



VAN-OIL

STANDARD TERMS AND CONDITIONS FOR THE SALE OF MARINE BUNKERS

1 January 2016

Important notice:

The Buyer's attention is drawn to clauses in these conditions which exclude or limit the Seller's liability, require the Buyer to indemnify the Seller in certain circumstances and/or limit time, being clauses 5,8,9,13,15,16 and 17

1.0 INTRODUCTORY These are the standard terms and conditions which shall apply to all contracts entered into with **Oiltrading SAC** of Jiron Independencia No. 444, Callao, Peru (with the trade name "**Van-Oil**") or **Van-Oil Petroleum Ltd.** of Akara Building , 24 De Castro Street, BVI VG 1110, British Virgin Islands.

2.0 DEFINITIONS In these conditions the following words shall have the following meaning:

2.1 Agreement The agreement between the Seller and the Buyer, evidenced by these Standard Terms and the Confirmation. If there is any conflict between these Standard Terms and the Confirmation, the terms of the Confirmation shall prevail

2.2 Basic Cost Unit Price multiplied by the number of units delivered.

2.3 Bunkers The marine fuels of whatever type and description as specified in the Confirmation.

2.4 Buyer The person(s) or entity(ies) so identified in the Confirmation which shall include, on a joint and several basis, any agent, principal, associate, manager, partner, servant, parent, subsidiary, owner or shareholder thereof and always any Vessel (as defined in Clause 2.18) to which it has been agreed for Bunkers to be delivered and her registered owner.

2.5 Confirmation The Seller's written confirmation of stem.

2.6 Delivery and delivery As set out in Clause 8.

2.7 Due Date The date specified in the Confirmation for payment of the Price or, in the absence of such date, the date of Delivery. In respect of Further Costs the Due Date shall be seven (7) days from notification to the Buyer of such costs.

2.8 Further Costs As set out in Clause 11.2.

2.9 Notice of Claim Written notice of any claim or potential claim by the Buyer to the Seller.



2.10 Physical Supplier The person or entity that physically supplies the Bunkers to the Vessel and shall include the Physical Supplier's servants, agents, successors, sub-contractors and assigns. The Physical Supplier may be the Seller.

2.11 Place of Supply The port or other geographical location specified in the Confirmation wherein or adjacent to which is the Point of Delivery.

2.12 Point of Delivery The precise place at which delivery is to be effected as provided in the Confirmation or as thereafter confirmed, advised or revised by the Seller or the Physical Supplier and which may be a berth, mooring, anchorage or other point within, adjacent to or associated with the Place of Supply.

2.13 Price The aggregate of the Basic Cost and the Further Costs as set out in Clause 11.2.

2.14 Seller Oil Trading SAC or Van-Oil Petroleum Ltd. as aforesaid, their respective servants, agents, assigns, sub-contractors and any and all other persons acting under the Seller's instructions in fulfillment, compliance or observance of the Agreement unless the context otherwise permits.

2.15 These Standard Terms The present standard terms and conditions of the Seller.

2.16 Unit One metric tone or such other measurement unit as the Confirmation may specify.

2.17 Unit Price The rate of cost in United States Dollars (or such other currency as specified in the Confirmation) per metric tone (or such other unit of measurement specified in the Confirmation) of Bunkers specified in the Confirmation.

2.18 Vessel The vessel, ship, facility, tank, container, or craft nominated in the Confirmation to receive Bunkers.

2.19 Working days Monday to Friday inclusive but excluding all public and bank holidays in Peru and/or in any other relevant place (as the particular case may be) and any other day designated as non-working from time to time as notified in writing by the Seller to the Buyer.

3.0 HEADINGS The use of headings and sub-headings herein is for reference purposes only.

4.0 ENTIRETY AND VALIDITY These Standard Terms together with the Confirmation constitute the entire Agreement which supersedes all prior oral or written agreements, representations and/or warranties. No derogation, addition or amendment to the Agreement shall be of any effect unless and until expressly confirmed in writing by the Seller. If any provision of the Agreement shall to any extent be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, remaining in full force and effect.



