleged breach of warranty within thirty (30) days after the Delivery Date and further provides full details with supporting evidence for the claim within sixty (60) days after the Delivery Date, then it shall be conclusively presumed that there were no defects in the Quality or description of the Marine Fuel delivered, that such Marine Fuel met all contractual Specifications and that all Seller's warranties were correct, and any such claim for defect or breach of warranty shall conclusively be deemed to be waived and absolutely barred. In the event Buyer timely notifies Seller of a claim or dispute concerning whether any Marine Fuel delivered met the applicable Specifications and warranties, the Parties shall have the sample of the Marine Fuel that was retained by Seller analyzed by a mutually acceptable, qualified and independent laboratory. The results of the analysis of Seller's sample shall be used to establish the actual Quality of the Marine Fuel delivered. Unless otherwise agreed, the expenses of the analysis shall be borne equally by Seller and Buyer, and the findings of the laboratory shall be presumed correct unless manifest error can be established. In the event of any claim by Buyer concerning the Quality of Marine Fuel delivered, Seller and Seller's Representative shall have the right to come aboard and inspect the Receiving Vessel and draw additional samples as part of its



investigation of such claim. To the extent commercially practicable, Seller will attempt to minimize costs associated with off-spec or suspected off-spec Marine Fuel at the time of delivery by blending or otherwise treating the Marine Fuel in order to meet its advertised Marine Fuel Specifications. Seller shall not be responsible for any claim arising in circumstances where there is or has been commingling of Marine Fuels delivered by Seller with other fuel aboard the Vessel.

**6. SCHEDULING.**

(a) Advance Notice. If Buyer should desire to purchase Marine Fuel from Seller, it should notify Seller at least five (5) Working Days in advance of the requested delivery date and request that Seller propose Specific Provisions under which Seller would be willing to sell such Marine Fuel. If Seller and Buyer agree in writing to a set of Specific Provisions, Seller shall sell Marine Fuel to Buyer under the terms of the resulting Contract. Unless the Specific Provisions provide otherwise, Buyer or Buyer's local agent shall notify Seller of the Receiving Vessel's status at least twenty-four (24) and then twelve (12) hours in advance of the Receiving Vessel's ETA at the Delivery Point, so as to allow Seller adequate notice of possible delays. The ETA specified twelve (12) hour notice shall become the "Delivery Time."

(b) Delivery Time. Where the Buyer or the Master request a Delivery Time, Seller and Seller's Representative shall endeavor to set a Delivery Time occurring as soon thereafter as reasonably practicable, giving due regard to congestion affecting the delivery facilities of the Seller and Seller's Representative and the harbor and to prior commitments of facilities, barges and vehicles. Unless mutually agreed upon by the Parties, the Delivery Date shall not occur on any public, customary or dock holidays where agreements with employee organizations prevent delivery in the ordinary course of business for the Seller or Seller's Representative.

(c) Excused Delays. Seller and Seller's Representative will use reasonable efforts to accommodate any delay on the part of the Receiving Vessel, considering other delivery commitments of Seller and/or the facility where delivery is to occur, provided, however, should the Receiving Vessel be unable to take delivery within four (4) hours after the Delivery Time, for any reason not due to the fault of Seller or Seller's Representative, then Seller and Seller's Representative will be excused from timely performance hereunder and may make delivery to the Receiving Vessel at any time in their reasonable discretion, and Seller or Seller's Representative shall bear no responsibility for demurrage or any other costs or expenses of Buyer. Buyer's rights to cancel or delay deliveries under Section 18, "Force Majeure" are expressly conditioned upon Buyer providing adequate notice of any anticipated delays.

**7. TITLE, RISK OF LOSS AND POINT OF SALE.** Title and risk of loss shall pass from Seller to Buyer at the Point of Sale. In the case of delivery by Seller's or Seller's Representative's Barge or truck into the Receiving Vessel, the Point of Sale shall be the point where the Marine Fuel passes the last flange connecting the Barge's or truck's hose with the permanent loading connection of the Receiving Vessel. In the case of delivery by Seller's or Seller's Representative's pipeline into the Receiving Vessel, the Point of Sale shall be the point where the Marine Fuel passes Seller's last flange connecting Seller's hose to Buyer's or receiving equipment.

**8. DELIVERY.**

(a) General Terms of Delivery. Delivery shall occur at the Delivery Point and the Delivery Time, as set forth in the Specific Provisions and the Parties' notifications, and shall be accomplished in the manner set forth in the Specific Provisions. Unless otherwise specifically provided in writing, delivery shall occur into the Receiving Vessel. Seller or Seller's Representative shall coordinate with the Master to facilitate delivery in accordance with the Specific Provisions. If deliveries are to occur through road vehicles at locations other than the facilities of Seller or Seller's Representative, Buyer shall provide prompt and safe passage between the public roadway and the Point of Delivery. Seller or Seller's Representative shall not be obliged to deliver in locations or conditions or over roadways which in its opinion are unsafe for its Barge or vehicles.

