



Trust House 112, Bonadie Street – KINGSTOWN – SAINT-VINCENT

## Standard Terms and Conditions for the Sale of Marine Bunker Fuels, Lubricants and Other Products

Effective from 07<sup>th</sup> May 2019

### 1.00 INTRODUCTION

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**1.01** Except as may otherwise be expressly agreed in writing by the parties hereto, these Terms and Conditions shall apply to all sales and supplies by "Ocean Energy LTD" (also referred to as "Ocean Energy" or "OE") of Trust House 112, Bonadie Street, Kingstown, Saint Vincent (the "Seller") to any another party (the "Buyer") of Marine Bunker Fuels and/or Marine Lubricants and/or other products (the "Product"). These terms and conditions may be referred to as "Ocean Energy LTD's Standard Terms and Conditions."

These terms and conditions shall override any other different terms or conditions stipulated, incorporated or referred to by the Buyer, whether in his purchase order or in any negotiation, unless otherwise agreed to by Ocean Energy in a subsequent writing.

In addition to the aforementioned, the last paragraph of clause 7.00 shall apply to any agreement by which Ocean Energy purchases marine fuel or related products or services from the Buyer.

**1.02** The order for Product shall be considered firm and binding upon Buyer's acceptance of price quoted by Ocean Energy LTD and confirmation in writing from the Seller to the Buyer. Confirmation in writing by Buyer may be provided to the Seller, but the absence of such confirmation shall not avoid the agreement of sale.

**1.03** These Terms and Conditions apply to all offers, quotations, orders, agreements, supplies, services and all subsequent contracts of whatever nature, except where otherwise is expressly agreed in writing by Ocean Energy LTD.

In any case, in the event of a conflict between these terms and conditions and the specific terms of Ocean Energy's confirmation, Ocean Energy's confirmation shall prevail except as provided for in Clauses 17.01 and 17.02.

Moreover, whenever Ocean Energy for the purpose of purchasing the Product to be sold to the Buyer enters into a contract with Physical Suppliers of the Product which contains terms and conditions other than the following, the terms and conditions which apply as between Ocean Energy and the Physical Supplier will be available on request and will be deemed incorporated into these terms and conditions for the benefit of Ocean Energy in so far as they further limit the liability of the Physical Supplier / Seller and / or provide more protection and / or grant more security to the Physical Supplier / Seller for the payment of the supply.

### 2.00 DEFINITIONS

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In these Standard Terms and Conditions the following terms shall have the following meaning:

**2.01 Agreement:** The agreement between the Seller and the Buyer evidenced by the Confirmation.

**2.02 Basic Price:** The basic price is defined as the unit price of the Product multiplied by the number of units of the Product delivered to the Vessel.

**2.03 Seller:** The Seller is defined as Ocean Energy LTD of Trust House 112, Bonadie Street, Kingstown, Saint Vincent, acting through any of its servants, agents, assigns, subcontractors and any and all other persons acting under the Seller's written instructions in fulfilment, compliance or observance of the Agreement unless the context otherwise requires or permits.

**2.04 Confirmation:** A confirmation in writing from the Seller to the Buyer setting forth the particular terms of each sale of Product.

**2.05 Buyer:** Buyer means jointly and severally :

- a) The person, party or entity so identified in the Confirmation as the Buyer and the party with whom the Seller contracts to sell the Product and any agent, principal, associate, manager, partner, servant, parent, subsidiary, owner, or shareholder thereof,
- b) the Vessel (as defined in clause 2.15) and her Master, Registered Owners, Beneficial Owners, Disponent owners, Managers / Operators, Charterers, Sub-charterers, Time Charterers, Bareboat Charterers, and any party benefitting from consuming the Product delivered,
- c) any party requesting offers and quotations for ordering the Product, even if only as agent or manager, and any party on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made, being in any case understood that the party identified in the Confirmation as the Buyer and the party with whom the Seller contracts to sell the Product are also jointly responsible for any act / or omissions of the receiving vessel, her Master, Registered Owners, Beneficial Owners, Managers / Operators, Disponent Owners, Time Charters, Bareboat Charters, vessel's crew and vessel's officers.

**2.06 Delivery:** as defined in Clause 8.00.

**2.07 Due date:** The date specified in the Confirmation for payment of the Price and any and all other fees, Further Costs, charges and like items.

**2.08 Gender, Singular and Plural:** Unless the context otherwise requires, all references in the 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.

**2.09 Physical or Local Supplier:** The party and/or person who has been instructed by the Seller to physically supply / deliver the Product to the Vessel together with that party's or person's servants, agents, successors, subcontractors and assigns. The Physical Supplier may be the Seller or any other party and/or person.

**2.10 Place of Supply:** The port or other readily identifiable geographical location specified in the Confirmation wherein or adjacent to which is the Point of Delivery.

**2.11 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 being a berth, mooring, anchorage or other point within, adjacent to or associated with the Place of Supply.

**2.12 Price:** The Price shall be the aggregate of the basic price and further cost as defined in Clause 11.00.

**2.13 Product:** The marine fuels, oils, lubricants, goods, items, equipment and materials of whatever type and description as specified in the Confirmation, being the subject of the Agreement.

**2.14 Unit Price:** The rate of price in United States Dollars (or such other currency specified in the Confirmation) per metric tonne (or such other unit of measurement specified in the Confirmation) of Product as specified in the Confirmation.

**2.15 Vessel:** The Vessel, ship, barge, yacht, craft, tank, container, facility or any other unit nominated to receive Product as specified in the Confirmation.

**2.16 Written, in Writing and Notice:** Any requirement for written communication, including the giving of any notice, may be fulfilled by the use of electronic mail, letter post, courier, telex, facsimile transmission or any other medium that 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 or facsimile medium, within three working days of dispatch for inland letter post and on the expiry of the declared or guaranteed time of delivery of any courier or monitored service.