5.0 FORCE MAJEURE The Seller shall not be liable for any loss, damage, costs or expenses arising from the Seller's failure to fulfill or comply with any term or condition of the Agreement if fulfillment or compliance has been delayed, hindered or prevented by any circumstance whatsoever which is not within the immediate and reasonable control of the Seller including, but without limiting the generality of the foregoing, any acts of God, fires, floods, perils of sea, war (declared or undeclared), hostilities, embargoes, accidents, strikes, lockouts or labour disputes, any government order, request or restriction, or acts in compliance with requirements of persons purporting to act on behalf of a government authority, or any other similar causes, any limitation, restriction or interruption to existing or contemplated sources of supply of Bunkers and/or the means of supply and/or the means of delivery thereof.

6.0 BROKERS AND AGENTS

6.1 Unless the person or entity with whom the Seller is corresponding specifically declares in writing to the Seller prior to dispatch by the Seller of the Confirmation that it is not the Buyer and at the same time provides in writing to the Seller the full name and address of the Buyer, then the person or entity with whom the Seller is corresponding shall be deemed to be the Buyer.

6.2 Without prejudice to the provision of Clause 6.1, in the event that the person or entity with whom the Seller is corresponding is an agent of the Buyer, then such person or entity shall be jointly and severally liable with the Buyer to perform the Buyer's obligations under the Agreement, notwithstanding that such person or entity purports to contract as a mere agent.

7.0 ASSIGNMENT

The Buyer is not permitted to and shall not assign its interest in the Agreement without the prior written approval of the Seller. The Seller may assign its interest in the Agreement or any part of its performance thereof to any subcontractor (be it a third or associated party).

8.0 DELIVERY

8.1 Allocation If the Seller at any time and for any reason believes that there may be a shortage of Bunkers at the Place of Supply, 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. Any such allocation shall constitute full and proper performance of the Sellers' obligations.

8.2 Restrictions The Seller shall not be required to deliver Bunkers to any Vessel in tanks or spaces which are not designated for storage of bunkers and shall not be required to deliver any Bunkers for which a government permit is required and has not been obtained by the Buyer.

8.3 Means of Delivery Delivery shall be effected in one or more consignments at the Point of Delivery by such means as the Seller shall deem appropriate in the circumstances or as may be available at the time of Delivery.



8.4 Barging In the event of delivery by barge the Buyer shall, as its own expense, provide a clear, clean, free and safe access for the barge alongside the Vessel, appropriate, suitable and convenient for the proper operation of the delivery/receiving lines and shall provide all necessary facilities and assistance required to effect promptly and safe delivery. The Buyer shall pay and indemnify the Seller against all claims, costs, losses and expenses in respect of any loss, damage or delay caused by the Vessel and/or the Vessel's personnel to any barge and/or its equipment and any injury and/or death caused by the Vessel and/or the Vessel's personnel to any of the personnel effecting delivery in the course of or in connection with delivery of Bunkers.

8.5 Connection/Disconnection The Buyer shall be responsible for making all connections and disconnections between the pipelines or delivery hoses and the Vessel's intake line and shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly each and every consignment of Bunkers. The Buyer shall be responsible for ensuring that Bunkers are delivered at a safe rate and pressure and that all equipment utilised is in a safe and satisfactory condition.

8.6 Delivery Shall be deemed complete when the Bunkers have passed the flange connecting the Physical Supplier's delivery facilities with those of the Vessel and/or, where appropriate, has passed the Vessel's rail.

8.7 Risk The Seller's responsibility for the Bunkers shall cease and the Buyer shall assume all risks and liabilities relating thereto, including for loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage of the Bunkers and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties at the time the Bunkers leave the Physical Supplier's fixed depot or wharf facilities, irrespective of whether the Bunkers are delivered by ship, barge or truck. The Buyer agrees to indemnify without limit the Seller in respect of any liability, loss, damages, costs, expenses, claim or demand arising in connection with the Bunkers after risk has passed to the Buyer.