(b) Requirements for Receiving Vessel. For deliveries into the Receiving Vessel, Buyer and the Master shall be responsible for providing and enabling clear safe reception of the full Quantity at the Delivery Point, without risk to Seller or Seller's Representative, the Barge or other contractor, their servants and agents, or their property. Buyer shall notify Seller in writing prior to delivery of (i) the maximum allowable pumping rate and pressure for the Vessel, (ii) the manifold configuration on the Receiving Vessel and (iii) such other information regarding the Receiving Vessel as Seller may reasonably require. Buyer and Seller shall also agree on communication and emergency shutdown procedures. Deliveries shall take place within normal harbor limits, and the Receiving Vessel shall provide a free side for receiving Barge deliveries. Unless otherwise agreed by the parties and allowed by the U.S. Coast Guard, Buyer shall not be entitled to receive Marine Fuel into any tanks other than those normally used to



store fuel bunkers for the Receiving Vessel. The Receiving Vessel shall make all connections and disconnections between the delivery hoses and the Receiving Vessel's intake flange, and shall render all other assistance and provide sufficient tankage and equipment to receive promptly all deliveries hereunder. The provision of any services by Seller or Seller's Representative, or any assistance offered by Seller or Seller's Representative, shall in no way relieve Buyer of any obligation or liability hereunder.

(c) Permits and Insurance. Seller shall not be required to deliver Marine Fuel if Buyer fails to obtain and produce proof of any required permits and/or insurance coverage(s). Buyer shall show evidence of such permits and insurance to Seller before delivery of Marine Fuel.

(d) Rejection Costs. Should the Receiving Vessel reject or otherwise refuse or be unable to receive the full Quantity of Marine Fuels ordered, Buyer shall pay all domestication fees and taxes, any costs of redelivery by Barge or otherwise, any expenses incurred in removing the Marine Fuels from the Barge, and any other costs incurred by Seller as a result of the decreased Quantity.

(e) Unavailability. In the event the specified Barge, bunker cart or other delivery facility is for any reason not available to effect delivery at the Delivery Point and the Delivery Time, Seller shall make reasonable efforts to arrange delivery as promptly as possible.

(f) Adverse Conditions. Seller or Seller's Representative need not make delivery when, in their reasonable opinion(s), a clear and safe berth (including conditions of the Receiving Vessel, mooring, wharf, weather and sea) is not available alongside the Receiving Vessel. In the event that, upon request of Buyer or the Master, a Barge makes reasonable effort to deliver the Marine Fuel but is prevented from doing so due to conditions of the Receiving Vessel, mooring, harbor, weather or sea, or other cause beyond the control of Seller or Seller's Representative, Buyer shall reimburse Seller for any costs related to the attempted delivery.

**9. INSPECTION OF RECEIVING VESSEL.** The Receiving Vessel shall be subject to inspection by the U.S. Coast Guard, any local Port Authority and, at Seller's option, by Seller or Seller's Representative. Any such inspection of the Receiving Vessel shall not relieve Buyer of any obligation or liability hereunder including, without limitation, responsibility for the safe operation of the Receiving Vessel. If the Receiving Vessel fails an inspection, Seller shall use reasonable efforts to accommodate Buyer's correction of any such issues, provided, however, that (i) Receiving Vessel shall have no right to utilize Seller's facilities, (ii) Buyer shall not be entitled to demurrage during any period while the Receiving Vessel is correcting any issues identified in any such inspection and (iii) Seller or Seller's Representative may refuse to deliver the Marine Fuel, without liability of any kind to Buyer for any delay or other cost, and without being in breach of any Contract, until any such issue is corrected.

**10. DOCUMENTATION.** Once the delivery is completed and quantities measured, Seller's Representative shall present the Master with a Receipt, which shall set forth measurements and product specifications required by MARPOLE, shall be signed and stamped by the Master or his representative and shall be returned to Seller or Seller's Representative, as acknowledgment of the delivery. A duplicate copy of the Receipt shall be retained by the Master. The signature and stamp of the Master or his representatives shall acknowledge only the Master's acceptance of the accuracy of the volume and the delivery temperature stated on the Receipt. If the Master should disagree with or challenge the accuracy of the Receipt as to either the volume delivered or the delivery temperature, the Master must place appropriate written annotations on the Receipt, which either detail the challenge or refer to a separate letter of protest to be issued and delivered by the Master or the Buyer immediately. The Master should also annotate the Receipt to note any apparent defects in the Quality of the Marine Fuel delivered, based upon the information known to the Master at the time of delivery. Buyer shall waive any such questions or challenge that are not identified on the Receipt and detailed either on the Receipt itself or in a separate letter of protest issued and delivered by the Master or the Buyer immediately after the delivery, provided however, that Buyer shall not waive any other claims concerning Quality that might be identified by subsequent analysis of the Receiving Vessel's and Seller's retained samples.

**11. PURCHASE PRICE.**

(a) General. The stated Purchase Price shall be valid only for the time period stated in the Specific Provisions, or if no such period is stated therein, for a time period extending from four (4) days before until four (4) days after (+/- 4 days) the Delivery Date. Should Buyer fail for any reason to take delivery within such time period, Seller may adjust the Purchase Price to Seller's then-current price for the Marine Fuel.



