

## GENERAL TERMS AND CONDITIONS FOR SALE OF BUNKERS

### 1. INTRODUCTION

These terms and conditions are the general terms and conditions for sale of Bunkers which shall apply to every sale of Bunkers entered into between GAC Bunker Fuels Company Limited, as Seller, and any Buyer. These terms and conditions shall be referred to as the “**GAC Bunker Fuels’ Terms and Conditions**”.

The Sales Confirmation, as defined below, shall incorporate the GAC Bunker Fuels’ Terms and Conditions by reference such that the GAC Bunker Fuels’ Terms and Conditions are made part of the particular terms set forth in the Sales Confirmation. The GAC Bunker Fuels’ Terms and Conditions together with the Sales Confirmation shall constitute the complete and exclusive agreement (the “**Sales Agreement**”) governing the sale of the Bunkers. No other prior agreements or understandings, whether verbal or written, shall apply, unless specifically referenced in the Sales Confirmation. If there is any conflict between the GAC Bunker Fuels’ Terms and Conditions and the Sales Confirmation, the Sales Confirmation shall prevail.

No addition or amendment to the Sales Agreement shall be of any force or effect unless and until expressly confirmed in writing by the Seller. If any provision of the Sales Agreement shall to any extent be invalid or unenforceable, the remainder of the Sales Agreement shall remain in full force and effect. Unless a challenge to the Sales Agreement is made by the Buyer to the Seller within 1 Working Day of the Sales Confirmation being sent to the Buyer, then it shall be deemed that the Buyer has accepted the Sales Agreement in its entirety.

### 2. DEFINITIONS

In these GAC Bunker Fuels’ Terms and Conditions the following have the meaning as detailed below:

**Banking Day:** a day on which the bank is held open for business in New York and in the place of Seller’s nominated bank.

**Basic Cost of Bunkers:** the cost of Bunkers which is calculated by multiplying the Unit Price by the number of Units delivered.

**Bunker Delivery Receipt:** the physical document of receipt of delivery presented by the Supplier immediately on completion of delivery of the Bunkers and signed and stamped by both the Seller or Physical Supplier and Buyer or his representative.

**Bunkers:** the commercial grade of marine bunker fuels as generally offered to the Seller's customers for similar use at the time and Place of Delivery and/or services connected thereto and any other marine petroleum products.

**Buyer:** shall include:

- a) the party identified in the Sales Confirmation as the Buyer (the "**Nominated Buyer**") to whom the Seller contracts to sell Bunkers; and
- b) the registered/head owner of the Receiving Vessel (which the Nominated Buyer and/or its agent warrant as having authorised the purchase of the Bunkers and consented to being liable as a principal for the purposes of this Sales Agreement); and
- c) any managers, managing company, charterers, brokers, agents or any other party acting for the Nominated Buyer, duly authorised by the Buyer as set out in Clause 14 below, ordering the Bunkers.

**Delivery/Deliver/Delivered:** the delivery of the Bunkers to the Receiving Vessel by the Physical Supplier at the Place of Delivery in accordance with the Sales Agreement.

**Due Date:** the date specified in the Sales Confirmation for the payment of the Price specified in Seller's invoice or, in default, the date of Delivery; save that in respect of Further Costs not itemised in Seller's invoice, the due date will be seven days after notification of such Further Costs.

**ETA:** estimated time of arrival at the Place of Delivery.

**ETD:** estimated time of departure from the Place of Delivery.

**Further Costs:** as defined in clause 7.2

**LIBOR:** London Interbank Offered Rate

**Local Agent:** shall be the Buyer's appointed agent in the Place of Delivery (or nearest landmass to the Place of Delivery).

**MARPOL:** the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto.

**Physical Supplier:** the person or entity instructed by or for the Seller to deliver at the Place of Delivery to the Buyer the Bunkers which the Buyer has purchased from the Seller. If and where the Seller itself delivers the Bunkers to the Buyer, the Seller shall also be the Physical Supplier.

**Place of Delivery:** the place at which the Seller agrees to deliver the Bunkers to the Receiving Vessel as specified in the Sales Confirmation or and thereafter as revised and confirmed, in writing, by the Seller or the Physical Supplier.

**Price:** the final Basic Cost of Bunkers plus Further Costs

**Receiving Vessel:** the vessel named in the Sales Confirmation as the vessel to receive the Delivery of the Bunkers. It shall include the Receiving Vessel's owners, operators, Master and crew.