8.8 Title-Prohibition of consumption Ownership of the Bunkers shall remain with the Seller and shall pass to the Buyer only after the Price and all other amounts due in relation to the particular delivery have been received by the Seller as provided in Clause 12.1. Until such time as the full Price and all other monies due are received by the Seller, the Buyer and any person or entity in possession of the Bunkers delivered shall hold the Bunkers as a mere bailee, without any charge to the Seller and shall hold the Bunkers on behalf of the Seller and to the Seller's order, at Buyer's sole risk and expense, storing them in a way so that they can be identified as the Seller's property and not being entitled nor permitted to use or in any way consume the Bunkers or any part of them. In case of non or short payment for the Bunkers by the Buyer, the Seller is entitled (but not obliged) to repossess the Bunkers without prior juridical intervention, without prejudice to all other rights or remedies available to the Seller. In the event that the Bunkers have been mixed with other products on board the Vessel, the Seller shall have the right to trace its proprietary interest in the Bunkers into the mixed product and/or to exercise a lien on such part of the mixed product as corresponds to the quantity or net value of the Bunkers delivered. The provisions of this Clause do not prejudice or in any way limit the Seller's right to



arrest/attach the Vessel and/or any other assets, wherever situated in the world, without prior notice and/or to exercise any other right under the Agreement or the Law. Repossession of the Bunkers shall take place at a port and place where the removal of the Bunkers can safely take place, at Buyer's expense and risk. The Buyer shall agree such place with the Seller and shall make the Vessel available there for such repossession at Buyer's cost and risk. If following repossession and on-sale of the respective Bunkers to a third party there is a shortfall to the Price, the Buyer shall forthwith pay such shortfall to the Seller. The Buyer acknowledges that repossessed Bunkers will most likely be on-sold to third parties at a considerably reduced price.

8.9 Measurement The quantity of the Bunkers delivered under the Agreement shall be measured by and at the Physical Supplier's option by one of such generally recognised methods of measurement as is appropriate in the circumstances and the Physical Supplier's measurements shall be final and binding and, absent manifest error, conclusive. The Buyer or its properly accredited representative may be present at all measurements; non-presence does not give any right or implication to the Buyer to challenge the respective measurement(s).

8.10 Specification The Bunkers to be delivered shall be as specified in the Confirmation and, save where more precisely specified in the Confirmation, they shall be of the Seller's commercial grades of product as currently offered generally to its buyers at the time and Point of Delivery. No other warranties, express or implied as to quality or fitness for any purpose, are given or form part of the Agreement.

8.11 Compatibility and Segregation Responsibility for establishing compatibility of the Bunkers delivered with any other product or products and for segregating or comingling the same rests solely with the Buyer.

8.12 Substitution The Seller may discharge its obligation to deliver Bunkers as specified in the Confirmation by supplying in substitution product of a different grade and/or brand name provided always that such substitute product is of an equivalent or superior specification to that specified in the Confirmation.

8.13 Availability Subject to the availability of Bunkers, the availability of facilities at the Place of Supply and Point of Delivery, the customary priority of any specific other vessel(s) and to the Buyer giving notice in accordance with Clause 8.16, the Seller will use its best endeavors to ensure that the Bunkers are delivered promptly upon or as close as possible to the Vessel's arrival at the Point of Delivery, but the Seller shall not be responsible for any loss, expense, damage or increased costs incurred in consequence of the Vessel not being supplied promptly or otherwise being delayed or restrained for any reason whatsoever. Particular note must be taken of Clauses 5.0 and 8.1, which apply also in this respect and are relevant.

8.14 Time The Buyer is responsible for ensuring that the Vessel is ready to receive Bunkers at the Point of Delivery on the expiry of the time of the notice given in accordance with Clause 8.16.

8.15 Delay In the event that the Vessel's arrival at the Point of Delivery is delayed or likely to be delayed the Buyer must so advise the Seller and the Vessel's agent at the Place of Supply and must ensure that the Vessel's agent advises the Physical Supplier



and the Seller (if different) accordingly. At the Buyer's request the Seller will use its best endeavors to supply a delayed Vessel on the terms originally agreed but the Seller reserves the right to pass on to the Buyer all additional costs, including but without limitation increased Basic Cost, arising from or as a consequence of the Vessel's delayed arrival.