(b) Delivery Costs. Unless otherwise stated in the Specific Provisions, the Purchase Price shall be a price for delivery "Ex-Quay" (Incoterms 2000), in bond, and the Purchase Price shall exclude, and Buyer shall be required to pay, all applicable Taxes, mooring or wharfage fees, harbor fees, and any other such costs, including without limitation any fees or costs imposed by governmental authorities, together with all barge, lightering, anchorage, wharfage, terminal, pipeline and other delivery costs, except demurrage and delay costs, which shall be handled as set forth in Section 12 below. As a convenience to Buyer, Seller or Seller's Representative may pay in advance and on Buyer's behalf all or part of those Taxes and costs associated with delivering the Marine Fuel to the Delivery Point, and Buyer shall reimburse Seller for (i) the costs of those delivery services at the rates applicable on the date of delivery, including without limitation, basic charges, minimum charges, pipeline fees and tariffs, terminal fees and vehicle transport fees, and (ii) for all additional Taxes and charges incurred in connection with the delivery, including but not limited to, port fees, inspection fees, harbor fees, anchorage fees, wharfage fees, spill containment fees, and charges for any provision of additional hose in excess of that normally available at the Delivery Point. Whenever work is performed in connection with deliveries outside normal working hours at the port or outside of normal harbor limits the Buyer shall be responsible for all resulting additional charges and Taxes.

(c) Excess Costs. If the Specific Provisions set forth a "delivered" Purchase Price, then the Seller shall bear only the actual ordinary delivery costs incurred at the normal operating rates for work performed during normal working hours within the normal harbor limits, and Buyer shall be responsible for all other and additional Taxes and charges, provided however that demurrage and delay costs shall be handled as set forth in Section 12.

(d) Changed Terms. The terms of the Specific Provisions, including without limitation, the stated Purchase Price, shall be based upon particular factors affecting the sale, including the Quantity to be purchased, the Specifications and grade of Marine Fuel being purchased, the Delivery Date, and similar factors. If after finalization of the Specific Provisions either (i) Buyer or the Master should require an increase or decrease of more than ten percent (10%) in the Quantity to be delivered, (ii) Buyer or the Master should require any material change in the Specifications or grade of Marine Fuel to be delivered, (iii) Buyer or the Master should require any change in either the Receiving Vessel, the Point of Sale, the Delivery Point, the Delivery Date, the manner of delivery or any other material provision of the Contract, or (iv) the Receiving Vessel should fail for any reason to take delivery within four (4) days of the Delivery Date, Seller shall have the right, at its sole option, to (I) proceed as requested by Buyer, (II) cancel the Contract, (III) propose to reschedule deliveries or (IV) negotiate a new Purchase Price with Buyer.

**12. DEMURRAGE AND DELAY CHARGES AND RELATED COSTS.** Subject to the Force Majeure provisions hereof, Buyer shall be responsible for any Vessel or Barge demurrage charges resulting from Buyer's or Vessels failure to comply with the terms and conditions of this Agreement and delay in delivery caused by Buyer or the condition of the Vessel. Provided Buyer has complied in all material respects with the terms and provisions of this Agreement, and the Vessel has reached the Delivery Point and stands ready to accept delivery in accordance with this Agreement within four (4) hours of the Delivery Time, and subject to the Force Majeure provisions hereof, the Seller shall be responsible for any Vessel or Barge demurrage charges resulting from Seller's delay in delivering the Quantity and Quality of Marine Fuel specified in the Specific Provisions. Any claim as to demurrage by a Party shall be presented in writing to the other Party within thirty (30) days of the delivery date, failing which any such claim shall be deemed to be waived and absolutely barred.

**13. TAXES.**

(a) Payable by Buyer. Unless otherwise specified in the Specific Provisions, Buyer shall pay all Taxes that may be levied or assessed or otherwise applied to the sale, purchase, exchange, use, resale, transportation, delivery, inspection or handling of the Marine Fuel, other than Taxes based on Seller's net income, but including excise taxes on gross receipts. In the event that Seller is required by law to pay any of said Taxes, Buyer shall reimburse Seller for all such payments.

(b) Exemptions. In the event Buyer intends to claim any applicable exemption for any Taxes, Buyer shall, prior to or upon delivery of the Marine Fuel, furnish to Seller exemption certificates for such Taxes, to the extent such certificates are required or permitted by law. Unless Buyer timely delivers such exemption certificates to Seller, Buyer shall remain liable for the payment of such Taxes and shall reimburse Seller for any such Taxes paid by Seller. By providing such exemption certificates to Seller, Buyer shall represent and warrant that it is legally entitled to all such exemptions, and Buyer shall indemnify, defend and hold Seller harmless from all liabilities for Taxes, penalties and interest, should it be determined that Buyer was not entitled to an exemption.