**2.17 Further Costs:** As defined in Clause 11.02

**2.18 Notice of Claim:** Written notice of any claim or potential claim by the Buyer.

### 3.00 HEADINGS

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The use of headings and explanatory notes is for convenience and elucidation only. They are not part of the Agreement.

### 4.00 ENTIRETY AND VALIDITY

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These Terms and Conditions together with the Confirmation constitute the entire Agreement.

These Terms and Conditions have been published on the Seller's website and are considered well known to Buyers. They shall apply to any and all sales of the Product even if not referred to in the Confirmations.

No derogation, addition or amendment to the Agreement shall be of any force or 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.

### 5.00 FORCE MAJEURE

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**5.01** Neither the Seller nor the Physical Supplier shall be liable for any loss, claim, damage, demurrage, costs or expenses of whatever nature arising from breaches of their obligations / from the failure to fulfil or comply with any term or condition of the Agreement due to *cas fortuit* or force majeure, meaning such expressions any circumstances whatsoever which are not within the immediate and reasonable control of the Seller and / or the Physical Supplier, including, but without limiting the generality of the foregoing, any act of God, fires, floods, perils or sea, earthquake, storm, swell, ice, exceptional weather conditions, any act of war (declared or undeclared), civil commotions, military operations, hostilities, embargoes, Sanctions accidents, governmental intervention, order, request or restriction, any act of third party, congestion, changed market conditions, unavailability of barges, closing or limitations of functioning of power plants and / or reception facilities, failure of equipment, fault or failure of Vessel, master or crew, act or omission of Buyer, strike, lockout or labour dispute or reasonable apprehension thereof, any government order, request or restriction, or acts in compliance with requests of persons purporting to act on behalf of a government authority, or any other similar causes, any shortage or limitation restriction or interruption to existing or contemplated sources of supply of Product or the means of supply thereof and/or the means of delivery. Neither the Seller nor the Physical Supplier shall be required to make any deliveries which fail in whole or in part as a result of the causes set out in this Article at any later time.

**5.02** Being in any case understood that these provisions do not excuse the Buyer from its obligation to make payment for all amount due to the Seller, if the Buyer exercises reasonable diligence, the Buyer shall not be liable for failure to receive any particular delivery if prevented therefrom by force majeure. The Buyer shall indemnify the Seller or the Seller's Physical Supplier for any damage caused by the Buyer, the Buyer's agent or employees in connection with deliveries hereunder.

**5.03** Declaration of Force Majeure shall be given without undue delay once such event has come to the knowledge of the respective party declaring same.

### 6.00 AGENTS

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Being in any case understood Buyer's responsibility under these general terms and conditions, if the agreement is entered into by an agent or broker of Buyer, whether such agency or brokerage is disclosed or undisclosed, then also such agent or broker shall be liable not only as agent or broker but also as Buyer under the Agreement.

Should delivery be made not directly by Seller, but by a third party acting as an agent for Seller, it is understood that these provisions shall apply under the Agreement at all effects.

### 7.00 ASSIGNMENT

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The Buyer shall not assign its interest in the Agreement without the prior written approval of the Seller. The Seller may assign alternatively, novate the agreement and shall thereafter give notice thereof to the Buyer.

Should Ocean Energy and the Buyer at any time enter into agreements by which Ocean Energy purchases marine fuel or related products or services from the Buyer, then the Buyer shall not be allowed to assign its interest in such an agreement without the prior explicit written approval from Ocean Energy. The aforementioned shall supersede any provision to the contrary in the Buyer's sales terms and conditions, which purports to allow the Buyer to assign its interest against Ocean Energy to third parties.

## 8.00 DELIVERY

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**8.01 Allocation.** If the Seller or Physical Supplier at any time and for any reason believes that there may be a shortage of Product at the Place of Supply, it may allocate its available and anticipated supply of Product among its Buyers in such a manner as it may, in its absolute discretion, determine.

**8.02 Restrictions.** The Seller or Physical Supplier shall not be required to deliver Product into any of the Vessel's tanks or other places that are not regularly used for storage of bunkers or lubricants or other products as the case may be and shall not be required to deliver any Product for the export or delivery of which a Government or any other type of permit is required and has not been obtained.

**8.03 Means and Point of Delivery.** Delivery shall be effected in one or more consignments at the Point of Delivery by such means as the Seller or Physical Supplier shall deem appropriate in the circumstances. Seller does not warrant nor shall be deemed to warrant the safety of the Point of Delivery or of the facility (ies) where the Vessel load and assumes no liability in respect thereof, except for loss or damage directly caused by his failure to exercise reasonable care-

**8.04 Barging.** In the event of delivery by barge, the Buyer shall at its own expense provide a clear and safe berth for the barge alongside the Vessel's receiving lines and shall provide all necessary facilities and assistance required to effect delivery on 24 hours per day basis.

Seller shall not be obliged to make delivery when in the opinion of the Seller and / or the Physical Supplier a clear and safe berth is not made available.

The Buyer agrees to pay and indemnify the Seller against all claims, costs, losses and expenses in respect to any loss, damage or delay caused by the Vessel and/or Vessel's personnel to any barges and/or its equipment and 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 Product. Where lighterage is employed, lighterage charges shall be for the account of Buyer. Lighterage will be charged on the quantity delivered to the Buyer's Vessel in accordance with the rates and charges of the barge contractor. Deliveries of Products on two or more barges will be subject to separate charges.

All costs due to berth congestion shall be for Buyer's account.

**8.05 Connection.** 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 the Delivery. The Buyer is responsible for ensuring that Product is delivered at a safe rate and pressure and that all equipment utilised therefore is in a safe and satisfactory condition. In any event the Buyer shall be responsible to ensure that the connection of the delivery hose to the Vessel has been properly and safely made.