8.16 Notice and Other Delivery Requirements The Buyer must give in writing to the Physical Supplier and the Seller (if different) not less than 3 (local, at Place of Supply) Working days' notice of the Vessel's readiness to receive the Bunkers. Notice must be given during the Physical Supplier's normal business hours. Notice given outside these hours will be deemed to have been given at 08:00 a.m. on the first local working day thereafter. Furthermore, it is in all circumstances and on all occasions the responsibility and duty of the Buyer to ascertain and where appropriate to comply with:

8.16.1 the precise requirements of the Physical Supplier and any other relevant person, body or authority in respect of the giving of notice of the Vessel's time of arrival at the Point of Delivery, and

8.16.2 the exact location of the Point of Delivery, and

8.16.3 any particular requirements to enable delivery to be effected as efficaciously as possible.

8.17 It is the responsibility and duty of the Buyer to instruct its agent at the Place of Supply to liaise with the Physical Supplier so as to ensure compliance with the provisions of Clause 8.16.

8.18 Information In response to a specific request for information from the Buyer in respect of the Point of Delivery, the Seller will use its best endeavors to obtain or provide the information requested. Whilst every care will be taken to ensure that such information is accurate and up-to-date, it is furnished on the strict understanding that it is not a contractual representation and that no responsibility whatsoever will attach to the Seller for its non-accuracy and/or non-veracity.

8.19 Environmental Protection Without prejudice to Clause 8.8, the Seller may at any time and without notice take any steps which it considers necessary to protect the environment from damage arising from spillage or transport of the Bunkers. Any action so taken shall be on behalf of and at the expense of the Buyer and the Buyer shall fully indemnify the Seller for any loss, costs, damages or expense incurred by the Seller for any such steps taken by the Seller or on its behalf.

9.0 CANCELLATION AND BREACH In the event of the Buyer at any time canceling a request for Bunkers or the Vessel failing to take delivery of part or all of the agreed quantity and/or kind of Bunkers for any reason, regardless of fault or causation, the Seller shall have the right to pursue a claim against both the Buyer and the Vessel and the Buyer and the Vessel shall be jointly and severally liable for all loss and/or damage and/or expense thereby suffered, including but without limitation loss of profit and (where the Seller has engaged in derivative hedging instruments to offer a fixed price to the Buyer for the Bunkers) loss and damage incurred arising from the Seller's purchase of derivative instruments to include, but not limited to, the premium cost of such instruments, net payments made by the Seller to instrument writer(s) and administrative fees. The Seller may treat any other breach by the Buyer



of any express term of the Agreement as a breach of a condition and it may at its discretion accept the breach, treat the Agreement repudiated and seek such remedies as it considers appropriate. However the provisions of Clauses 15.0, 16.0 and 17.0 shall survive the termination of the Agreement in any event.

10.0 LIENS-MARITIME LIEN

Where Bunkers are supplied to a Vessel, in addition to any other security and right, the Agreement is entered into and the Bunkers are supplied upon the faith and credit of the Vessel. It is agreed and acknowledged that a maritime lien over the Vessel is thereby created for the Price of the Bunkers supplied and all other monies payable under the Agreement and that the Seller in agreeing to deliver the Bunkers to the Vessel does so relying upon the faith and credit of the Vessel and such maritime lien. The Buyer, if not the owner of the Vessel, hereby expressly warrants that it has the authority of the owner to pledge the Vessel's credit as aforesaid and that it has given clear notice of the provisions of this Clause to the owner. The Seller shall not be bound by any attempt by any person or entity to restrict, limit or prohibit its lien or liens attaching to a Vessel, either by clausing the delivery receipt, or otherwise.

11.0 THE PRICE

11.1 Unit Price The Buyer shall pay the Unit Price at the rate agreed in the Confirmation. In case of any unexpected general increase of the market price of the Bunkers between the Confirmation and the Delivery, the Buyer shall bear the corresponding increase to the Unit Price, by paying same to the Seller.

11.2 Further Costs In addition to the Basic Cost of the Bunkers the Buyer shall pay for any charges raised in respect of taxes, freight, barge, vehicle, wagon, clean up costs, overtime, or other like payments, insurance, pilotage, port dues and any and all other like costs and expenses incurred by or charged to the Seller. Such charges, costs and expenses will be passed on to the Buyer at the rates charged to the Seller as and when they are advised to the Seller and together with the Basic Cost shall for all purposes constitute the Price due from the Buyer to the Seller for the Bunkers supplied.