**14. INVOICE AND PAYMENT.**

(a) Invoice. Seller shall send Buyer an invoice (which may be sent by fax) setting forth the amount due for the sale of Marine Fuel. Buyer shall make payment for the Marine Fuel in U.S. dollars within the time period stated in the Specific Provisions, or if no payment terms are stated therein, payment shall be due within ten (10) days after the Delivery Date or five (5) days after invoice, whichever is later. The invoice shall calculate the payment owed based upon the actual delivered Quantity and Quality of Marine Fuel delivered, as acknowledged by the Receipt and reflected by Seller's subsequent calculations on the invoice. If payment has already been made based upon a nominated Quantity, an adjustment shall be made to correct the Quantity to the actual volume of Marine Fuel delivered, and any additional payments or refunds owed shall be stated on the invoice and paid within the number of days stated in the Specific Provisions, or if no payment terms are stated therein, within thirty (30) days after the actual Delivery Date. The invoice shall also include the amount of all charges incurred by Seller for delivery costs, demurrage, Taxes and other costs or charges that are the responsibility of Buyer under the Contract.

(b) Payment. Full payment of the invoiced amount shall be made when due, without set-off, counterclaim, deduction or discount, free of bank charges, by means of wire transfer, automated credit transfer or electronic transfer of immediately available funds, and in the manner and at the place indicated in the Specific Provisions. Buyer shall notify (or instruct its bank to notify) Seller when each payment has been made, identifying the date on which payment was made, the amount of payment, the name of the bank effecting payment, Buyer's name and each invoice being paid. Such notification shall be sent by fax to Tesoro's Credit Department, San Antonio, Texas, (210) 283-2048. Payment shall be deemed to have been made on the date the payment is credited to the bank account designated by Seller. If payment falls due on a day when Seller's bank is not open for business, then payment shall be made on or before the last business day before that date. For any amount not paid in full on the date owed, Buyer shall owe Seller interest on the unpaid balance from the due date until the date payment is received by the Seller's bank, at the rate of one and one half percent (1½%) per month, and pro rata for any part thereof, but not to exceed the highest rate allowed by applicable law.

(c) Correction. All invoices and payments shall be subject to subsequent adjustment and correction, as necessary, upon the Parties' receipt of further information concerning samples, delivery charges, Taxes and/or other costs, or as may be otherwise agreed upon by the Parties after detailed checking and correction of the invoice.

**15. FINANCIAL RESPONSIBILITY.** If Buyer fails to pay Seller all amounts owed when due, or if, in the sole opinion of Seller, the financial responsibility of Buyer should at any time become impaired, unsatisfactory or unacceptable, Seller at its option may require Buyer to pay cash prior to any future deliveries of Marine Fuel or may require Buyer to post an irrevocable letter of credit or other security reasonably required by Seller and may suspend further deliveries of Marine Fuel until such security is received; provided however, that if the Specific Provisions of a Contract require specific security for Buyer's performance, Seller may require only such specified security. If (a) any requested security is not received within the time reasonably specified by Seller, or, (b) Buyer fails to provide Seller such other adequate assurance of future performance reasonably requested by Seller, or (c) any past due indebtedness is not paid in full within five (5) days of a written default notice to Buyer, then Seller shall have the right to (i) immediately terminate the Contract (regardless of anything to the contrary stated or implied elsewhere in these General Provisions), (ii) offset and recoup any amounts owing thereunder against any payments or deliveries due Buyer under any Contract between the Parties, pursuant to the Section titled "Remedies", and (iii) exercise any other remedies allowed under the Contract, applicable law or equity.

**16. REMEDIES.**

(a) Seller's Remedies in General. Seller may avail itself of any available remedy for late payments or other breaches by Buyer, including arbitration, lien rights, withholding future deliveries and termination of any Contract.

(b) No Offset. No claim by Buyer shall relieve Buyer of its obligation to timely pay the full amount agreed to be paid for the Marine Fuel. Buyer shall not withhold payment of any amount based on any claim or other dispute, whether based on Quantity, Quality, demurrage, or otherwise.

(c) Maritime Lien and Security Interest. Buyer unconditionally and irrevocably agrees that under the Maritime Lien Act, 46 U.S.C. §31301 et seq., including without limitation, §31301(4) and (5) and §§31341-31343, Seller shall have a maritime lien on each Receiving Vessel, to the extent Seller does not receive timely payment for all Marine Fuel delivered to such Receiving Vessel under a Contract. Buyer acknowledges that any Marine Fuel supplied to each Receiving Vessel by Seller under a Contract shall have been supplied with the authority of Buyer and the Master. Buyer represents and agrees that it is not prohibited from granting this maritime lien under the terms of any charter,



mortgage or other agreement, and that this representation shall be correct at the time each Contract is executed. Buyer acknowledges that Seller will rely upon the credit of the Buyer and the lien right granted under this provision in supplying Marine Fuel to Buyer and to the Receiving Vessel. Further, in addition to applicable maritime liens, Seller shall retain a first purchase money security interest in all Marine Fuel delivered to Buyer and/or into a Receiving Vessel, until payment in full is made for all such Marine Fuel delivered.

(d) Audit. Each Party and its duly authorized representatives shall have access to the accounting records and other documents maintained by the other Party which relate to a Contract, and shall have the right to audit such records at any reasonable time or times during the term of the Contract or within three years after termination of the Contract.

