



## STANDARD TERMS AND CONDITIONS OF SALE OF MARINE FUEL BY KPI OCEANCONNECT HK LIMITED.

29 AUGUST 2020

Except as may otherwise be negotiated by the parties and agreed to in writing, the following terms and conditions shall apply to all sales of marine bunker fuels and related products of whatever type or grade by KPI OCEANCONNECT HK LIMITED to any Buyer as defined below:

### ARTICLE 1 DEFINITIONS AND INCORPORATION

#### 1.1 In this document the following terms shall have the following meanings:

**Affiliate** means a company, partnership, or other legal entity which controls, is controlled by, or is under the indirect ownership of fifty per cent (50%) or more of the issued share capital or any kind of voting rights in a company, partnership, or legal entity, and "controls", "controlled" and "under common control" shall be construed accordingly.

**Agent** means a party acting on behalf of the Buyer and/or the Vessel.

**Bunker Confirmation** means the order confirmation in writing from the Seller to the Buyer setting forth the particular terms of each sale of Bunker Fuel.

**Bunker Contract** means the Bunker Confirmation and the Standard Terms.

**Bunker Fuel** means marine bunker fuel and related products and services of whatever type or grade delivered by the Seller.

**Buyer** means the Buyer under each Bunker Contract, including the entity or entities named in the Bunker Confirmation, together with the Vessel, her master, owners, operators, charterers, any party benefitting from consuming the Bunker Fuel, and any other party ordering the Bunker Fuel, all of whom shall be jointly and severally liable as Buyer under each Bunker Contract.

**Sanction laws** means the various export controls and economic sanctions regulations, including but not limited to, those maintained by various European Governments and the EU, Switzerland, the US Government as enforced by the US Office of Foreign Assets Control, the US Department of State, and the US Department of Commerce, and various UN sanctions as implemented into local laws.

**Standard Terms** means these terms and conditions in force as of 29 August 2020 and any subsequent amendments thereto.

**Seller** means KPI OceanConnect HK Limited with registered address at Room 604, 6f Phase I China Taiping Tower, 8 Sunning Road, Causeway Bay, Hong Kong, as identified on the relevant invoice issued in respect the Bunker Contract.

**Vessel** means the Vessel to which a delivery of Bunker Fuel is made and/or onboard when it is consumed, which shall include any on-shore tank, rig, or other unit or installation supplied by the Seller.

#### 1.2 Incorporation of Standard Terms

Each sale of Bunker Fuel shall be confirmed by a Bunker Confirmation at which time the Bunker Contract is made. Should the Buyer disagree to any terms contained therein the Buyer is under an obligation to object to the terms of the Bunker Confirmation immediately and in no event later than 3 hours after circulation of the Bunker Confirmation. The Bunker Confirmation shall incorporate the Standard Terms by reference and the Bunker Confirmation and the Standard Terms together constitute the complete Bunker Contract. The Bunker Contract shall supersede and replace any other terms or contracts which the Buyer may seek to enforce against the Seller. In particular, any terms not directly aimed at bunker sales transactions may not be enforced against the Seller to the effect they contravene the Bunker Contract. If the Seller for whatever reason fails to issue or send a Bunker Confirmation to the Buyer these Standard Terms shall govern the sale nonetheless and a contract pursuant to these Standard Terms shall be deemed to have been made.

## ARTICLE 2 PRICE

- 2.1** The Buyer shall pay the price for the Bunker Fuel in accordance with the terms of the Bunker Contract. Buyer shall, in addition to the price, pay all applicable duties, taxes and other such costs including, without limitation, those imposed by governmental authorities, and barging and other delivery charges.