11.3 Notice of the Price The Seller will give notice of the Price to the Buyer as soon as reasonably practicable after Delivery. In certain circumstances the Seller will give notice of the Price by consecutive notification messages. Where notification of the Price is given in the latter manner, each element of the Price so notified shall when due constitute an enforceable debt due from the Buyer to the Seller. Notice of the Price may at the Seller's option be provided by invoice sent by post, fax, email or as otherwise provided herein or as agreed.

11.4 Proof of Delivery The Buyer or its representative must attend Delivery and obtain at that time all information relating to Delivery including the exact quantities and precise specification of the Bunkers delivered. Unless otherwise requested by the Buyer prior to dispatch by the Seller of the Confirmation, the Seller shall be under no obligation 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 Seller of proof of delivery is not a pre-requisite to payment of the Price. However, the Buyer shall



instruct its representative(s) on the Vessel to sign and seal (i) prior to delivery, any relevant pre-delivery note and (ii) after delivery, the respective delivery receipt.

12.0 PAYMENT In most cases special payment terms will have been agreed and will be set out in the Confirmation.

12.1 Each of the following terms apply unless the Confirmation otherwise provides:

12.1.1 Payment of the Price will be made in United States Dollars or such other currency as specified in the Confirmation, in full without set off and/or deduction for any reason whatsoever (including but without limitation for counter claim) so as to ensure that the Seller receives value for the payment in cleared funds on or before the Due Date.

12.1.2 Timely payment is of the essence to the Agreement.

12.1.3 In respect of all sums which may be overdue, the Buyer shall be liable to pay to the Seller default interest/late payment charges calculated at 4% per month, pro-rated and compounded on a daily basis, from the Due Date until receipt by the Seller of full payment. Accrued interest and costs and/or expenses incurred by the Seller in requesting payment of outstanding amounts will be added on a monthly basis to and become part of the total outstanding sum. The Buyer hereby agrees and accepts that the rate of the default interest/late payment charges as agreed hereinabove in this Clause is not a penalty, but constitutes the agreed damages suffered by the Seller as a result of the latter being deprived of the timely payment of the principal amount (inclusive of, but not limited to, the element of interest), without prejudice to all other rights and entitlements of the Seller under the Agreement or under the applicable Law or otherwise. In the event that the aforesaid contractually agreed rate of default interest/late payment charges is in excess of that permitted by the applicable Law, it shall be substituted by the maximum rate so permitted.

12.1.4 Payment will be made by way of telegraphic, telex, swift or rapid electronic transfer to the bank and the account specified in the Seller's invoice. All bank and other charges, if any, incurred in effecting remittance will be for the account of the Buyer. Advice of remittance including identifying references should always be given to the Seller. If payment is not received as a result of the Buyer not complying with the payment instructions, then the Buyer will pay immediately, upon written request, all sums due including interest and all other charges.

12.1.5 Payments received by the Seller from or on behalf of the Buyer, notwithstanding any specific instruction, request or reference to the contrary, will be applied in the following order, in diminution or extinction of:

12.1.5.1 accrued default interest/late payment charges and costs (including attorneys' fees) in respect of other transactions for which the principal sum has already been paid.

12.1.5.2 accrued default interest/late payment charges and costs (including attorneys' fees) arising from all other transactions.

12.1.5.3 any principal sum due and outstanding, commencing with the oldest and proceeding by chronological sequence thereafter to the most recent.

12.2 If at any time the conduct, reputation, standing, creditworthiness, liquidity or solvency of the Buyer or any subsidiary, parent, associate or affiliate thereof, should give the Seller reasonable cause for concern and/or if any amount due remains outstanding for a period of seven (7) days after its Due Date, the Seller may (without prejudice to all other rights and remedies which it may have) give notice to the Buyer



that credit facilities from the Seller to the Buyer and its group/associates are withdrawn or suspended, as the case may be, and all sums outstanding by the Buyer and members of its group and associates thereof to the Seller and/or due for payment at a future date shall thereupon fall due for immediate payment.