**Sales Confirmation:** the confirmation sent by email, fax or other writing from the Seller to the Buyer for each sale of Bunkers as detailed in clause 3.5.

**Sales Request:** the Buyer's written sales request for the supply of Bunkers as detailed in clause 3.3.

**Seller:** GAC Bunker Fuels Company Limited.

**Supplying Vessel:** shall include any vessel used for or in connection with the delivery of the Bunkers.

**Supplying Vehicle:** shall include any road or rail vehicle, pipeline or any other facility of the Supplier used for or in connection with the delivery of the Bunkers.

**Unit:** one unit is equal to one metric tonne or such other measurement as the Sales Confirmation may specify.

**Unit Price:** the rate of cost in United States Dollars (or such other currency as specified in the Sales Confirmation) per metric tonne (or such other unit of measurement specified in the Sales Confirmation) of Bunkers as specified in the Sales Confirmation.

**Working Day:** the hours of 0800 to 1800 local time on a day which is a working day in both the Place of Delivery and London. A working day shall end at 1800 local time at whichever of the Place of Delivery and London it occurs the earlier. Any communication not received within such hours shall be deemed to be received at 0800 (London time) on the following working day.

**Written, in Writing and Notice:** Any requirement for written communication including the giving of any notice shall 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 for any electrical or electronic medium, within two Working Days of dispatch for the first class inland letter-post, within five 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.

### **3. SALES CONFIRMATIONS**

- 3.1 All sales of Bunkers require a written request to be submitted by the Buyer to the Seller (a “**Sales Request**”).
- 3.2 The Buyer shall give the Seller written confirmation of any verbal sales request on the same Working Day as it was verbally placed (ie a Sales Request).
- 3.3 The Buyer’s written Sales Request, shall include the following:
- a) Name and IMO code of the Receiving Vessel.
  - b) Details of the place where the Bunkers are requested to be supplied.
  - c) Local Agent – including full telephone, fax, email and postal details.
  - d) ETA/ETD of the Receiving Vessel at the Place of Delivery.
  - e) Full title of the Buyer.
  - f) Registered office address of the Buyer and principal place from where business is conducted.
  - g) Relationship of the Buyer with the Receiving Vessel (registered owner, disponent owner, manager, agent etc).
  - h) Qualities and grades of Bunkers to be supplied.
  - i) Qualities and standards of Bunkers to be supplied.
  - j) Unit Price required.
  - k) Indicative additional delivery charges including but not limited to baring, taxes, and/or wharfage.
  - l) Required payment terms.
- 3.4 The Seller shall have the option, to be exercised within the same or the following Working Day as the Working Day upon which the Sales Request is received, to refuse such Sales Request if it does not comply with the provisions of clause 3.3 above or it is not in accordance with the terms of any agreement previously made between the Buyer and Seller. The compliance of the Sales Request with all requirements of clause 3.3 shall be a condition of this Sales Agreement. The Seller reserves its right to, and may, in its absolute discretion reject any Sales Request.
- 3.5 Subject to clause 3.4, the Seller shall provide the Buyer with a Sales Confirmation within 1 Working Day of receipt of the Sales Request. The Sales Confirmation shall confirm the following:
- a) Name and IMO code of the Receiving Vessel.
  - b) Place of Delivery of the Bunkers.
  - c) Local Agent Details
  - d) ETA/ETD of the Receiving Vessel at the Place of Delivery.
  - e) Full title of the Buyer.

- f) Registered office address of the Buyer and principal place from where business is conducted.
  - g) Relationship of the Buyer with the Receiving Vessel (registered owner, disponent owner, manager, agent etc).
  - h) Qualities and grades of Bunkers to be supplied.
  - i) Qualities and standards of Bunkers to be supplied.
  - j) Unit Price to be paid.
  - k) Any agreed Further Costs.
  - l) Agreed credit period granted by Seller (if any).
- 3.6 The Buyer shall be responsible for ensuring that the Physical Supplier is kept fully advised in writing as to any amendments to the ETA or ETD of the Receiving Vessel, the Place of Delivery and/or the required Delivery date and shall liaise fully with the Physical Supplier to ensure timely Delivery.