## ARTICLE 3 NOMINATION AND DELIVERIES

- 3.1** Any Agent, whether disclosed or undisclosed, which enters into a Bunker Contract shall (i) be jointly and severally liable with the Buyer for the proper performance of all the obligations of the Buyer under this Bunker Contract as if acting as a principal; and/or (ii) guarantee the Buyer's obligations under the Bunker Contract.
- 3.2** All orders of Bunker Fuel are considered to be emanating from and approved by the Master of the Vessel, even if relayed by the Buyer to the Seller and even if no written request from the Master of the Vessel exists. Seller has a maritime lien on the Vessel as of the date of delivery of the Bunker Fuel to the Vessel.
- 3.3** **The Buyer shall make the Vessel available for delivery within the agreed delivery period set out in the Bunker Confirmation.** Unless otherwise agreed Buyer will give Seller and Seller's local representative at least 72 hours prior written notice of arrival, specifying the Vessel's estimated time of arrival and method of delivery of Bunker Fuel. Buyer will give Seller's local representative at the delivery port at least 36 working hours advance notice of delivery details. If the Vessel arrives outside the agreed delivery period set out in the Bunker Confirmation or later than 2 hours from the specified time of arrival all supplies will be made on a reasonable endeavour basis and subject to adjustment for price increases and/or additional costs incurred.
- 3.4** The time of delivery specified by the Seller is an approximate time and the Seller shall commence delivery of the Bunker Fuel within the agreed delivery period set out in the Bunker Confirmation and no guarantee of the time or rate of delivery is given. Where delivery is required outside normal working hours and is permitted by applicable regulations, Buyer will pay all overtime and extra expenses incurred.
- 3.5** Buyer will make all connections and disconnections of the delivery hose and will render all other necessary assistance and equipment to receive delivery. The Buyer shall ensure that the Vessel provides a free, safe and always accessible side for the delivery of bunkers and that all necessary assistance as required by the Seller or the Seller's representative is rendered in connection with the delivery. For safety reasons it is solely the master of the supply barge that determines whether mooring alongside the Vessel is safe, taking weather, swell and forecasts into decision. If clear and safe berth is unavailable, delivery may be delayed or cancelled by the Seller and all costs incurred will be for the Buyer's account.
- 3.6** In the event that the supply is made in a ship-to-ship transfer, any damage caused by contact, collision, swell or any other weather or sea related condition or the negligence or navigation of the supply vessel shall be dealt with by the Buyer directly with the owners of the supply vessel. The Seller shall not be held liable for any such damages and the Buyer shall indemnify the Seller against any claims arising out of such incident.
- 3.7** Where lightering/barging is employed, lightering/barging charges shall be for the account of Buyer. If Buyer fails to take delivery, in whole or in part, of the quantities nominated, Buyer shall be responsible for any costs resulting from Buyer's failure to take full delivery, as well as for any losses incurred by Seller to downgrade and/or pump back of the fuel.
- 3.8** Buyer will be liable for all demurrage or additional expenses incurred by Seller if Buyer causes delay to the supply of Bunker Fuel. Buyer will also pay for mooring, unmooring and port dues incurred. In addition Buyer will be liable for any expenses incurred by Seller resulting from Buyer's failure to take delivery of the full quantity of Bunker Fuels agreed to by Buyer including but not limited to any loss on the resale of the Bunker Fuels and the Buyer shall bear the risk of the return transport, demurrage on the barge or trucks, storage or selling of the Bunker Fuels.
- 3.9** Buyer shall indemnify and hold harmless Seller against all damage and liabilities arising from any acts or omissions of Buyer or its servants, ship's officers or crew in connection with the delivery of the fuel under this Bunker Contract.
- 3.10** If Buyer cancels the nomination for any reason whatsoever the Buyer shall be liable to the Seller for any and all direct or indirect or consequential losses incurred by the Seller resulting from such purported cancellation, termination or failure, including but not limited to: a. any charges and expenses levied by a third party; b. any difference in price between the sales price and the market price at the delivery location; c. losses, costs and damages associated with the cancellation; d. costs of selling any

undelivered Bunker Fuel; e. additional operational expenses such as pump-back fees, inspection charges and storage; and f. demurrage., such sums to be paid immediately upon demand.

- 3.11** Seller will not be liable for any costs or losses incurred by Buyer as a result of any delay in delivery regardless of cause, including but not limited to delay due to (a) congestion affecting the physical supplier of Bunker Fuel at the delivery facilities, (b) prior commitments of available barges, (c) local customs, pilots, port or other authorities or (d) to any other cause of delay in delivery.