12.3 In the event that the Buyer or any subsidiary or parent thereof (“group”) shall commit an act of bankruptcy or shall be the subject of proceedings judicial or otherwise commenced for protection from creditors, bankruptcy, insolvency, liquidation or winding up, the Seller may forthwith terminate the Agreement.

12.4 The full legal and other costs and expenses incurred by the Seller, including those of the Seller's own legal and credit departments and of the lawyers it will appoint/engage in connection with any breach by the Buyer of any term of the Agreement including but not limited to actions for collection of the debt, shall be for the Buyer's account and shall for all purposes form part of the Price due from the Buyer to the Seller for the Bunkers supplied.

13.0 CLAIMS, DISPUTES AND PRECAUTIONS

13.1 Notification: Written “Notice of Claim” must be given to the Seller within the time limit specified in Clauses 13.4 (quantity claims and disputes), 13.5 (quality claims and disputes) and 13.6 (all other claims and disputes) below or as specified in the Confirmation and any claim not notified within such specified time limit shall be deemed waived and absolutely barred and the Seller shall be discharged of all liability whatsoever and howsoever arising. It is the Buyer's responsibility to ensure that Notice of Claim is received by the Seller, whose express written confirmation of receipt should always be sought. Regardless of whether a claim or dispute has arisen or is anticipated, the Buyer must give Notice of Claim forthwith to the Seller of any discrepancy, error or omission present in any form or document tendered, submitted or produced by the Physical Supplier and of any unusual occurrence relating to the delivery.

13.2 Sufficiency of Information: The Notice of Claim must contain sufficient information to enable the Seller to identify the relevant transaction, the nature of the complaint and the loss or damage alleged. Any Notice of Claim which does not contain such sufficient information will not be valid for the purpose of compliance with the relevant time limit. In addition, the Buyer must provide a full and complete response to any and all questions, enquiries and requests made of it by the Seller concerning the claim and matters relating thereto.

13.3 Categories Claims generally fall into the below three categories:

- Quantity claims and disputes
- Quality claims and disputes
- Other claims and disputes

13.4 Quantity Claims and Disputes The Physical Supplier shall measure the contents of delivery barges and/or wagons and/or vehicles and/or storage tanks by tank-dipping to ensure full out-turn and shall check flow meters for seals, correct settings, calibration and general condition. All of these checks must be carried out before and after delivery of each consignment on each barge and/or wagon and/or



vehicle and/or storage tank load. The delivery shall be supervised by the Physical Supplier at all times and all documentation shall be complete and accurate before signing and stamping. The Buyer's representative may attend throughout the delivery. Any discrepancies concerning quantity must be recorded by the Buyer or the Buyer's representative on the Physical Supplier's delivery receipt or by a letter of protest issued by the Buyer and counter-signed by the Physical Supplier for receipt on completion of delivery. In the absence of discrepancies recorded in accordance with this Clause, the Seller shall not be liable for any claims for discrepancies, including but not limited to claims for short delivery.

13.4.1 The Seller shall not be liable for claims for short delivery based upon figures obtained by measuring the Bunkers in the Vessel's tanks.

13.4.2 The time limit for receipt by the Seller of a Notice of Claim in a quantity dispute is the point of time at which the Delivery is concluded and the relevant delivery receipt is signed by both parties. This time bar shall be interrupted by a respective letter of protest delivered by the representative of the Buyer to the representative of the Seller or of the Physical Supplier. The Buyer acknowledges that this deadline is reasonable, necessary and important, given that in case of a quantity claim the Seller may have a claim against the Physical Suppliers and/or the interests of the delivery barge or other means of delivery, which must be in turn protected.

13.5 Quality Claims and Disputes It is the Buyer's sole responsibility to ensure that Bunkers tendered for delivery are fit for use by the Vessel and are delivered into the correct tanks of the Vessel.

13.5.1 Three (3) representative samples of every consignment and load of the Bunkers shall be taken by the Seller or its representatives at the source of supply on commencement of each respective delivery, in accordance with the custom at the Point of Delivery. These three (3) representative samples must be sealed and labeled and the label signed by a representative of the Physical Supplier and by an officer of the Vessel and/or other senior representative of the Buyer. One set of the Physical Supplier's samples shall be retained by the Buyer and one set by the Physical Supplier, each to be retained for a minimum of sixty (60) days after delivery of the Bunkers to the Vessel. The third sample shall be retained by the Vessel in accordance with the provisions of MARPOL 73/78, Annex VI. The third sample may only be used for the purposes of confirming the sulphur content of the marine fuel and such other matters as are specifically set out in Marpol Annex VI, Regulation 18.