(e) Release and Indemnity. Buyer agrees to defend, protect, indemnify, and save Seller, Seller's parent corporation, Seller's affiliates and their respective officers, directors employees and representatives (the "Seller Group") harmless from and against any and all claims, demands, liabilities, losses, causes of action, fines, penalties, costs and expenses (including reasonable attorneys fees) of every kind and character for personal injury, death or damage to property, or violations of law, arising from or occurring or growing out of or incident to, or resulting from the willful or negligent acts or omissions of Buyer or its agents, servants, employees, contractors, representatives and invitees. Seller agrees to defend, protect, indemnify, and save Buyer, Buyer's parent corporation, Buyer's subsidiary corporations, Buyer's affiliates and their respective officers, directors employees and representatives harmless against any and all claims, demands, liabilities, losses, causes of action, fines, penalties, costs and expenses (including reasonable attorneys fees) of every kind and character for personal injury, death or damage to property, or violations of law, arising from or occurring or growing out of or incident to, or resulting from the willful or negligent acts or omissions of Seller or its agents, servants, employees contractors, representatives and invitees. Where personal injury, death, or loss of or damage to property is the result of the joint negligence or misconduct of a Party hereto, the Parties expressly agree to indemnify each other in proportion to their respective shares of such joint negligence or misconduct.

(f) Limitation of Damages and Waiver. No Party shall be liable to the other for any loss of profits or special, indirect, consequential, statutory, punitive or exemplary damages, whether based in contract, tort (including negligence or strict liability), warranty or otherwise. Seller's liability for any claim under a Contract shall not exceed the amount of the Purchase Price payable for the Marine Fuel sold thereunder.

(g) Fees and Expenses If a Party seeks to enforce that Party's rights under the Agreement in any arbitration proceeding, court action, litigation or similar proceeding, the prevailing Party may recover from the other Party all court and arbitration costs, reasonable expenses and reasonable expert's and attorney's fees relating to such arbitration or court action, litigation or proceeding.

(h) Default and Liquidation. Upon any default by a Party under a Contract, or if a liquidator, trustee in bankruptcy, receiver or receiver and manager or equivalent officer is appointed with respect to any assets or undertaking of a Party or any of its associated companies, or if a Party or any associated company enters into an arrangement or composition with its creditors, or if any similar appointment, arrangement, or composition is made under any applicable law, or if the other Party has a reason to anticipate any such appointment, arrangement or composition, then in addition to such other remedies as may be available in law or equity, the other Party shall have the right to terminate and liquidate each Contract upon written notice

(i) Survival. The provisions of this Section 16 shall survive the expiration or termination of the Contract.

**17. AGENCY AND AUTHORITY.** Buyer's delivery of a request to Seller that Seller supply Marine Fuel to a Receiving Vessel, shall constitute Buyer's representation and warranty to Seller that the person sending such request has the authority on behalf of Buyer to order the Marine Fuel for the Receiving Vessel and to enter into contracts on behalf of Buyer, the Receiving Vessel and its owners and charterers, and the Parties shall be deemed to have entered into the Contract in such capacity. If such a request is delivered to Seller by a broker representing Buyer, by delivering the request, such broker shall represent that it has full authority to order the Marine Fuel and to bind to the Contract Buyer, the Receiving Vessel and its owners, charterers and Master. If any delivery is contracted for by Buyer as an agent of any other person or by any person as an agent of Buyer, whether such agency is disclosed or not, such other agents and principals shall be jointly and severally liable with Buyer, the Receiving Vessel and its owners and charterer, for proper performance of all obligations of Buyer under the Contract.

**18. FORCE MAJEURE.** No failure or omission by either Buyer or Seller to carry out or observe any of the provisions or conditions of the Contract, other than the payment of money owed, shall give rise to any claim against that Party, or be deemed a breach of a Contract, if such failure or omission arises from Force Majeure. Force



Majeure shall include acts of God, natural disasters, floods, hurricanes, adverse weather or sea conditions, perils of the sea, war (declared or undeclared), embargoes, civil insurrection, riots, strikes, labor disputes, actions taken to comply with directions of any governmental or military authority or persons purporting to act therefore, accidents, fires, explosions, mechanical breakdowns or any other cause beyond the reasonable control of the affected Party, and, in the case of Seller, the failure, delay, congestion or shortage of any facilities used for the production, refining, storage, transportation or delivery of Marine Fuel, the unavailability of suitable Marine Fuel at reasonable cost or the unavailability at a reasonable cost of products or raw materials necessary for the production of Marine Fuel. Notwithstanding the foregoing: (a) In the event the arrival of the Receiving Vessel will be delayed beyond the Delivery Time by an event of Force Majeure, Buyer must provide immediate written notice to Seller, stating the underlying circumstances of the particular cause(s) of Force Majeure, and the expected duration thereof, and if Buyer fails to do so Buyer's performance will not be excused hereunder; (b) Buyer shall in no circumstances be excused from its obligation to make payment for Marine Fuel delivered hereunder and for costs of transportation, delivery, demurrage and/or other delay costs that Seller reasonably incurs before receiving actual notice of the Force Majeure event; and (c) Force Majeure shall not relieve any Party of any release, indemnity, defense or hold harmless obligation arising under a Contract. Whenever either Party's performance is prevented or delayed as a result of Force Majeure, Seller may reduce or allocate deliveries in such manner as Seller may determine, and Seller shall not be obligated to make up any deliveries omitted as a result of any condition of Force Majeure. Each Party shall use reasonable diligence to cure or correct any condition of Force Majeure affecting performance by such Party, provided however, that neither Party shall be obligated to settle any strikes, labor disputes or disputes with governmental authorities on terms it deems unsatisfactory.