## **ARTICLE 4 QUALITY**

- 4.1** Buyer shall have the sole responsibility for the selection of the proper grades of Bunker Fuels for use in the Vessel and the Seller shall not be under any obligation to check whether the grade of Bunker Fuels is suitable for the Vessel. The Bunker Fuels shall be of the same quality generally offered for sale at the time and place of delivery, for the grade of Bunker Fuels ordered by the Buyer. Any express or implied warranties, including the warranties of merchantability, durability, suitability, stability, compatibility or fitness for a particular purpose, by common law, statute, or otherwise are expressly excluded and disclaimed.
- 4.2** Buyer at its own expense has the right to have its representatives present to inspect the Bunker Fuel to be delivered hereunder before it is pumped aboard the Vessel being supplied. Any such inspection must not delay delivery and must take place in the presence of a representative of the Seller.
- 4.3** The Buyer shall be responsible to keep the delivered Bunker Fuel segregated from any Bunker Fuel(s) onboard the Vessel or from a different delivery to the Vessel. In no event shall the Seller be responsible for the quality and compatibility of the Bunker Fuel delivered if the Seller's product is mixed or comingled with any other product(s) onboard the receiving Vessel. The Buyer shall be solely responsible for any losses caused by mixing or comingling the Bunker Fuel with any other oil, including any damage the Bunker Fuel may cause on other products on board the receiving Vessel.
- 4.4** Where the Buyer nominates Bunker Fuel above the sulphur limits set out in MARPOL Annex VI, the Buyer shall be fully responsible for, and on the Seller's request provide confirmation in writing, that the Vessel has working Abatement Technology (as defined in MARPOL Annex VI) installed in compliance with MARPOL Annex VI or must include a copy of a valid Fuel Oil Non-Availability Report (FONAR) and the relevant authorisation granted to the Vessel for that specific delivery of Bunker Fuel. The Buyer shall indemnify the Seller of all cost or losses incurred as a result of Seller's breach of this Clause 4.4.

## **ARTICLE 5 QUANTITY**

- 5.1** The quantity of Bunker Fuel delivered shall be determined from gauges/ullages of the barge or truck effecting delivery or by gauging/ullages of shore tank if delivery is by pipeline and these soundings or measurements shall be conclusive evidence of the quantities delivered and shall be recorded in the bunker delivery note which the Buyer shall be invited to counter-sign. Buyer has the right to have its representatives present during measurements, but determination of quantity shall be made solely by Seller. Should the Buyer's representative fail or decline to verify the quantities, the measurements of quantities made by the physical supplier and recorded in the bunker delivery note, the recordings of Bunker Fuel shall be conclusive and the Buyer shall in such case have waived any claims with respect to variance. The quantity of Bunker Fuel delivered shall be the quantity specified in the Bunker Confirmation with a tolerance at Seller's option of +/- 5 % of the quantity specified.

## **ARTICLE 6 SAMPLING**

- 6.1** The Seller or its representatives shall arrange for samples to be drawn at the time of delivery of the Bunker Fuel. Unless otherwise agreed between the Seller and Buyer prior to entering into the Bunker Contract, the samples shall be drawn from a point and in a manner chosen by the Seller or its representatives in accordance with the customary sampling procedures at the port or place of delivery of the Bunker Fuel.
- 6.2** The sampling mentioned in paragraph 6.1 shall be performed in the presence of the Seller or its representatives and the Buyer or its representatives, but the absence of the Buyer or its representatives during all or any part of the sampling process shall not prejudice the validity of the samples.
- 6.3** On completion of sampling, all samples drawn by the Seller or its representatives are to be sealed, labelled and signed by both Seller or its representatives and Buyer or its representatives and their numbers stated on the bunker delivery note. Two samples shall be retained by the Buyer or its representatives, one of these shall be the MARPOL compliant sample. The remaining samples shall be retained by the Seller or its representatives.

- 6.4** In the event of a dispute concerning the quality of the Bunker Fuel, one, and only one, of the samples retained by the Seller with a seal number reflected on the bunker delivery note, shall be forwarded for testing to an independent laboratory mutually appointed by the Buyer and Seller. The results of the analysis of the sample shall be conclusive to determine the quality of the Bunker Fuel supplied. Analysis results of the Seller's or its representative's drawn samples will be the sole binding evidence for the quality of the Bunker Fuel supplied to the Vessel. Where standard specifications are being given or referred to, tolerances in accordance with ISO 4259 in respect of reproducibility or repeatability in quality are to be accepted without compensation or consequences whatsoever.
- 6.5** If the Buyer's complaint concerning the quality of the Product is based on the presence of substances which are not part of the quality specifications set out in Table 1 or Table 2 of ISO 8217, the Buyer shall show that the substances in question without a reasonable doubt jeopardize the safety of the Vessel or adversely affect the performance of the machinery.
- 6.6** No samples drawn by the Buyer's personnel or samples subsequently taken shall be allowed as evidence of the quality of the Bunker Fuel. If any seals have been removed or tampered with by an unauthorised person, such samples shall be deemed to have no value as evidence.
- 6.7** If the Seller and the Buyer cannot agree on an independent laboratory to perform mutual analysis or if the Buyer fails to reply to the Seller's notice hereof within 7 days from receipt of such notice, the Seller can at its sole discretion decide which laboratory to perform the analysis, which shall be final and binding for all parties involved.