#### **4. QUALITY & QUANTITY**

- 4.1 Quality: Buyer shall have the responsibility for the selection and acceptance of Bunkers for their intended purpose. The quality of each grade of Bunkers shall be the usual production quality of that grade being sold by the Seller at the time and Place of Delivery. The Buyer shall have the responsibility for ascertaining that the Bunkers are suitable for use in the Receiving Vessel and also for any determination of compatibility of Bunkers purchased from the Seller with Bunkers already on board of Receiving Vessel. **Any guarantees, conditions or warranties, expressed or implied, as to the satisfactory quality, merchantability, fitness or suitability of the Bunkers for any particular purpose or otherwise, are expressly excluded.**
- 4.2 **Quantity: Unless otherwise expressly agreed in the Sales Confirmation, the quantity of Bunkers to be Delivered shall be the amount nominated plus or minus 10% (ten per cent) at Seller's option.**

#### **5. DETERMINATION OF QUALITY AND QUANTITY**

- 5.1 The quality and quantity of Bunkers shall be determined by the Physical Supplier's personnel, using the Physical Supplier's equipment according to the Physical Supplier's customary methods, and in any case according to refinery/deposit's tickets, custom's certificate and the Bunker Delivery Receipt.

The quantity of Bunkers shall be determined **exclusively** from the official gauge of meter of the Supplying Vessel and/or Supplying Vehicle. Such determination shall be conclusive. **Any figures obtained by measuring Bunkers in the Receiving Vessel's tanks are agreed to be unsuitable/unreliable for this purpose and no claim for short Delivery can be based on them.**

The Buyer may be present or represented when such quality determinations and quantity measurements are taken, but whether or not the Buyer or Buyer's representatives accepts or declines such invitation, the Physical Supplier's determination of quality and/or quantity shall prevail and be binding.

- 5.2 In addition to any samples which may be required under MARPOL, the Physical Supplier shall draw at least two representative sealed online samples, at the time of pumping, in accordance with the customary method at the Place of Delivery of each grade of Bunkers for every consignment Delivered (the "**Sealed Samples**"). One set of the Sealed Samples is to be retained by the Buyer and the other one is to be retained by the Physical Supplier. The Buyer may attend or be represented during such sample taking. The Sealed Samples shall be conclusively deemed to be representative of the quality of the Bunkers supplied to the Receiving Vessel. Any samples drawn from the Receiving Vessel's tanks shall not be valid as an indicator of the quality supplied.
- 5.3 As a matter of good practice, the Buyer undertakes to seek to ensure that the Sealed Samples are signed by both a representative of the Physical Supplier and by a representative of the Receiving Vessel.
- 5.4 Seller or Seller's agent may inspect the Receiving Vessel in the event of any complaint, whether at the request of Buyer or otherwise.
- 5.5 If present at loading, Buyer or Buyer's representative shall furnish to Seller's personnel such Receiving Vessel's data as available pertaining to the accuracy of the quantity and quality determinations initially made (i.e dryness certificate, Receiving Vessel's ullage before and after loading, Bunkers retained on board from tank washing or cleanage or for other reason, Receiving Vessel experience factors and sample from the cargo tanks).
- 5.6 Adjustment in the volume of Bunkers Delivered owing to difference in temperature shall be made in accordance with the American Society for Testing and Materials and The Institute of Petroleum (ASTM-IP) petroleum measurement tables or, at the option of the Seller or Physical Supplier, in accordance with the method of any other recognised standards authority.

## **6. DELIVERY**

- 6.1 Deliveries shall be made at the Place of Delivery.
- 6.2 Deliveries shall be made during normal working hours at the Place of Delivery. However, if permitted by the regulations of the Place of Delivery and if requested by the Buyer and agreed to by the Seller, Deliveries may be made outside normal working hours, in which event the Buyer shall pay all overtime and any other extra expenses whatsoever thereby incurred.