**8.06 Completion of delivery.** Delivery shall be deemed completed when the Product has passed the flange connecting the Physical Supplier's delivery facilities with the receiving facilities provided by the Buyer, and/or, where appropriate, has passed the Vessel's rail and/or Point of Delivery whether product is delivered ex-wharf or by barge. At either location, pumping shall be performed under the direction and responsibility of Buyer or Buyer's Vessel personnel.

**8.07 Title.** Title in and to the Product delivered and/or property rights in and to such Product shall remain vested in the Seller, and shall pass to the Buyer only after the Price has been received by the Seller as provided in Clause 12. Until such time as the Price is received by the Seller the person or entity in possession of the Product delivered shall hold the Product as a mere bailee and shall hold the Product on behalf of the Seller and to the Seller's order. For the avoidance of doubt, where a mortgagee bank enforces any rights against the Vessel and becomes a mortgagee in possession of the Product then as bailee the mortgagee bank is liable to the Seller for fulfilment of the Agreement.

**8.08 Risk.** The Seller's responsibility for Product shall cease, and the Buyer shall assume all the risks and liabilities relating thereto, including loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage of Product and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties at the time Product leaves the Physical Supplier's fixed depot or wharf facilities. The Buyer agrees to indemnify without limit the Seller in respect of any liability, claim or demand for which the Buyer is liable.

**8.09 Measurement.** The quantity of Product delivered hereunder shall be determined at the Physical Supplier's option by one of such generally recognized methods of measurement as is appropriate in the circumstances.

**8.10 Specification.** The Product to be delivered shall be as specified in the Confirmation and, other than as more precisely specified therein, shall be one of the Seller or Physical Supplier's commercial grades of Product as currently offered generally to its Buyers at the time and Point of Delivery for marine Products. No other warranties, express or implied as to quality or fitness for any purpose, are given or form part of the Agreement. Buyer shall also assume sole responsibility for the selection and fitness of its choice of Product for any particular use or purpose, and the Seller shall assume no responsibility whatsoever for the compliance or fitness of the Product for a specific type of engine or equipment which the Buyer may or may not have agreed upon in any term or otherwise. This includes but is not limited to the quality, sulphur content and any other specific characteristics of the Products whatsoever. Any and all warranties regarding the satisfactory quality, merchantability, fitness for purpose, description or otherwise, are hereby excluded and disclaimed. Where

specifications designate a maximum value, no minimum value is guaranteed unless expressly stated in the Confirmation, and conversely where minimum values are provided in a specification, no maximum values are guaranteed unless expressly stated in the Confirmation.

**8.11 Compatibility and Segregation.** Responsibility for establishing compatibility of Product delivered with any other product or products and for segregating or co-mingling the same rests solely with the Buyer. In any case, Seller shall not be liable or anyhow responsible for any problems due to the incompatibility between products. Moreover it shall be Buyer's responsibility ascertaining and making sure that Vessel's tanks are clean and cargoworthy under all respects.

**8.12 Substitution.** The Seller may discharge its obligation to deliver Product as specified in the Confirmation by supplying in substitution thereof 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 Product, the availability of facilities at the Place of Supply and Point of Delivery, and the customary priority and to the Buyer giving notice in accordance with Clause 8.16, the Seller or Physical Supplier will use its best endeavours to ensure that Product is delivered promptly upon the Vessel's arrival but the Seller or Physical Supplier shall not be responsible for any demurrage, detention, 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.

**8.14 Time.** The Buyer is responsible for ensuring that the Vessel is ready to receive Product at the Point of Delivery on the expiry 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 shall give immediate written notice to the Seller. The Buyer should also ensure that the Vessel's agent at the Place of Supply is similarly informed and that the agent advises the Physical Supplier accordingly. At the Buyer's request the Seller or Physical Supplier will use its best endeavours to supply a delayed Vessel on the terms originally agreed but reserves the right to pass on to the Buyer all damages and all additional expenses and costs, including increased Basic Price arising from the Vessel's delayed arrival.

In any case, should the Vessel for any reason arrive later than 3 days after the ETA notified to Seller, the latter shall have the option to cancel the supply.

**8.16 Notice and Other Delivery Requirements.** The Buyer must give not less than 72 hours' notice (excluding holidays and other non-working days at the Place of Supply) of the Vessel's readiness to receive Product to the Seller and to the Physical Supplier. Notice must be given during the Seller's normal business hours (Monday to Friday inclusive, 09:00-18:00 Monaco, Athens, Miami or Singapore time as the case may be). Notice given outside these hours will be deemed to have been given at 09:00 on the first business day thereafter. If Buyer fails in giving such notice, the Seller shall have the option to cancel the supply. The Buyer shall be responsible in any event for any costs and or expenses incurred and damages suffered by the Seller.

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:

- a. The precise requirements of the Physical Supplier and any other person, body or authority in respect of the giving of notice of the Vessel's time of arrival at the Point of Delivery.
- b. The exact location of the Point of Delivery.
- c. Any particular requirements to enable Delivery to be effected as efficaciously as possible.

The Buyer is advised to instruct its agent at the Place of Supply to liaise with the Physical Supplier so as to ensure compliance with these provisions.

**8.17 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 endeavours to obtain or provide the information requested. While 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 accuracy and veracity.

**8.18 Environmental Protection.** Without prejudice to Clauses 8.08 and 15.03 the Seller or Physical Supplier 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 Product. Any action so taken shall be on behalf of and at the expense of the Buyer.