## **ARTICLE 7 RISK**

- 7.1** Risk in the Bunker Fuel, including loss, damage, deterioration, evaporation, or any other condition or incidents related thereto shall pass to the Buyer as the Bunker Fuel passes the fixed bunker connections on the delivering vessel or truck. The buyer warrants that representatives from the Vessel shall be responsible for ensuring that the Bunker Fuel is received in a safe way.
- 7.2** Title in the Bunker Fuel shall remain with the Seller until the Buyer has paid for the Bunker Fuel in full. Until that time, the Buyer shall hold the Bunker Fuel as bailee, store it in such a way that it can be identified as the Seller's property and keep it separate from Buyer's own property and the property of any other person. In the event that the Buyer fails to make payment in accordance with Article 8, the Seller has the right to demand immediate return of the Bunker Fuel and any party other than the Buyer who consumes the Bunker Fuel shall be liable to the Seller in conversion.

## **ARTICLE 8 PAYMENT**

- 8.1** Payment shall unless otherwise agreed be made in United States Dollars by bank transfer in full without any set-off, counterclaim, deduction and/or discount free of bank charges to the bank account identified by the Seller in the invoice. Payment shall be deemed to have been made on the date the payment is credited to the Seller's bank account. If the Buyer fails to make payment in full by reference to an alleged counterclaim the Seller shall be entitled to claim an additional penalty fee of 20 per cent of the outstanding amount.
- 8.2** If not otherwise specifically agreed between Buyer and Seller at time of ordering, the confirmed costs including possible additional extra costs are only valid for delivery performed to the Vessel on the agreed and confirmed delivery date(s). Should the date(s) of delivery for any reason change, the Seller is entitled to change the price. The Seller shall be entitled, at its sole discretion, to specify any particular invoice or part thereof to which any payment(s) shall be applied, including, but not limited to, payment covering interest charges, legal fees and other charges. Moreover, the Buyer shall indemnify the Seller against any loss which is caused by adverse currency fluctuations between the invoice currency and the value of the US Dollar from the latest due date of the invoice until the date on which payment is made.
- 8.3** Unless a longer or shorter period is set out in the Bunker Confirmation, payment is to be received by Seller within a period of 30 days from the date of delivery. Any delay in payment of the full sum shall entitle Seller to interest at the rate of three percent (3%) per month and the interest shall be compounded monthly for each month, or part thereof, unless the parties have agreed to any other specific interest rate as set out in the Bunker Confirmation. In addition to interest, Seller is entitled to charge a delayed payment administration fee of USD 1.50 per metric ton supplied with a minimum administration fee of USD 500 for each delivery made.
- 8.4** Notwithstanding any agreement to the contrary, payment will be due immediately and the Seller shall be entitled to cancel all outstanding stems and/or withhold future deliveries in case of:

- (i) bankruptcy, liquidation or suspension of payment or comparable situation of the Buyer,
- (ii) arrest of assets of the Buyer including, but not limited to, the Vessel
- (iii) liquidation/bankruptcy or any other changed financial or legal position of the parent company, sister companies or affiliated companies to the Buyer which in the sole discretion of the Seller is deemed to adversely affect the financial position of the Buyer
- (iv) if the Buyer fails to pay any invoice to the Seller at the time of maturity set forth in such invoice,
- (v) if the Buyer fails to comply with any other obligation pursuant to the Bunker Contract, including, but not limited to, the Buyer's failure to take delivery of Bunker Fuels in full or in part, or
- (vi) in case of any other situation, which in the sole discretion of the Seller is deemed to adversely affect the Seller's assessment of the financial position of the Buyer.

In any of the foregoing situations the Seller shall have the option to either (a) cancel the Bunker Contract, (b) to store the Bunker Fuel in full or in part for the Buyer's account and risk, (c) to demand that the Buyer complies with its obligations pursuant to the Bunker Contract or (d) to make use of any other remedy available under the law.