- 6.3 The Buyer shall give the Supplying Vessel or Supplying Vehicle a clear and safe berth free of costs alongside the bunker manifold of the Receiving Vessel and the Buyer shall furnish and pay for all necessary wharfage, service or other installation charges incurred. The Seller shall not be obliged to make any Delivery where, in the opinion of the Seller or the Physical Supplier, a clear and safe berth is not made available.
- 6.4 The Buyer shall make all connections and disconnections of the delivery hose to the Receiving Vessel, unless the custom of the Place of Delivery requires otherwise, but in any event it shall be the responsibility of the Buyer to ensure that the connection of the delivery hose to the Receiving Vessel has been properly and safely made. The Buyer shall ensure that the Receiving Vessel renders all customary assistance and provides sufficient tank space and equipment to receive prompt Delivery.
- 6.5 Subject to clause 11.1 below, the Bunkers shall be deemed delivered, when the oil passes the flange connecting the Supplying Vessel and/or Supplying Vehicle with the receiving facilities provided by the Buyer.
- 6.6 The Buyer shall promptly receive Delivery when tendered and shall promptly withdraw the Receiving Vessel from the Supplying Vessel and/or Supplying Vehicle upon completion of Delivery. If the Buyer or the Receiving Vessel causes delay in the use of the Supplying Vessel or Supplying Vehicle, the Buyer shall immediately be responsible to the Seller for any costs, damages or liability which the Seller incurs thereby, including but not limited to demurrage at the Physical Suppliers prevailing rate.
- 6.7 Where necessary, the Buyer shall be responsible for obtaining a government permit or licence for the export of the Bunkers. If such a permit or licence is not obtained then the Seller and/or Physical Supplier shall be under no obligation to Deliver and shall not be responsible for any such loss or damage resulting from such non-delivery.
- 6.8 On completion of Delivery, the Buyer or his representative shall sign the Bunker Delivery Receipt and give it to the Physical Supplier for countersigning. Both the Buyer and Seller shall retain an original of the Bunker Delivery Receipt for their records.
- 6.9 In the event that the Receiving Vessel's arrival at the Place of Delivery is delayed or likely to be delayed, the Buyer must so advise the Seller. The Buyer should also ensure that the Receiving Vessel's Local Agent is similarly informed and that the Local Agent advises the Physical Supplier accordingly. At the Buyer's request, the Seller will use its best endeavours to Deliver to a delayed Receiving Vessel on the terms originally agreed, but reserves the right to pass on to the Buyer all additional costs, including but not limited to

any increases in the Basic Cost of Bunkers resulting from the Receiving Vessel's delayed arrival.

## **7. PRICE**

- 7.1 Unit Price: where in the Sales Confirmation the Unit Price is stated not to be subject to variation, the Unit Price will, subject to clause 6.9, not be varied. In all other cases, like floating prices or posted prices, the final Unit Price charged shall be based on the relevant quotations/posted prices ruling on the date(s) agreed between the parties and reported on the Sales Confirmation.
- 7.2 Further Costs: in addition to the Basic Cost of Bunkers, the Buyer agrees to pay for any additional costs which shall include, but is not limited to, bargaining, clean-up costs, demurrage, duties, fees, freight, insurance, overtime, pilotage, port duties, storage, wharfage, taxes, vehicle or wagon charges, or other costs incurred by or charged to the Seller (including, without limitation, those imposed by governmental authorities). Such costs 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 of Bunkers shall for all purposes constitute the Price due from the Buyer to the Seller for the Bunkers supplied.
- 7.3 Notice of the Price: The Seller will give notice of the Price to Buyer as soon as reasonably practicable after Delivery.
- 7.4 Proof of Delivery: The Buyer or his representative should attend Delivery and obtain at that time all outstanding information relating to Delivery, including the exact quantities and precise specifications of Bunkers delivered. Unless otherwise requested by the Buyer, and stated in the Sales Confirmation, the Seller shall be under no obligation at any time to produce to the Buyer any evidence of Delivery. It is expressly agreed that the furnishing by the Seller of proof of Delivery is not a pre-requisite to payment of the Price.

## **8. CANCELLATION AND BREACH**

In the event of the Buyer at any time cancelling a confirmed request for Bunkers or the Receiving Vessel failing to take Delivery of part or all of the requested Bunkers, the Seller shall have the right to pursue a claim against the Buyer and the Buyer shall indemnify the Seller for all loss and damage thereby suffered including loss of profit. The Seller may treat any other breach by the Buyer of any express term of the Sales Agreement as a breach of this Sales Agreement and it may at its discretion treat this Sales Agreement as repudiated and seek such remedies as it considers appropriate and the provisions of Clauses 21, 22 and 23 shall survive the termination of this Sales Agreement.



## 9. PAYMENT

9.1 The payment terms will be set out in Sales Confirmation. Each of the following terms apply unless the Sales Confirmation otherwise provides:

9.1.1 the Buyer shall make payment to the Seller in United States Dollars;

9.1.2 unless, the Supplier has granted the Buyer credit, the Buyer shall make full payment in advance of Delivery;

9.1.3 at the sole discretion of the Seller, invoices shall be submitted to the Buyer by any form of telegraphic communication, including but not limited to, e-mail or facsimile. Non receipt of invoice does not relieve the Buyer of its obligation to make full payment of the amount due under 9.1.4 of this Sales Agreement;