### **8.19 Cancellation by Buyer Prior to Delivery**

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In the event that the Buyer cancels an Agreement or fails to take delivery of the full contracted quantity of Products during the designated delivery period under the Agreement, regardless of fault or causation and without regard to force majeure or circumstances entirely outside of the Buyer's control, the Buyer, without prejudice to its other available rights and remedies, shall be liable to the Seller for all costs, charges, fees, expenses and losses incurred by the Seller or the Physical supplier resulting from such purported cancellation, termination or failure, including but not limited to :

**8.19.1** those incurred by the Seller as a result of having entered into the foregoing transactions including but not limited to any cancellation provisions under, and in accordance with, the Physical Supplier's Terms and Conditions including but not limited to any costs of maintaining, terminating and/or re-establishing any derivative and/or hedge or related trading positions or transactions, in each case as determined by the Seller;

**8.19.2** the total of :

(i) in the Seller's sole option, Ten United States Dollars Only per metric ton (USD 10.00/mt); and

(ii) the difference between the Price agreed by the parties and the prevailing market price on the date of the Buyer's cancellation or default OR the difference between the market price on date of fixture and the prevailing market price on the date of the Buyer's cancellation or default, whichever is higher. If the above calculation amounts to less than United States Dollars Two Thousand (USD 2,000.00), then the liquidated damages will be determined to be at United States Dollars Two Thousand (USD 2,000.00).

For the purposes of clause 8.19.2 : the "prevailing market price" or "market price" shall refer to the corresponding prices published by Platts and the quantity by which the above-mentioned liquidated damages are to be calculated shall be the maximum quantity of Product to be supplied under the Agreement.

**8.20.a)** It is expressly agreed that all deliveries are in any case subject to weather and sea permitting, over vessels' priority, if any, and working hours. If Vessel arrives out of working hours, all extra costs are for Buyer's account. The delivery shall be made during normal working hours and days (as indicated in the port regulations and, in the lack of such regulations, from 8.00 am to 5.00 pm from Monday to Friday) unless required and available at other times (holidays, Saturdays, and Sundays) and permitted by Port regulations. Any additional expenses / overtime / extra time / local charges are on Buyer's account.

**8.20.b)** Seller shall not be in any event liable for any damage or loss or delay or demurrage or detention due to lack of notice, bad weather, barge or port or terminal congestion, expected or unexpected, or to lack of availability of barges / trucks for the Product to be delivered or due to any other reasons beyond the reasonable control of the Seller or avoidable by reasonable care on the part of the Buyer or the vessel.

**8.20.c)** The Buyer shall take prompt delivery of the Product and withdraw the vessel from the terminal. The Buyer shall ensure that the Vessel renders all customary assistance and provides sufficient tank space and equipment to receive prompt delivery. Buyer shall indemnify the Seller of costs and expenses of barge demurrage or truck overtime due to its delay in taking delivery or in vacating berth. Moreover, without prejudice to the previous covenants, in any case if Buyer, its agents, servants, Vessel's officers or Vessel's crew cause a delay to Seller's (or Physical Supplier's) facilities in effectuating delivery of Products, Buyer shall pay demurrage to Seller at Seller's established rates and reimburse Seller for any and all other expenses and costs and damages in connection therewith.

**8.20.d)** On completion of delivery, the Buyer or its representative shall give the Seller or the Physical Supplier a signed receipt therefrom in the form presented for signature by the Seller or Physical Supplier.

## **9.00 CANCELLATION AND BREACH**

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Without prejudice to clause 8.19, in the event of the Buyer, at any time, failing to take delivery of part or the entire requested Product, the Seller shall have the right to pursue a claim against both the Buyer and the Vessel 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 Agreement as a breach of a condition and it may, at its discretion, treat the Agreement as repudiated or terminated and seek such remedies, as it considers appropriate. Nevertheless, the provisions of Clauses 15.01, 17.01, 17.02, and 18.00 shall survive the termination of the Agreement in any event.

## **10.00 LIENS**

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**10.01** Where Product is supplied to a Vessel, in addition to any other security, the Agreement is entered into and Product is supplied upon the faith and credit of the Vessel. It is agreed and acknowledged that a maritime lien against the Vessel is thereby created for the Price of Product supplied and that the Seller in agreeing to deliver Product to the Vessel does so relying upon the faith and credit of the Vessel, and that such maritime lien may be enforced in any court of competent jurisdiction. The Buyer represents that it is the Vessel's Owner, or Charterer, or a person authorized by the Vessel's Owner or Charterer to order the Products. The Buyer, if not the owner of the Vessel, hereby expressly warrants that Buyer has the authority of the owner to pledge the Vessel's credit as aforesaid and that he has given notice of the Provisions of this Clause to the owner. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien or liens attaching to a Vessel unless notice in writing of the same is given to the Seller before it sends its Confirmation to the Buyer.

**10.02** Any notice by Buyer that a maritime lien on the Vessel may not be created because of the existence in Buyer's charter of a Prohibition of Lien Clause, or for any other reason, must be given to Seller in the initial order for Product, in which case no credit can be granted to Buyer and the Product shall be paid prior to delivery. Any notice of such restriction given by Buyer, its agents, ship's personnel or other person later than in the initial order shall not effect a modification of the terms and conditions of sale except that any granting of credit by Seller is rescinded on receipt of the notice, with full payment then due.

## 11.00 THE PRICE

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**11.01 Unit Price.** Wherein the Confirmation of the Unit Price is stated to be not subject to variation, the Unit Price will, subject to Clause 8.15, not be varied up to the expected date of the delivery mentioned in the Confirmation. After that date, Seller reserves the right to change it.

**11.02 Further Cost.** In addition to the Basic Price of the Product, the Buyer agrees to pay for

- a) any charges for current barge and/or lighterage and/or current truck and/or wagon, and / or clean-up costs including overtime or other like payments,
- b) any costs due to terminal or berth,
- c) any mooring and unmooring charges, wharfage, booms, charges, insurance pilotage, agency fees or port dues which Seller may incur in connection with any vessel the Product is delivered to,
- d) fire – fighting, anti-pollution, any authorisation and any Customs charges,
- e) any duties and/or taxes incurred by Seller or for which Seller is accountable in respect of deliveries or sale of the products,
- f) any additional cost incurred by Seller in respect of payments for overtime, and
- g) all other similar costs and expenses incurred by or charged to the Seller.