- 8.5** Any notice or any stamp in the bunker delivery receipt or similar shall be invalid and cannot waive the Seller's maritime lien on the Vessel unless the Buyer has notified the Seller of its intention to exclude the liability of the Vessel at least 12 hours in advance of the supply. Notification to the physical supplier of Bunker Fuel (or their agents, employees, or representatives) shall have no effect to waive the Seller's maritime lien on the Vessel as the Seller is unable to take immediate reaction to halt a supply in case the Vessel intends to exclude its liability for a supply or otherwise attempts to vary the agreement. Both parties acknowledge that any stamps inserted in the bunker delivery receipt after the supply of Bunker Fuel has taken place can in no event affect the liability of Buyer and the Vessel.
- 8.6** Should the Bunker Fuel be purchased by a manager, broker or agent then such manager, broker or agent as well as the Buyer shall be bound by and liable for all obligations as fully and completely as if they were themselves the Buyer whether such principal be disclosed or undisclosed and whether or not such manager, broker or agent purports to contract as manager, broker or agent only. Furthermore, delivery shall always take place for the account of the registered owners and for the account of the current charterers all of whom shall be jointly and severally liable for the payment of the delivery as Buyers. The Buyer warrants that it is authorized as agent to order the Bunker Fuel for delivery to the Vessel, and that the Seller has a lien on the Vessel for its claim.
- 8.7** Where the Seller has extended any kind of credit facility to a group of companies or associated companies, default by any one relevant Buyer in respect of any invoice of the Seller shall give the right to the Seller to cancel all credit arrangements of the entire group or of the associated companies.
- 8.8** Seller may from time to time without need for prior consent of Buyer, assign any of its rights under the Contract to any third party and the assignee shall enjoy and be entitled to exercise against Buyer any and all rights herein conferred upon Seller.
- 8.9** If at any time an amount is payable by Buyer to Seller, such amount may at the sole discretion of Seller be fully or partially paid by set-off against any amounts payable to Buyer by Seller and any Affiliate of Seller.

## **ARTICLE 9 ARREST OF VESSEL**

- 9.1** The Bunker Fuel supplied to the Vessel is sold and delivered on the credit of the Vessel, as well as on the promise of the Buyer to pay therefore, and the Buyer agrees and warrants that the Seller shall have and may assert a maritime lien against the Vessel and may take such other action or procedure against the Vessel and any other vessel or asset beneficially owned or controlled by the Buyer, for the amount due for the Bunker Fuel and the delivery thereof together with interest accrued. The Buyer, if not the owner of the Vessel, hereby expressly warrants that it has full authority of the Agents/traders/owners/managers/operators/charterers to pledge the Vessel in favour of the Seller and that the Buyer has given notice of the provisions of this Bunker Contract to the owners of the Vessel. The laws of the United States, including but not **limited** to the Commercial Instruments and Maritime

Lien Act, shall always apply with respect to the existence of a maritime lien, regardless of the jurisdiction in which Seller takes legal action. Nothing in this Bunker Contract shall be construed to limit the rights or legal remedies that the Seller may enjoy against the Vessel or the Buyer in any jurisdiction.