9.1.4 the Buyer shall pay the Price in full, and expressly agrees to make no deduction, discount or set off for any reason whatsoever therefrom. Such payments shall be made free of all charges to the account of the Sellers stated in the invoice mentioned in clause 9.1.3 above, or to such other account as the Seller may notify in writing to the Buyer;

9.1.5 if the last day upon which payment is required hereunder is not a Banking Day, then payment shall be made on or before the nearest Banking Day immediately preceding that date;

9.1.6 if payment is not received in full in advance of Delivery, or where credit terms have been agreed, at the expiration of the agreed credit period, any amounts outstanding shall **bear interest at the rate of 1.8% per month pro rata**, or the maximum interest rate permitted by law, whichever is lower, unless otherwise agreed in the Sales Confirmation;

9.1.7 the Buyer agrees that the Seller shall have, and the Seller reserves, the option at its sole discretion to withdraw any credit which has been granted by the Seller to the Buyer. The Seller may in writing notify the Buyer of the withdrawal of credit, whereupon payment of any sum outstanding from the Buyer to the Seller shall immediately become due. The Buyer in accordance with clause 9.1.4 above shall forthwith make payment in full. Upon receipt of payment the Seller shall be obliged to and shall refund to the Buyer an amount in respect of interest on the payment made, for the period from the date when payment is received by the Seller to the date to which credit has been granted, at the LIBOR rate;

9.1.8 if at any time prior to Delivery the Buyer shall be in default of any of its obligations under this Sales Agreement or any other contract between the Seller and the Buyer, the Seller shall be entitled to cancel this Sales Agreement or to refuse to make the Delivery under this Sales Agreement,

and shall be under no liability in damages or otherwise to the Buyer under this Sales Agreement; and

- 9.1.9 all credit terms granted are conditioned upon the Buyer's compliance with all the Due Dates for payment of the earlier supplies, failing which all invoices will be considered immediately due.

## **10. LOCAL TERMS AND CONDITIONS**

The Seller may be required to enter into contracts with local suppliers of Bunkers which contain various terms and conditions similar to, but not the same as, GAC Bunker Fuels' Terms and Conditions. In these cases, the terms and conditions that the Seller is required to accept are hereby incorporated into GAC Bunker Fuels' Terms and Conditions for the benefit of the Seller in so far as they limit the liability of the local supplier/Seller and/or provide protection and/or grant security to the local supplier/Seller for payment on the supply.

## **11. TITLE, OWNERSHIP, PROPERTY**

- 11.1 The title to, ownership of and property in the Bunkers, free from liens and encumbrances, shall pass to the Buyer only after the Price has been received by the Seller as provided in clause 9. Until such time as the Price is received by the Seller, the person in possession of the Bunkers Delivered (e.g. the Receiving Vessel owner) shall hold the Bunkers as a mere bailee.
- 11.2 Bunkers supplied in each Sales Agreement are sold and effected on the credit of the Receiving Vessel, as well as on the promise of the Buyer to pay. It is agreed and the Buyer warrants that the Seller shall have and may assert a maritime and/or contractual lien against the Receiving Vessel for the amount due for the Bunkers. Any such lien shall extend to the Receiving Vessel's freight and/or hire payments for the particular voyage during which the Bunkers were supplied and to freights and/or hire on all subsequent voyages.

## **12. RISK**

The Seller's responsibility for the Bunkers shall cease and the Buyer shall assume all risks and liabilities relating thereto, including loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage of Bunkers and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties at the time Bunkers have passed the flange connecting the Receiving Vessel's bunker manifold with the Supplying Vessel and/or Supplying Vehicle provided by the Physical Supplier. The Buyer agrees to indemnify without limit the Seller in respect of any liability, claim or demand for which the Buyer is liable.

### **13. NOTICES**

The Buyer must give not less than 3 (three) Working Days notice of the Receiving Vessel's readiness to receive Bunkers to the Seller and the Physical Supplier. Notice must be given during the Seller's normal business hours, Monday to Friday inclusive, 08.00-18.00 London time. Notice given outside these hours will be deemed to have been given at 08.00 on the first 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:

- 13.1 the precise requirements of the Physical Supplier and any other person, body or authority in respect of the giving of notice of the Receiving Vessel's ETA;
- 13.2 the exact location of the Place of Delivery;
- 13.3 any particular requirements to enable Delivery to be effected as efficiently and promptly as possible. It is the responsibility and duty of the Buyer to instruct its Local Agent to liaise with the Physical Supplier so as to ensure compliance with these provisions.