Such charges, costs and expenses will be passed on to the Buyer as and when they are advised to the Seller and together with the Basic Price shall for all purposes constitute the Price due from the Buyer to the Seller for the Product supplied.

**11.03 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 in instalments. Where notification of the Price is given in instalments, 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 and sent by post or telex or facsimile or via internet or as otherwise provided herein or as agreed.

**11.04 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 specification of Product delivered. Unless otherwise requested by the Buyer prior to dispatch by the Seller of the Confirmation, the Seller shall be under no obligation at any time to produce to the Buyer any evidence of Delivery to the Vessel. It is expressly agreed that the furnishing by the Seller of proof of Delivery is not a prerequisite to payment of the Price.

## 12.00 PAYMENT

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

**12.01** Payment of the Price will be made in United States dollars, or any other currency as agreed in the Confirmation, to the bank and account specified by the Seller so as to ensure that the Seller receives value for the payment in cleared funds on or before the Due Date. Payment shall be deemed to have been effected on the date when full amount due to the Seller is credited to Seller's account. Payment shall be made in full, without any set-off, counterclaim deduction and / or discount, free of bank charges.

**12.02** Due date is as provided in the Confirmation or, in default, the date of Delivery. Any credit term granted in the Confirmation is conditioned upon Buyer's compliance with all the due dates for payment for early supplies, failing which all Prices will be considered immediately due.

At the sole discretion of the Seller, invoices may be submitted to the Buyer by any form of telegraphic communication, including, but not limited to, e-mail or facsimile. Lack of receipt of the invoice does not relieve the Buyer from its obligation to make full payment of the amount due.

**12.03** Timely payment is of the essence of the Agreement.

**12.04** If the Product is supplied on a credit basis and full payment is not received by on the due date, the Buyer shall immediately be in default. Late payment will incur a financial charge to Buyer of 2% per calendar month on the outstanding sum calculated on a daily basis from Due Date until the payment is received by the Seller. This shall be in addition to any other remedies which Seller may be entitled to. Accrued financial charges will be added to and become part of the outstanding sum at monthly intervals.

**12.05** Payment will be made by way of telegraphic, telex, swift or rapid electronic transfer to the bank and account specified by the Seller. 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.

**12.06** Payments received by the Seller from or on behalf of the Buyer, notwithstanding any specific request to the contrary, will be applied

in the following order in diminution or extinction of:

- a. Accrued financial and other charges in respect of transactions for which the principal sum has been previously paid.
- b. Accrued financial and other charges arising from all other transactions.
- c. Any principal sum or sums due and outstanding commencing with the oldest and proceeding chronologically thereafter to the most recent.
- d. Any principal sum which the Seller knows or reasonably expects will fall due at a future date.

**12.07** The Seller may in good faith vary, amend, withdraw, substitute or add to the terms relating to payment at any time in the course of a transaction in such a manner as it shall in its absolute discretion consider necessary to protect its interests.

**12.08** If at any time the reputation, standing, creditworthiness, liquidity or solvency of the Buyer or any subsidiary, parent, associate or affiliate thereof should give the Seller reasonable cause for concern, 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 are withdrawn or suspended as the case may be and all sums outstanding shall thereupon fall due for immediate payment. In any case, if at any time prior to delivery of the Product under this Agreement to the Vessel, the Buyer is in default of any of its obligations under this or any other agreement between the Seller and the Buyer, the Seller shall be entitled to cancel this Agreement and / or to refuse delivery under this Agreement, and shall be under no liability for damages or otherwise to the Buyer under this Agreement.

**12.09** In the event that the Buyer or any subsidiary or parent thereof shall commit an act of bankruptcy or shall be the subject of proceedings, judicial or otherwise commenced for debt, bankruptcy, insolvency, liquidation or winding up, the Seller may forthwith terminate the Agreement and shall be under no liability for damages or otherwise to the Buyer. In case of bankruptcy, and to the extent permitted by law, Buyer agrees that Seller possesses priority over all other contract claims against Buyer.

**12.10** The full legal and other costs and expenses incurred by the Seller including those of the Seller own legal department and of other lawyers in connection with any breach by the Buyer of any term of the Agreement including but not limited to actions for debt shall be for the Buyer's account and shall for all purpose form part of the Price due from the Buyer to the Seller for Product supplied.

### **13.00 CLAIMS, DISPUTES AND PRECAUTIONS**

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**13.01 Notification.** Written notice of any claim or potential claim must be given to the Seller within the time limit specified. It is the Buyer's responsibility to ensure that notice is received by the Seller, whose confirmation of receipt should always be sought. Regardless of whether a claim or dispute has arisen or is anticipated, the Buyer must always give prompt notice to the Seller of any alleged 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.

**13.02 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 transactions, the nature of the complaint and the loss or damage alleged. Any notice which does not give such 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 relating thereto.

**13.03 Quantity claims and disputes.** The quantity to be delivered is that indicated in the confirmation. Should the Buyer require more quantity to be delivered after confirmation has been sent, Seller shall make reasonable efforts to satisfy Buyer's request but with no obligation whatsoever to deliver the quantity exceeding that indicated in the Confirmation.

**13.03.1** The Buyer's representative shall, together with Seller's or Physical Supplier's representative measure and verify the quantities of Product delivered from the tank from which delivery is made. For bulk deliveries, delivery barges, wagons and vehicles must be checked by tank dipping to measure the contents and ensure full turnout. 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 Seller / Physical Supplier's delivery receipt. The Seller shall reject claims for short delivery where these receiving procedures are not followed.

In any case, should bunker quantity be subject to determination by local custom authorities, it is understood that the quantity binding upon the parties shall be exclusively the one resulting from such determination, and afterwards indicated in the pertinent document delivered by the authority mentioned above.