## ARTICLE 10 CLAIMS

- 10.1** The quantity of Bunker Fuel delivered shall be determined in accordance with Article 5.1. Any claim regarding the quantity of the Bunker Fuel delivered shall be notified by telephone as well as in writing by the Buyer or the master of the Vessel to the Seller immediately when the dispute occurs and while the delivery hoses are still connected. In the event immediate verbal as well as written notice is not made, such claim shall be deemed to be waived and barred. A notification inserted in the bunker delivery note or in a separate protest handed to the physical supplier of Bunker Fuel shall not qualify as notice under this section 10.1 and the Seller shall under no circumstances be deemed to have accepted such notice or protest handed to the physical supplier.
- 10.2** Any claim regarding the quality of the Bunker Fuel delivered shall be presented in writing to the Seller as soon as an alleged quality problem has occurred or the Buyer is notified of any alleged problem and in any event no later than within 14 days from the date of delivery to the Vessel. Should the Buyer fail to make timely notification of any claim regarding the quality of the Bunker Fuel the claim shall be deemed waived and barred.
- 10.3** A written claim for the purposes of clauses 10.1 and 10.2 must provide a complete and comprehensive explanation of the circumstances and basis of the claim, including where applicable the quantities short and/or the discrepancies in quality, and include a full test report for a test performed on one of the official samples mentioned in the bunker delivery note performed by an independent laboratory along with copies of all correspondence with the independent laboratory and include copies of all supporting documents including the vessel's logs evidencing the matters complained of.
- 10.4** To the extent that the Buyer's test report evidence that the components detected are within the allowed tolerances in respect of reproducibility or repeatability as set out in ISO 4259, the Product shall be deemed to be compliant and the Buyer cannot require further testing of the Product.
- 10.5** In the event of any claim presented in accordance with Section 10.1, and 10.3 and 10.4, the Buyer shall:
- (i) Cooperate with the Seller and make all necessary arrangements for the Seller or its representatives to investigate such claim, including but not limited to the boarding and inspection of the Vessel, the interviewing of crew and the review and copying of Vessel documents.
  - (ii) Take all reasonable steps and actions to mitigate any damages, losses, costs and expenses related to any claim of alleged off-specification or defective Bunker Fuel. If the Bunker Fuel deviates from specifications, the Buyer shall use all reasonable endeavours to mitigate the consequences hereof and shall burn the Bunker Fuel if possible even if this requires employment of purification tools or other similar measures.
  - (iii) Take all reasonable steps to preserve the Seller's recourse against the physical supplier of Bunker Fuel or any culpable third party.
- 10.6** A breach by the Buyer of any part of Article 10.5 above will entitle the Seller to set off losses caused by the breach against any liability to the Buyer.
- 10.7** Any claims against the Seller in respect of this contract shall be brought before the relevant court or arbitral tribunal in accordance with Article 19/20 within 6 months of the date of delivery of the Bunker Fuel, failing which such claims shall be deemed absolutely waived and time barred.
- 10.8** Buyer's submission of any claim does not relieve it of responsibility to make full payments as required under Article 8 and Buyer shall not be entitled to set off any claim from payment.
- 10.9** In the event that the Buyer has made a valid claim regarding the quality of the product, which cannot be mitigated in accordance with 10.5, the Seller shall have the option to debunker the product and perform redelivery of on-spec product in accordance with the terms of the Bunker Contract.

## ARTICLE 11 LIABILITY

- 11.1** The Seller's liability for any claim whatsoever, however arising under the Contract whether caused by negligence or not, whether based in tort or contract and including claims or pollution shall be limited to the value of the Bunkers Fuel as set out in the invoice.

- 11.2** The Seller shall under no circumstances be liable for any consequential losses whatsoever, whether direct or indirect and whether or not foreseeable at the time of formation, including, without limitation, cost and losses from delay, detention, demurrage, charter hire, loss of freight, crew wages, pilotage, towage, port charges, or any loss of profits or any increased cost or expenses for obtaining replacement fuel. In no event shall the Seller be liable for punitive damages.
- 11.3** Any liability for damage to the Vessel shall in any event be reduced by 20 percent of the invoice value of spare parts for each year or fraction thereof in which the replaced part has been in use.
- 11.4** The Buyer undertakes to indemnify the Seller against any claims, losses, costs, fines penalties, damage or liability of whatever kind related to the Bunker Contract instituted by third parties against the Seller to the extent such claims exceeds the Seller's liability towards the Buyer according to section 11.1
- 11.5** Any damage caused by contact or collision shall be dealt with by the Buyer directly with the owners of the supply barge. The Seller shall not be held liable for any such damages and the Buyer shall indemnify the Seller against any claims made against the Seller arising out of such incident.

## **ARTICLE 12 TAXES**

- 12.1** All prices are excluding VAT and/or taxes unless otherwise agreed as stated in section 2.1. The Seller is entitled, at any time, to charge additional VAT and/or taxes if incurred from local authorities. Buyer shall pay Seller the amount of all excise duties, VAT, GST, gross receipts, imports, motor fuel, superfund, spill taxes, and all other applicable taxes.

## **ARTICLE 13 FORCE MAJEURE**

- 13.1** The Seller shall not be liable for any loss or damage of whatever nature resulting from any delay or failure in performance under the Bunker Contract:
- (i) caused by any circumstance beyond the Seller's direct control, or
  - (ii) if the supply or source of the Bunker Fuel from any facility of production, distribution, storage, transportation or delivery contemplated or intended by the physical supplier of Bunker Fuel is disrupted, unavailable or inadequate due to war or war-like situations, riots, strikes, congestion, governmental order or intervention, unavailability of barges or other means of transport or stem, weather, epidemics, act of God, changed market conditions, or similar situations.
- 13.2** In the event of a failure of performance as provided in Section 13.1, the Seller may, but is under no obligation, to source, procure or obtain alternative Bunker Fuel or product, and in such case the Seller shall be entitled to receive from the Buyer payment of any additional costs of performance.
- 13.3** The Buyer shall have no right of cancellation of the Bunker Contract due to Force Majeure as stated in Section 13.1.