13.5.2 All documentation must be checked by the Buyer or the Buyer's representative and any discrepancies concerning quality must be noted on the Physical Supplier's delivery receipt before signing and stamping same.

13.5.3 In the event the Buyer has grounds to believe that the Bunkers supplied do not accord with their description in the Confirmation or are defective, the Buyer shall immediately:

13.5.3.1 take all reasonable steps to mitigate the consequences of having been supplied with possibly defective or inappropriate Bunkers.

13.5.3.2 give immediate notice with full details of the possibly defective or inappropriate Bunkers to the Seller together with the Vessel's position, destination and next ETA, the quantities and locations of all Bunkers (supplied by the Seller or pre-existing on board or supplied after Delivery) on board the Vessel/stored in the Vessel, the rate and quantity of consumption since Delivery and the location of the Vessel immediately prior to the delivery of the Bunkers and, for each of the three last preceding deliveries of bunkers to the Vessel, the quantity, quality and specification of the bunkers supplied, the place and date of supply and the name of the respective physical supplier;

13.5.3.3 inform the Seller of the whereabouts of the Buyer's retained set of samples.

13.5.4 It is a pre-condition to the Seller's liability for any quality claim that at the time Notice of Claim is given the set of samples retained by the Physical Supplier are submitted for analysis by a reputable independent testing laboratory approved by the Seller in accordance with the established practice and procedures and the analysis is carried out in the presence of a representative of the Seller. The Buyer hereby acknowledges that the sealed samples retained by the Physical Supplier are representative of the Bunkers delivered and that the Seller has no duty or obligation to consider any other independently produced samples. The results of the said analysis shall be final, binding and conclusive on all parties. In the event that the Physical Supplier is unable or unwilling to make available for analysis the samples within seven (7) days from the date of delivery or such shorter period as may be specified in the Confirmation, the Seller will accept the Buyer's set of sealed samples provided by the Physical Supplier as representative of the Bunkers delivered for analysis in accordance with the provisions of this Clause, provided that the Buyer's request in writing to the Physical Supplier for the sealed samples is copied to the Seller at the same time the request is sent to the Physical Supplier.

13.5.5 If it is alleged that any equipment or machinery has been damaged by incorrect or defective Bunkers, full details must be given to the Seller at the earliest opportunity and the item allegedly damaged must be preserved and made available for inspection on demand at any reasonable time or times by the Seller and/or its representative(s).

13.5.6 The time limit for receipt by the Seller of a Notice of Claim in respect of quality and/or claims arising out of quality is fifteen (15) days from the date of Delivery or such shorter period as may be specified in the Confirmation. The Buyer acknowledges that this deadline is reasonable, necessary and important, given that in case of a quality claim the Seller may have a claim against the Physical Suppliers and/or the interests of the delivery barge or other means of delivery and/or the refinery, as the case may be, which must be in turn protected.

13.5.7 The non participation by the Buyer or its representative(s) at the sample taking and/or sealing procedure or at the sample testing and relevant seal opening, per the foregoing, does not affect the effect and consequences of the foregoing terms and conditions.



13.5.8 These are no guarantees or warranties, express or implied, of the merchantability, fitness or suitability of the Bunkers for any particular use, purpose or otherwise, which extend beyond the relevant express provisions of the Agreement.

13.6 Other Claims and Disputes: In all other kinds of claims Notice of Claim must be given to the Seller as soon as reasonably possible and in any event not later than twenty eight (28) days after Delivery. If the Confirmation provides for a shorter period such shorter period shall apply.

13.7 Proceedings: In any event, the Seller shall be discharged of all liability whatsoever, howsoever arising in respect of any Bunkers and/or supplies and/or services provided to the Buyer or which the Seller has undertaken to supply and/or provide, unless suit be brought against and written notice of such suit is given to the Seller within six (6) months from the date of Delivery and/or date of the Seller's respective undertaking, as the case may be.