**13.03.2** The Seller will not accept a claim for short delivery based upon figures obtained by measuring Product in the Vessel's tanks as well as findings of any surveyor appointed unilaterally by buyer. When Product is supplied by barge, the particular barge will present its tank calibration and ullage sounding records, which are considered to be the sole valid and binding documents to determine the quantity supplied. Quantities calculated from the receiving Vessel's sounding shall not be considered.

**13.03.3** Should the Buyer's representative fail or decline to verify the quantities, the measurements of quantities made by the Seller or



Physical supplier shall be final, conclusive and binding and the Buyer shall be deemed to have waived any and all claims in regard to any variance.

**13.03.4** Buyer expressly undertakes not to make any endorsement, complaint/comment on the Product Delivery Receipt when presented for signature.

In the event of complaint/comment on the quantity of Product delivered, the Buyer or the Master of the Vessel shall give to the Seller or Physical Supplier at the time of loading a letter of protest separately, followed by a formal written Buyer's complaint in detail to the Seller, with full supporting vouchers, in writing within 7 (seven) days from the date of the delivery.

If Buyer fails to give such letter of protest or such written detailed formal complaint within the mentioned time limits, any Buyer's claim shall be conclusively deemed waived. It is Buyer's responsibility to ensure the notice is timely received by Seller whose confirmation of receipt should always be sought.

**13.03.5** The quantity agreed upon, the Seller or Physical Supplier shall be at liberty to provide, and the Buyer shall accept a variation of 5% from the agreed quantity, with no other consequence than a similar variation to the corresponding invoice from the Seller.

**13.03.6** The time limit for receipt by the Seller of notice of a quantity dispute is 7 (seven) days from the date of Delivery or such shorter period as specified in the Confirmation.

**13.3.7** Should a dispute arise on the quantity delivered, the parties shall immediately appoint, together with the Physical Supplier, an Independent Surveyor who shall ascertain the quantity actually delivered and whose determination shall be final and binding upon the parties, unless Independent Surveyor's wilful misconduct is proved. Costs for the survey shall be paid by the defaulting party.

**13.3.8** Claims, if any, are to be settled separately from payment of the Price, which, in all cases, has to be honoured in full without delay.

**13.04 Quality Claims and Disputes.** The quality shall be the one specified in the Confirmation and, other than as more precisely specified therein, shall be one of the Seller or Physical Supplier commercial grades of Products as currently offered to its Buyers at the time and Point of Delivery for marine products.

Should the quality above not be available, Seller shall advise the Buyer and offer the grades and quantities available at that time without any liability whatsoever to Seller.

Buyer shall have the responsibility for the selection and acceptance of the Product. In particular, it is Buyer's responsibility to ensure that the products tendered for Delivery are those which are required by the Vessel and are delivered into the correct tanks. The Vessel shall provide and have appropriate and segregated tanks to receive the contracted quantity of Product; and the Vessel shall always be able to perform its own blending on board if any blending is deemed to be required by Buyer. The Vessel shall upon delivery test the Products supplied by running her engines or auxiliaries or equipment, for which the Products are supplied, for a minimum of 1 (one) hour to determine that the Products are satisfactory. In the event the Products are not considered satisfactory, the Seller and Physical Supplier are to be notified immediately after such test period has expired.

**13.04.1** It is the duty of the Buyer to instruct Physical Supplier and Vessel's officers and crew to take four (4) representative samples of every consignment and load of the Product on commencement of delivery in accordance with the custom at Point of Delivery. The four representative samples must be signed, labelled and sealed by a representative of the Physical Supplier and by an officer of the Vessel or other senior representative of the Buyer. Samples have to be provided with labels showing the Vessel's name, Place of Supply, Point of Delivery, Product name, Delivery Date and seal number. The seal numbers shall be inserted into the Physical Supplier's delivery receipt. By signing and stamping the Physical Supplier's delivery receipt, both parties agree to the fact that the samples referred to therein are deemed valid and taken in accordance with the requirements as specified in this clause.

No other samples shall be representative for Seller.

If Buyer / Vessel's crew / Vessel's officer fails to attend the sample taking, the samples will be sealed and signed by Physical Supplier only.

**13.04.2** In case that drip sampling is not available on board barge, truck or shore tank, samples shall be taken as a composite of each tank from which supplies are made, divided with 1/4 from each the top, mid and bottom of the tanks.

**13.04.3** Two (2) sets of samples taken shall be retained by the Seller / Physical Supplier for sixty (60) days after delivery of the Product or, if requested by the Buyer in writing and agreed by the Seller, for as long as the Buyer reasonably required. The other two (2) sets of samples must be retained by the Vessel, one of which may also 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.

**13.04.4** In the event of the Buyer having grounds to believe that the Product supplied does not accord with the relevant description in the Confirmation or is defective, the Buyer shall immediately:

- a. Take all reasonable steps to mitigate the consequences of having been supplied with possibly defective or incorrect Product.
- b. Give immediate written notice with full details of the possibly defective or incorrect Product to the Seller together with the Vessel's position, destination and ETA; the quantities and locations of all Products on board the Vessel/stored in the Vessel,

the rate and quantity of consumption since delivery and the location immediately prior to consumption of Products consumed; for each of the three preceding deliveries to the Vessel, the quantity, quality and specification of Product supplied, the place and date of supply, and the name of the Physical Supplier.

c. Inform the Seller of the whereabouts of the Buyer's Set of Samples.