#### 19. DISPUTE RESOLUTION.

(a) International Contracts. If this Agreement is an "International Contract", meaning that one of the Parties is established and existing under the laws of a state or country other than a State within the United States, then any dispute, controversy, or claim arising out of or in relation to or in connection with this Agreement, including without limitation, any dispute as to the construction, validity, interpretation, enforceability, or breach of such an International Contract, shall be exclusively and finally settled by arbitration in accordance with this section; provided however that this section shall not apply to the Agreement unless it is an International Contract as defined herein. By notice to the other Party, any Party may submit such a dispute, controversy, or claim involving an International Contract to arbitration as follows:

(i) The arbitration shall be heard and determined by three (3) arbitrators. Each side shall appoint an arbitrator of its choice within thirty (30) days of the submission of a notice of arbitration. Those Party-Appointed Arbitrators shall in turn appoint a Presiding Arbitrator of the tribunal within thirty (30) days following the appointment of both Party-Appointed Arbitrators. If the Party-Appointed Arbitrators cannot reach agreement on a Presiding Arbitrator and/or one Party refuses to appoint its Party-Appointed Arbitrator within said thirty (30) day period, that arbitrator shall be appointed by the International Chamber of Commerce ("ICC"), who shall appoint an independent arbitrator who does not have any financial interest in the dispute, controversy, or claim, in accordance with the ICC appointing procedures then in effect.

(ii) Unless otherwise expressly agreed in writing by the Parties to the arbitration proceedings:

(A) The arbitration proceedings shall be conducted, and the arbitrators shall all be fluent, in the English language;

(B) Whenever the Parties are of more than one nationality, the Presiding Arbitrator shall not be of the same nationality as any of the Parties or their ultimate parent entities;

(C) If an arbitrator should die, withdraw, otherwise become incapable of serving or refuse to serve, a successor arbitrator shall be selected and appointed in the same manner as the original arbitrator;

(D) The arbitrators shall be and remain at all times wholly independent and impartial;



(E) The arbitration proceedings shall be held in New York, New York, U.S.A.;

(F) The arbitration proceedings shall be conducted under the International Arbitration Rules of the ICC, as amended from time to time;

(G) The arbitration shall proceed in the absence of a Party who, after due notice, fails to answer or appear. An award shall not be made solely on the default of a Party, but the arbitrator(s) shall require the Party who is present to submit such evidence as the arbitrators may determine is reasonably required to make an award;

(H) All decisions and awards by the arbitration tribunal shall be made by majority vote;

(I) The decision of the majority of the arbitrators shall be (1) reduced to writing; (2) final and binding without the right of appeal; (3) the sole and exclusive remedy regarding any claims, counterclaims, issues, or accountings presented to the arbitrator; and (4) state any amounts owed or damages awarded in U.S. dollars;

(J) Consequential, punitive, or other similar damages shall not be allowed, except those specifically authorized under the Agreement or damages which have previously been determined to be payable to third parties and for which liability is allocated among the Parties by the arbitration award;

(K) The arbitration award shall include interest from the date of any breach or violation of this Agreement, as determined by the arbitration award, until the date of such arbitration award and continuing from the date of the arbitration award until paid in full, all at interest rate provided in the Agreement;

(L) The Party against whom an arbitration award is entered shall promptly pay the full amount awarded to the other Party in U.S. dollars, free of any deduction or offset except as expressly provided in such arbitration award or as otherwise specifically provided herein; and any costs or fees incident to enforcing the award shall, to the maximum extent permitted by law, be charged against the Party resisting such enforcement; and

(M) Judgment upon the arbitration award may be entered in any court having jurisdiction over the person or the assets of the Party owing the judgment or application may be made to such court for a judicial acceptance of the arbitration award and an order of enforcement, as the case may be.

(b) Domestic Contracts. If this Agreement is a “Domestic Contract”, meaning that each Party is established and existing under the laws of a State within the United States, then the provisions of Section 19(a) shall not apply, regardless of the location of the Delivery Point. All unresolved disputes arising out of Domestic Contracts shall be referred to arbitration conducted in New York City in accordance with the Commercial Rules of the American Arbitration Association. Prior to arbitration, should the Parties fail to agree on an arbitrator within 60 days of referral to arbitration, either party may request selection of an arbitrator by the American Arbitration Association, which selection shall be accepted by the Parties. The decision of the arbitrator shall be in English, and delivered no later than 120 days after referral to arbitration.