### **14. BROKERS AND AGENTS**

- 14.1 Unless the party with whom the Seller is corresponding specifically declares to the Seller prior to dispatch by the Seller of the Sales Confirmation that the party with whom the Seller is corresponding is not the Buyer and that at the same time provides to the Seller the full name and address of the Buyer then the party with whom the Seller is corresponding shall be deemed to be the Buyer.
- 14.2 Without prejudice to the provisions of clause 14.1, in the event that the party with whom the Seller is corresponding is an agent of the Buyer, duly authorised by the Buyer, then the party with whom the Seller is corresponding shall be jointly and severally liable with the Buyer to perform the Buyer's obligations under the Sales Agreement notwithstanding that the party with whom the Seller is corresponding purports to contract as a mere agent.

### **15. ASSIGNMENT**

The Buyer shall not assign its interest in this agreement without the prior written approval of the Seller. The Seller may assign this agreement and shall thereafter give notice to the Buyer.

## **16. FORCE MAJEURE AND CONTINGENCIES**

- 16.1 The Seller shall not be liable for any failure to fulfil any term or conditions of the Sales Agreement if fulfilment has been delayed, hindered or prevented or made substantially more expensive by any circumstances whatsoever which are not within the immediate control of the Seller (whether foreseeable or not) including but without limiting the generality of the foregoing, any fire, explosion, mechanical breakdown, flood, storms, earthquakes, tidal waves, acts of God, war, military operations, national emergency, civil commotion, strike, lockout or labour dispute or reasonable apprehension thereof, any governmental order, request or restriction, any limitation, restriction or interruption to existing or contemplated sources of supply of Bunkers or the means of supply thereof. Nothing in this provision shall be deemed to excuse the Buyer from its obligation to make payments for Bunkers received.
- 16.2 In the event that performance is prevented or delayed or made substantially more expensive by any of contingencies above, the Seller may reduce or stop Deliveries in any manner as it shall determine in its sole discretion, or elect to continue Deliveries and increase prices in fair proportion to the increased cost of operation under such contingency.

## **17. ENVIRONMENTAL PROTECTION**

- 17.1 If an escape, spillage or discharge of Bunkers occurs during the Delivery (a “**Spill**”), the Buyer shall promptly take such action as is reasonably necessary to remove the Bunkers and mitigate the effect of a Spill.
- 17.2 Notwithstanding the cause of such Spill, the Seller and Physical Supplier are authorised by the Buyer to take such measure and to incur such expenses, by employing its own resources or by contracting with other persons, either in co-operation with the Buyer and/or the Receiving Vessel, or alone as is in the opinion of the Seller or the Physical Supplier reasonably necessary to remove the oil and mitigate the effect of a Spill. The Buyer agrees that it and the Receiving Vessel will render such co-operation and assistance as is required by the Seller or the Physical Supplier in the course of such action. The Seller and Physical Supplier shall not be considered volunteers in taking such action or incurring such expense, whether or not they or the Buyer have caused the Spill.
- 17.3 In the event of a Spill, any expenses, damages, costs, fines and penalties arising from the Spill shall be paid for by the Buyer (or recoverable from the Buyer if the Seller has paid them in the first instance) unless the Spill arose out of the Seller's negligence in which case the Seller will be liable, provided that the Buyer shall prove such negligence, to the extent that such negligence caused or contributed to the Spill.

17.4 It shall be presumed that the Physical Supplier has not caused any Spill and that the Buyer or the Receiving Vessel has caused it unless the Buyer proves otherwise.

17.5 The Buyer shall disclose or cause to be disclosed to the Seller or the Physical Supplier all documents and other information concerning the Spill or any measures for the prevention or remedy of a Spill which may be requested by the Seller or the Physical Supplier or the disclosure of which is required by any applicable law including the law applicable at the Place of Delivery.

## **18. HEALTH, SAFETY AND THE ENVIRONMENT**

18.1 The Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of any Bunkers.

18.2 The Buyer shall at all times comply with any obligations, requirements or recommendations contained in any law, statute, directive or regulation of any territory, state or jurisdiction in or through which the Bunkers may be delivered, sold, transported or used and all Government, state or local regulations at the port such as, but not limited to, those related to fire, or spillage or loss of Bunkers.

18.3 The Buyer shall indemnify and keep indemnified the Seller against any liability, claim or proceedings whatsoever arising out of or in connection with any failure by the Buyer to comply with its obligations under this Clause 18.