**13.04.5** In the event of a dispute in regard to the quality of the Product delivered, the samples drawn pursuant to clauses related hereto above in this Article, shall be deemed to be conclusive and final evidence of the quality of the product delivered. One, and only one, of the samples retained by Physical Supplier shall be forwarded to an independent laboratory to perform a set of tests, the result of which are to be made available to both parties. Those test results shall be final and binding upon both Buyer and Seller as to the parameters tested. The parties are to use best endeavours to agree the independent laboratory to perform the tests. If, however, no agreement can be reached on the choice of laboratory within three (3) days of the Buyer being advised of the Seller opting to have the sample tested, the Seller is at liberty to send the sample to a reputable and independent laboratory of its choice for the tests to be conducted, and those test result will be final and binding upon Buyer and Seller as set out above.

Analysis costs to be paid by the Buyer if the Product is found in order, or by the Seller if it is found out of the agreed specifications..

**13.04.6** The seal must be breached only in presence of the Seller unless it declares in writing that it will not be present; and parties shall have the right to appoint independent person(s) or institute(s) to witness seal breaking. No samples subsequently taken shall be allowed as (additional) evidence. If any of the seals have been removed or tampered with by an unauthorised person or not in presence of the Seller, such sample(s) shall be deemed to have no value as evidence.

**13.04.7** Any eventual samples drawn by Buyer's personnel either during delivery or at any later date after delivery shall not be valid as indicator of the quality supplied. The fact that such samples may eventually bear the signature of personnel on board the barge or tank truck or other delivery conveyance shall have no legal significance as such local personnel have no authority to bind Seller to different contractual terms. Seller shall have no liability for claims arising in circumstances where Buyer may have commingled the products on board the Vessel with other Products.

**13.04.8** Notwithstanding provisions of clause 17, if it is alleged that any equipment or machinery has been damaged by defective Product, 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.

**13.04.9** The time limit for receipt by the Seller of a Buyer's written notice of a quality claim is 7 (seven) days from the date of Delivery or such shorter period as is specified in the Confirmation.

It is Buyer's responsibility to ensure that the notice is received by the Seller, whose confirmation of receipt should always be sought.

If the Buyer fails to give written notification within the mentioned time limit, any quality claim shall be conclusively deemed to have been waived.

In case of any complaint, Seller may inspect the Vessel, whether at Buyer's request or otherwise. Such inspection or analysis made in connection herewith shall be made entirely without any obligation on Seller's behalf to consider or act upon any claim or complaint by Buyer or otherwise and shall be entirely without prejudice to Seller's position.

**13.05 Other Claims and Disputes.** Notice of all other claims, specifically excluding any and all claims relating to or associated with those relating to matters of quantity or quality which are subject to the time limits set out in sub-clause 13.03.4 and 13.04.9 above, should be given to the Seller as soon as reasonably possible and in any event no later than seven (7) days after delivery. If the Confirmation provides for a shorter period, such shorter period shall apply.

It is Buyer's responsibility to ensure that the notice is received by the Seller whose confirmation of receipt should always be sought.

If the Buyer fails to give written notification within the mentioned time limit, any other claim as above shall be conclusively deemed to have been waived.

**13.06 Summary of Time Limits for Submission of Notice of Claim:**

Quantity claims and disputes - Seven (7) days

Quality claims and disputes – Seven (7) days

Other claims and disputes – Seven (7) days

All of the above terms run from the date of the delivery and are subject to the provision of shorter time limits in the Confirmation.

**13.07 Submission of Claim Supporting Documentation and Evidence.** As soon as reasonably possible, after providing notice of a claim relating to quantity or quality issues, Buyer shall furnish to the Seller a sample of the Product delivered to the Buyer's Vessel, and all documentation supporting Buyer's claim, including, but not limited to, all analyses performed on the Product. Buyer shall immediately give Seller all reasonable opportunity to inspect the Vessel, including, without limitation, its engines, fuel tanks, equipment, logs, records and copies of communications, including communications between Vessel and Buyer (and/or between Vessel and owner or operator), as well as communications to and from fuel testing organisations consulted by Buyer or Vessel interests. If Notice of a Claim is not provided

within the periods above or the conditions in this sub-paragraph 13.07 are not met within thirty (30) days of the date the Product was delivered to the Vessel, Buyer shall be time-barred from making a claim. The parties also agree that any such claim is time-barred, if litigation is not commenced within one year of the delivery date.

**13.08** A Claim of any nature by Buyer does not relieve Buyer of the responsibility and obligation to make full and timely payment of all amounts billed by Seller. Claims, if any, are to be settled separately from payment of the Price which, in all cases, has to be honoured in full without delay.

#### **14.00 WAIVER**

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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 or in any way affect the validity of the 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.

#### **15.00 INDEMNITY**

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**15.01** The Buyer shall hold Seller harmless from any and all consequences and / or responsibility arising out of any and all uses of the Product after the Product itself has been delivered.

The Buyer shall also indemnify 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 unless the Buyer proves that they have been caused by the negligence or default of the Seller.

Indemnification shall also include all costs, reasonable attorney's fees, and other damages, including, but not limited to, the costs of compelling Buyer to comply with these terms and conditions.

**15.02** Buyer shall also indemnify and hold harmless Seller, the Physical Supplier, the fuel barge contractor and their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of services or the providing of Products under this contract, including claims, damages, losses, penalties or expenses arising under any air, water quality or hazardous waste statute, regulation or ordinance, hereinafter referred to as "pollution claims", providing that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than Buyer's Vessel and its appurtenances) including the loss of use resulting therefrom, or to pollution claims, and (b) is not wholly caused by the Seller, the Physical Supplier, the fuel barge contractor, their agents or employees.

**15.03** Without any prejudice to the above provisions, if a spill occurs while the Product is being delivered, the Buyer shall promptly take such actions as they are reasonably necessary to remove the spilled product and to mitigate the effect of such spill. Buyer shall cooperate and render such assistance as required by Seller in the course of such action. The burden of proof to show Seller's negligence shall be on the Buyer. Buyer shall give Seller all documents and other information concerning any spill, or any program for the prevention thereof that are required by Seller or required by law or regulation applicable at the time and place of delivery.