## 20. LAWS AND REGULATIONS.

(a) Compliance. Buyer and Seller shall enter into each Contract in reliance upon and shall fully comply with all U.S. Coast Guard and other applicable regulations and federal, state and local laws, rules, regulations, decrees, guidance documents and/or permits (“Regulations”), which directly or indirectly affect the Marine Fuel sold and to be delivered thereunder, or any delivery, transportation, handling or storage of Marine Fuel sold thereunder including without limitation, state or local regulations, obligations, requirements or recommendations at the Port of



delivery, such as those related to fire, spillage or loss of Marine Fuel. In the event any Contract, or any action or obligation imposed upon a Party thereby, shall at any time be in conflict with any requirement of a Regulation, then the Contract, action or obligation so adversely affected shall immediately be modified to conform to the requirements of the Regulations, and all other provisions of the Contract shall remain effective. Buyer and the Master shall each be responsible for ensuring that Buyer and the Receiving Vessel comply with all Regulations which directly or indirectly affect the delivery, handling or storage of Marine Fuel, whether they relate to vessel operations, health, safety or the environment, including, but not limited to, a requirement that the Receiving Vessel have an officer fluent in English present at all times during delivery of the Marine Fuel. The Receiving Vessel shall also comply with bunkering practices recommended by its P&I Club or by the Barge or shoreside delivery facility. The Receiving Vessel shall provide the crew of the Barge, or the personnel of the shoreside facility, as the case may be, with safe access to the Receiving Vessel for the purpose of conducting the pre-transfer conference required by U.S. Coast Guard regulations. For any delivery occurring at any facility of Seller, the Receiving Vessel shall comply with all safety and other procedures of the facility. If the Receiving Vessel fails to comply with this Section 20, or if delivery would otherwise be in violation of any federal, state or local law or regulation, Seller may refuse to deliver the Marine Fuel, without liability of any kind to Buyer (including without limitation demurrage), and without being in breach of a Contract.

(b) New Or Changed Regulations. If during the term of any Contract, new Regulations become effective or any existing Regulations are or their interpretations are changed, or are anticipated to change, and such change will have a material adverse impact upon Seller or upon any transportation or delivery of Marine Fuel sold thereunder, Seller may, by written notice to Buyer, request renegotiation of the Contract terms for deliveries not yet made. In the event that the Parties are unable to agree on new prices or other terms to reflect impact of the changed Regulations, Seller have the right to cancel the Contract, by providing written notice thereof to Buyer. After requesting renegotiation, Seller shall not be obligated to make any deliveries to Buyer pending agreement on such new price or other terms.

(c) US Foreign Corrupt Practices Act. All actions by the Parties will comply with all applicable law and lawful regulations. In particular, the Parties shall, and shall ensure that their employees shall, comply with all laws, rules and regulations applicable to the performance of its obligations hereunder and, in connection therewith, the Parties shall not, and shall ensure that their employees shall not, off, pay, arrange for a third party to pay, or agree to pay or similarly receive or agree to receive any payment gift or other thing of value of any nature to or from any officials, employees or agents of any government, any department, agency or instrumentality of any government any political party, or any candidate for political office or other person or entity, including a legislative, administrative or judicial office (including any person exercising a public function for a public agency, a public enterprise or a public international organization) where such payment, gift or other consideration would violate applicable laws and regulations or the principles disclosed in the Convention for Combating Bribery of Foreign Public Officials in International Business Transactions signed in Paris on December 17, 1997; (and without limitation, shall not perform any act which could constitute "bribery of a foreign official" as defined in Article 1(3) of such Convention); or United States Foreign Corrupt Practices Act or other anti-corruption legislation applicable to any party to this Agreement.

(d) Export Compliance. Buyer shall verify and ensure that none of its principals or representatives appear on any of the denied party lists administered by the U.S. government, including but not limited to the Denied Persons List, Unverified List, and Entity List administered by the Department of Commerce Bureau of Industry and Security; the Debarred Bidders List and Excluded Parties List administered by the General Services Administration; the Statutorily Denied Parties List, U.S. Arms Embargoes in Effect List, and the United Nations Sanctioned Persons List administered by the Department of State Directorate of Defense Trade Controls; and the Specially Designated Nationals List and Blocked Persons List administered by the Department of the Treasury Office of Foreign Assets Control. Additionally, Buyer shall not, in connection with work or services provided hereunder, hire, charter, or contract or sub-contract with any entity organized under the laws, or operating under the flag of any country subject to a comprehensive embargo of the United States, including Iran, Cuba and Sudan. Buyer shall indemnify Seller for any matter or claim that exposes Seller to liability under applicable export or re-export controls or economic sanctions laws or regulations. Buyer agrees to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions regulations maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC"), and the International Traffic in Arms Regulations ("ITAR") maintained by the U.S. Department of State. Buyer agrees that no item shall be shipped, either directly or indirectly, to any country,



company or person or for any end-use that is prohibited under the EAR, OFAC regulations or ITAR. Notwithstanding anything contrary in this article, neither party shall be required to meet any of its obligations under the Agreement if, in that Party's reasonable opinion, doing so would result in such Party violating applicable U.S. laws or regulations. Buyer agrees to indemnify Seller for any fines, penalties, claims, losses, damages, costs (including reasonable legal costs), expenses and liabilities that may arise as a result of Buyer's breach of this clause.