## **19. CLAIMS, DISPUTES AND PRECAUTIONS**

19.1 TIME LIMITS: THE BUYER ACKNOWLEDGES THAT AS THE SELLER IS SUBJECT TO STRICT TIME LIMITS FROM ITS PHYSICAL SUPPLIERS FOR ANY CLAIM PRESENTATION, THE SELLER MUST IN TURN IMPOSE RIGID TIME LIMITS ON RECEIVING NOTICE OF CLAIMS FROM ITS BUYERS. THEREFORE THE BUYER SHALL ENSURE THAT IT WILL MAINTAIN ITS OWN INTERNAL CHECKING AND REPORTING PROCEDURES. THE BUYER ACKNOWLEDGES THAT THE SELLER WILL NOT RELAX ITS TIME-LIMITS IN ANY CIRCUMSTANCE. THE BUYER FURTHER ACKNOWLEDGES THAT ANY CLAIM AGAINST THE SELLER NOT RECEIVED WITHIN THE TIME LIMITS SET OUT IN THIS CLAUSE 19, SHALL BE DEEMED WAIVED AND NO SUCH CLAIM SHALL BE ENTERTAINED.

19.2 NOTIFICATION: Written notice of any claim or potential claim must be given to the Seller within the specified time limit set out in this clause 19. It is the Buyer's responsibility to ensure that the notice is received by the Seller, whose confirmation of receipt should always be sought. Regardless of whether a claim or dispute has risen or is anticipated, the Buyer must always give prompt notice 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.

19.3 SUFFICIENCY OF INFORMATION: To enable the Seller to investigate and pursue a claim, the notice must give sufficient information for the Seller to be able to identify the relevant transaction, the nature of the complaint and the alleged loss of damage. Any notice which does not give sufficient information will not be valid. For the same reasons 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 related thereto.

19.4 Claims fall into 3 categories:           19.4.1 Quantity claims and disputes  
  19.4.2 Quality claims and disputes  
  19.4.3 Other claims and disputes

19.4.1 Quantity claims and disputes:

19.4.1.1 these are most easily avoided by ensuring high standards of checking before, during and after Delivery by an officer of the Receiving Vessel's crew or other senior representative of the Buyer;

19.4.1.2 for bulk deliveries, delivery barges, wagons and vehicles must be checked by tank-dipping to measure the contents and ensure full out-turn. Flow meters must be checked for seals, correct settings and calibration and general condition. All of these checks must be carried out before and after Delivery of each consignment and each barge, wagon or vehicle tank load. The Delivery must be supervised at all times and care must be taken in ensuring that all documentation is complete and accurate before signing and stamping. Any discrepancies must be recorded on the Bunker Delivery Receipt. Unless these procedures are followed, it is nearly always impossible for a claim to be substantiated. The Seller regrets therefore that it will be obliged to reject claims for short Delivery where these receiving procedures are not followed; and

19.4.1.3 THE TIME LIMIT FOR RECEIPT BY THE SELLER OF NOTICE OF A QUANTITY CLAIM AND DISPUTE IS 7 (SEVEN) DAYS FROM THE DATE OF DELIVERY OR SUCH SHORTER PERIOD AS IS SPECIFIED IN THE SALES CONFIRMATIONS.

19.4.2 Quality claims and disputes:

19.4.2.1 it is the Buyer's responsibility to ensure that the Bunkers tendered for Delivery are those which are required by the Receiving Vessel, and are Delivered into the correct tanks;

- 19.4.2.2 it is the duty of the Buyer to instruct the Physical Supplier to take at least two representative samples of each grade of Bunkers Delivered, as per clause 5.2;
- 19.4.2.3 it is important to check that all documentation is in order and to note discrepancies on the Bunker Delivery Receipt before signing and stamping;
- 19.4.2.4 in the event of the Buyer having grounds to believe that the Bunkers supplied do not accord with the relevant description in the Sales Confirmation or are defective, the Buyer shall immediately:
- 19.4.2.4.1 take all reasonable steps to mitigate the consequence of having been supplied with possibly defective or incorrect Bunkers;
  - 19.4.2.4.2 give notice with full details of the possibly defective or incorrect Bunkers to the Seller together with the Receiving Vessel's position, destination and ETA, the quantities and locations of all Bunkers on board the Receiving Vessel, the rate and quantity of consumption since Delivery and the location immediately prior to consumption of Bunkers; for each of the three preceding deliveries to the Receiving Vessel, the quantity, quality and specification of Bunkers supplied, the place and date of supply and the name of the Physical Supplier; and
  - 19.4.2.4.3 inform the Seller of the whereabouts of the Buyer's Sealed Samples.
- 19.4.2.5 it is a pre-condition of the Seller being prepared to consider any quality claim that at the time notice is given, the Buyer has retained its complete set of the Sealed Samples (as per clause 5.2). The Buyer agrees that the Sealed Samples are representative of the Delivery and that the Seller has no duty to consider any other independently produced samples. The results of the analysis performed on the Sealed Samples by a reputable independent testing laboratory, approved by the Seller and by the Physical Supplier, in accordance with established procedures in the presence of a representative of the Seller and/or of the Physical Supplier shall be binding on all parties. In the event that the Buyer is unable or unwilling to produce its Sealed Samples for analysis within 28 days of a request from the Seller to do so, the Seller may proceed to have the Physical Supplier's Sealed Samples analysed, the results of such analysis shall also be binding upon the parties hereto. Cost of analysis will be 100% of the laboratory fees and shall be for the account of the party who is found to be at fault;