#### **16.00 BUNKER USAGE**

Being in any case understood Seller's indemnity as referred to in paragraph 15, Buyer guarantees that the Product supplied by Seller to Buyer shall not be used in any way other than for the bunkering requirements of Buyer's vessel.

#### **17.00 LIABILITY**

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**17.01 Liability.** To the extent permitted by Law, the Seller shall not be liable to the Buyer for any loss or damage of whatsoever nature including physical injury, loss of hire, loss of profit or any other consequential damages or loss whatsoever arising from any cause whatsoever whether in contract, tort or otherwise including the negligence of the Seller, its servants, agents or sub-contractors. Consequential damages or losses include any and all damage claims involving supply chain interruptions, and contracts and/or prospective contracts about which Seller has received no written information at the inception of the Agreement, detention, demurrage, charter hire, crew wages, towage, pilotage, lost profits, barge delivery charges and increased costs or expenses in obtaining replacement Product.

## **17.02 Limitation of Liability**

**17.02.1** Notwithstanding any provisions in this Agreement or any confirmation to the contrary, Seller's liability for any breach of contract or warranty, or commission of any tort is limited to the Price, or USD 50,000, whichever is less. Under no circumstances shall Seller be liable should Buyer suffer losses due to any physical damage to property in which Buyer or third parties hold a proprietary interest.

**17.02.2** Seller shall not be liable for demurrage or for loss, damage or expense of any nature whatsoever incurred by Buyer due to any delay in delivery, or failure to make delivery, of Product occasioned by the barge contractor. Seller shall not be liable for such demurrage, loss, damage or expense incurred by Buyer due to delays in furnishing a berth. In any situation not included above, Seller shall not be liable for delay in delivery, or failure to make delivery, of Product unless Buyer proves that the delay or failure was solely caused by gross negligence on the part of the Seller.

**17.02.3** Seller is not liable for supplying defective or improper Product or Product other than as ordered by Buyer, unless the same is directly and solely caused by the negligence of Seller's own employees, which negligence must be affirmatively proved. In such event, Seller's liability, if any, is strictly limited to the cost of replacement of the defective or wrong kind of Product at the date and Place of Supply furnished. Buyer acknowledges and warrants that it is Buyer's responsibility to test the Product provided and to insure that it is proper in all respects prior to the use of such fuel on Buyer's Vessel. Accordingly, Seller shall not be responsible for any damage to Buyer's Vessel, including, without limitation thereto, its machinery or tanks or their contents, caused by use of defective, improper, or the wrong kind of Product.

**17.02.4 DISCLAIMER OF WARRANTIES.** ANY IMPLIED WARRANTIES WHATSOEVER, WHETHER STATUTORY OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR OF CONDITION, AND ANY ORAL OR IMPLIED AGREEMENTS INCONSISTENT WITH THIS AGREEMENT ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

## **18.00 COMPENSATION**

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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 price charged to the Buyer for Product supplied under this Agreement. It is a pre-condition to the payment of any compensation by the Seller that all sums standing due to the Seller from the Buyer are first paid and settled.

## **19.00 INSURANCE**

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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 Agreement and Delivery.

## **20.00 LICENCES, PERMITS AND APPROVALS**

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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.

## **21.00 GOOD PRACTICE**

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The Buyer shall, in addition to observing and complying with the terms of the Agreement, abide by generally accepted good operating practices.

## **22.00 APPLICABLE LAW AND JURISDICTION**

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These general terms and conditions, the Agreement, its performance and enforcement, except as otherwise expressly agreed in writing, shall be governed by the law of the State of New York (USA).

The Buyer expressly accepts and submits to the non-exclusive jurisdiction of the Court of Genoa (Italy).

Any jurisdiction / arbitration clause applicable in the relationship between the Seller and the Physical Supplier may be enforced by the Seller also in the relationship with the Buyer.

In any event the Seller will remain entitled to institute any action aimed to secure any outstanding claim he may have against the Buyer in front of any Court the Seller may deem fit irrespective of whether or not such Court has jurisdiction on the merits.

## **23.00 SANCTIONS**

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**23.01** The Buyer represents, warrants and undertakes that:

**23.01.1** it shall at all times comply with Sanctions applicable to the Seller and/or the Buyer that affect the performance of either party's obligations under this Agreement;

**23.01.2** it is not, whether directly or indirectly, the subject of any Sanctions and that it will promptly notify the Seller should it become, or have reasonable cause to suspect it will become, subject to Sanctions during the term of this Agreement; and

**23.01.3** it will not nominate any Vessel to receive Product or perform any of its obligations under this Agreement in violation of any Sanctions or which would put the Seller in breach of any Sanctions.

**23.02** If the Buyer is or becomes subject to Sanctions which affect the ability of either party to perform any obligations under this Agreement or the performance of any aspect of this Agreement becomes prohibited by Sanctions, the Seller may, at its sole discretion, terminate this Agreement by notice to the Buyer.

**23.03** The Seller will have the right to reject any Vessel nomination which violates any Sanctions or puts the Seller in breach of any Sanctions by serving a rejection notice on the Buyer detailing the grounds for the rejection. If the Seller rejects a nomination of a Vessel on these grounds it shall be entitled, at its sole discretion, to (i) require the Buyer to promptly nominate a suitable substitute vessel; or (ii) terminate this Agreement.

**23.04** The service of notice to the Buyer pursuant to Clause 23.02 or 23.03 shall not constitute a breach of this Agreement and the Seller shall not be liable to the Buyer for any losses, claims, costs, expenses, damages or liabilities arising in connection with any such termination or rejection.

**23.05** To the full extent permitted by applicable law, the Buyer shall indemnify the Seller against any and all costs, expenses, losses and liabilities it incurs as a result of the Buyer being in breach of its obligations under this clause 23.