**21. SAFETY.** Seller shall furnish to Buyer health, safety and environmental information (including, without limitation, Material Safety Data Sheets) (collectively, "HSE Data") concerning health, safety and environmental aspects of the Marine Fuel purchased by Buyer, including health, safety and environmental warnings required by applicable law. Buyer shall ensure that its employees, the Master and the crew of the Receiving Vessel comply fully with all contractual, legal, regulatory and other accepted requirements, obligations and recommendations relating to the handling, storage and use of the Marine Fuel delivered hereunder and shall impose upon all of its customers to whom the Marine Fuel are to be supplied the same obligation to comply fully with these requirements. Compliance by the Buyer with recommendations in HSE Data shall not excuse the Buyer from its obligations under Section 16 or this Section 21.

**22. ENVIRONMENTAL PROTECTION.** Buyer, the Master and the Receiving Vessel shall comply with all applicable regulations and guidelines and use due care to avoid any spill, leakage, discharge or release of Marine Fuel. Should there be any spill, leakage, discharge or release of Marine Fuel from the Receiving Vessel or for which Buyer otherwise bears responsibility, Buyer shall immediately take all actions necessary to clean up the spill and mitigate its effects. Seller and Seller's Representative are authorized (but shall not be required), with or without notice to Buyer or the Master, to take action and employ contractors on behalf of Buyer and/or the Receiving Vessel to clean up such spills and mitigate their effects, all at Buyer's expense and without admission of liability or assumption of responsibility by Seller or Seller's Representative.

**23. INTERPRETATION.** Each Contract shall be governed by and construed in accordance with the general maritime laws of the United States, to the extent that such maritime law applies to each term of such Contract, and unless the Specific Provisions provide otherwise, provisions that are not within the principals of maritime law shall be interpreted in accordance with the laws of the State of New York, exclusive of its choice of laws rules. All provisions of a Contract shall be harmonized to the maximum extent possible, but in the event of any conflict, between the Specific Provisions and these General Provisions, the Specific Provisions shall prevail over these General Provisions. If any one or more provisions of a Contract should for any reason, be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision thereof, the remainder of the Contract shall nevertheless survive and remain in full force and effect, and shall be construed to give effect of the intent of the Parties specified therein to the maximum extent legally possible. In the event of any ambiguity in any of the terms or conditions of a Contract, including any Exhibits thereto, such ambiguity shall not be construed for or against any Party thereto on the basis that such Party did or did not author the same. The headings used throughout these General Provisions are for convenience only and shall be disregarded for the purposes of construing a Contract. None of the language in any Contract is intended, or shall be construed, as an agreement by either Seller or Buyer to comply with any international boycott to the extent that compliance, or agreement to comply, therewith would be penalized under the U.S. anti-boycott laws and regulations. Under no circumstances shall Buyer be required to make any payment directly or indirectly covering services not complying with this provision, and Seller shall immediately reimburse Buyer for any amounts Buyer believes were paid by it in connection with services that expose Buyer to liability under applicable laws or regulations.

**24. NOTICES.** Any notice, request or other communications required or permitted by or pertaining to a Contract, shall be in writing and addressed to the other Party thereto at the address listed in the Specific Provisions of a Contract. Any such notice, request or other communication shall be delivered either (i) by prepaid mail (by airmail where airmail is possible) or nationally recognized courier or messenger service, (ii) by personal service upon an authorized owner, officer or manager of the receiving Party, (iii) by prepaid telegram or telex, or (iv) by fax. All notices shall be deemed served upon receipt.

**25. ASSIGNMENT.** Neither Party may assign any Contract without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may assign a Contract to an entity that owns or acquires or has common ownership of substantially all of the stock or assets of such Party or as a pledge or security interest to a financial institution, subject to the limitations under Section 16(c). Any assignment without the required prior written consent shall be null and void. A Party making any assignment shall promptly notify



the other Party of such assignment, regardless of whether consent is required, and no assignment or pledge of any Contract right, interest or obligation shall be binding upon a Party until after such Party has received notice of such assignment. In the event of an assignment by a Party, the other Party may impose additional financial responsibility requirements, as provided above. Each Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

**26. MISCELLANEOUS PROVISIONS.** Each Contract, consisting of these General Provisions together with the Specific Provisions, shall constitute the entire agreement between the Parties with reference to the purchase, sale and delivery of Marine Fuel sold thereunder, and shall supersede any prior oral or written proposals, negotiations, and representations, understandings or agreements of the Parties regarding such sale. Except as provided herein, no amendment, modification, waiver or alteration of any Contract shall be binding unless reflected by a written instrument executed by both Parties. A Party's failure to insist upon strict performance of any provision of the Contract shall not constitute a waiver of the right to require such performance, nor shall a Party's waiver of any default or breach by the other Party constitute a waiver of any other default or breach. Time is of the essence in the performance under a Contract.