14.0 WAIVER The failure by any party to the Agreement to enforce any right against any other party shall not be construed as a waiver of that right nor shall in any way affect the validity of the Agreement. In particular, the granting by the Seller of any additional time to the Buyer to make payment, or the waiving or reducing of any interest or other charge shall not prevent the Seller at any time thereafter from relying upon its strict contractual rights.

15.0 INDEMNITY The Buyer hereby fully indemnifies the Seller against any claim for injury and/or death occurring to any person to any property and against all actions, suits, claims, demands, costs, charges or expenses arising in connection therewith to the extent that the same shall have been occasioned by the negligence or default of the Buyer, its servants, representatives, or agents, or any third party in the course of performance of or arising out of or in connection with the Agreement.

16.0 LIABILITY Save as provided in Clause 13, the Seller shall not be liable to the Buyer for any loss or damage, including loss of profit or any other consequential loss whatsoever, arising from any cause whatsoever, whether in contract, tort or otherwise including the negligence of the Seller, its servants, agents and/or sub-contractors.

17.0 COMPENSATION-LIMITATION Without prejudice to the provisions of Clause 16.0, in the event that the Seller is found to be liable to the Buyer, the total amount payable by way of compensation other than in respect of personal injury or death, shall not exceed the Price (excluding Further Costs, interest and other charges payable by the Buyer) of the Bunkers supplied under the Agreement. It is a pre-condition to the payment of any compensation by the Seller that all sums due to the Seller from the Buyer are first paid and settled.

18.0 INSURANCE The Buyer is responsible for effecting and maintaining in force adequate insurance which will fully protect the Buyer, the Seller and all relevant third parties from all risks, hazards and perils associated with or arising out of or in connection with the Agreement and Delivery.



19.0 LICENCES PERMITS AND APPROVALS The Buyer is responsible for obtaining all necessary permits, licenses and approvals required to enable both parties to execute all of their obligations under the Agreement.

20.0 WRITTEN, IN WRITING and NOTICE Any requirement for written communication including the giving of any notice may be fulfilled by the use of letter-post, courier, telex, facsimile transmission, email or any other medium which produces a tangible result for the intended recipient. The communication shall be deemed to have been given and received upon completion of transmission of any electrical or electronic medium, within two (2) Working days of dispatch for first class inland letter-post, within five (5) Working days of dispatch for second class inland letter post and air mail and on the expiry of the declared or guaranteed time for delivery of any courier or monitored service.

21.0 LAW AND JURISDICTION

21.1 The Agreement and all claims and disputes arising under or in connection therewith shall be governed by the General Maritime Law of the United States of America.

21.2 For the sole benefit of the Seller, it is further agreed that the Seller, without prejudice to any of its rights, has the right to proceed against the Buyer and/or the Vessel and/or any other party in such jurisdiction worldwide as the Seller in its sole discretion sees fit, inter alia, for the purpose(s) of securing any payment due to it or proceeding in the main or any other proceedings in order to enforce and/or collect any claim or cause the issuance of any Court judgment whatsoever. Therefore the Court having jurisdiction for any matter and/or claim concerning the securing, enforcement and/or collection by the Seller of any amounts due under the Agreement or the repossession of the Bunkers, as well as any non contractual matters related, is the competent Court of the jurisdiction where the Seller shall submit the respective proceedings. On the other hand, any claim against the Seller in respect of or arising from the quality or the quantity of the Bunkers or otherwise (whether under the Agreement or concerning non-contractual issues) shall be submitted to the exclusive jurisdiction of the competent Courts of Lima, Peru. The Buyer agrees and acknowledges that the nature of the transaction and of the respective business concerned is such, to the effect that the foregoing which are set for the benefit of the Seller, are absolutely reasonable and fully acceptable by the Buyer, which hereby confirms that it will also be liable for all costs of the Seller including but without limitation attorneys' fees.

21.3 If any proceeding of any nature whatsoever is instituted under Clauses 21.1 or 21.2 above, in connection with any controversy arising out of the Agreement or to interpret or enforce any rights under the Agreement, the prevailing party shall have the right to recover from the losing party all its reasonable costs and attorneys' fees incurred in such proceeding.