19.4.2.6 if it is alleged that any equipment of machinery had been damaged by defective Bunkers, full details must be given to the Seller at the earliest opportunity and the item must be preserved and made available for inspection on demand at any reasonable time or times to the Seller or its representative; and

19.4.2.7 THE LIMIT FOR RECEIPT BY THE SELLER OF NOTICE OF A QUALITY CLAIM AND DISPUTE IS 14 (FOURTEEN) DAYS FROM THE DATE OF DELIVERY OR SUCH SHORTER PERIOD AS IS SPECIFIED IN THE SALES CONFIRMATION.

19.4.3 Other claims and disputes:

Notice of all other claims and disputes, specifically excluding any and all claims relating or associated with matters of quantity and quality which are subject to the time limits set out in sub-clauses 19.4.1 and 19.4.2.4, respectively, should be given to the Seller as soon as reasonably possible and in any event no later than 14 (fourteen) days after Delivery. If the Sales Confirmation provides for a shorter period, such shorter period shall apply.

19.5 Summary of time limits: Quantity claims and disputes 7 (seven) days;  
Quality claims and disputes 14 (fourteen) days;  
Other claims and disputes 14 (fourteen) days.

All the above time limits are subject to the provision of shorter time limits in the Sales Confirmation message and/or in the local suppliers' general terms and conditions as referred to in clause 10.

19.6 Claims settlement: claims, if any, have in any case to be settled separately from payment of the invoice, which, in all cases, has to be honoured in full without delay, deduction or set-off.

**20. WAIVER**

The failure by any party to the Sales Agreement to enforce any right against any other party shall not be construed as a waiver of that right or in any way affect the validity of the Sales Agreement. In particular, the granting by the Seller of any additional time to make payment or the waiving or reducing of any financial or other charge shall not prevent the Seller at any time thereafter from relying upon its strict contractual rights.

**21. INDEMNITY**

The Buyer hereby indemnifies the Seller in respect of all damage or injury occurring to any person or 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, his servants or agents or any third party in the course of performance of or arising out of the Sales Agreement.

**22. LIABILITY**

The Seller shall not be liable to the Buyer for any direct or indirect loss of damage including any loss of profit or any, other indirect, special, incidental or consequential loss or damage whatsoever arising from any cause whatsoever whether in contract, tort or otherwise including the acts or omissions or negligence of the Seller, its servants, agents or sub-contractors, including, without limiting the generality of the foregoing in any way whatsoever, no liability will be borne by the Seller for demurrage, detention or other vessel delay, or any damages or loss arising from the exercise of Seller's right to suspend and/or terminate Delivery of the Bunkers.

**23. COMPENSATION**

Notwithstanding the foregoing, 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 Basic Cost of Bunkers charged to the Buyer for the Bunkers supplied under the Sales 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, in full, without deduction or set-off.

**24. INSURANCE**

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

**25. 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 Sales Agreement.

**26. GENDER, SINGULAR, PLURAL**

Unless the context otherwise requires, all references in the Sales Agreement to one gender shall be deemed to include all others and references to the singular shall be deemed to include the plural and vice versa.

## **27. GOVERNING LAW**

The Sales Agreement is subject to the law of England and the jurisdiction of the English High Court. However, nothing in this clause shall, in the event of a breach of the Sales Agreement by the Buyer, preclude the Seller from taking any such action as it shall in its absolute discretion consider necessary, and the Seller shall have the power to enforce, safeguard, secure or assert its rights under the Sales Agreement and any rights of lien, attachment, arrest in any court or tribunal or any state or country, including any jurisdiction where the Receiving Vessel or a sister or associated ship may be found.