## **ARTICLE 14 INDEMNITY**

- 14.1** Buyer shall indemnify and hold harmless Seller from and against all claims, damages, losses and expenses, including attorney fees, arising out of, or resulting from performance of the providing of Bunker Fuel under the Bunker Contract, including claims, damages, losses, penalties or expenses under any statute, regulation or ordinance or damage to property or injury or death of any person arising out of or in any way connected with the acts or omissions of the Buyer or its agents as servants in receiving, using, storing or transporting the fuel delivered hereunder.
- 14.2** If the supply is delayed by the Buyer for whatever reason or the Vessel fails to leave the Place of Supply immediately, the Buyer shall indemnify the Seller for any consequent loss or damage suffered by the Seller including losses arising due to the delay in the supply of other vessels.

## **ARTICLE 15 COLLECTION AND INDEMNITY**

- 15.1** The Buyer agrees to pay any and all costs and expenses, legal fees and court costs incurred by the Seller (i) to collect and obtain payment of any amount due to the Seller, including but not limited to legal fees and court costs associated with enforcing a maritime lien, attachment, right of arrest, or other available remedy in law, equity or otherwise; and (ii) to recover any damages or losses suffered by the Seller as a result of any breach by the Buyer of any provision of the Bunker Contract.

## ARTICLE 16 SAFETY

- 16.1** It shall be the sole responsibility of the Buyer to ensure that the Vessel, its crew and those responsible for its operation and management observe and comply with all health, safety and environmental laws and regulations with regard to the receipt, handling and use of the Bunker Fuel.

## ARTICLE 17 ENVIRONMENTAL PROTECTION

- 17.1** The Buyer must comply with all national and international trading, pollution, environmental and health and safety regulations concerning the receipt and use of Products. In the event of a spill or discharge, before, during or after supplying the Bunker Fuel, Buyer and the Vessel shall, at their own expense, immediately take whatever action is necessary to give prompt notice to the official bodies and to effect cleanup. Failing prompt action, Buyer and the Vessel authorize Seller to conduct and/or contract for such cleanup at Buyer's and Vessel's expense. Buyer warrants that the Vessel is in compliance with all national, state and local statutes, regulations and ordinances, including those requiring proof of financial ability in regard to spills or discharges of oil. The Buyer warrants that the Vessel is entered with a P&I Club and insured for pollution liability risks. Buyer shall hold Seller harmless as to any delays, claims, losses, expenses or penalties arising from breach by Buyer of this warranty, including attorney fees. The Buyer shall provide or procure all documents and information concerning any Spill for the Seller as the Seller may demand or as may require by applicable laws or regulations.

## ARTICLE 18 COMPLIANCE

- 18.1** By accepting the Seller's offer and Order Confirmation, the Buyer thereby confirms and warrants that the Buyer is in full compliance with the Sanctions Laws; that the Buyer is purchasing the Products as principal and not as agent, trustee or nominee of any person or entity with whom transactions are prohibited or restricted under the Sanctions Laws; and the Products purchased will not be used in any manner whatsoever directly or indirectly in connection with any entities, persons, projects, contracts, transactions or payments that contravenes any Sanctions Laws. Further in relation to these Sanctions Laws, the Buyer confirms and warrants that the Vessel to be supplied is not and/or will not be:
- (i) A designated vessel or flagged by a sanctioned country;
  - (ii) Owned or chartered by or related to any designated entity or person;
  - (iii) Coming from or on its way to visit countries or regions designated under the Sanctions Laws;
  - (iv) Involved in the transfer of goods that may be prohibited under the Sanctions Laws; or
  - (v) Engaged in any conduct designed to evade any Sanctions Laws, including but not limited to turning off transponders, reporting false travel plans, deviating from reported travel plans and engaging in ship-to-ship transfers to hide the origin of goods.
- 18.2** If at any time during the performance of the Contract the Seller becomes aware or have reasonable grounds to believe that the Buyer, the Vessel and/or any related parties are in breach of the warranty as aforesaid, the Seller shall have the option to immediately cancel the Contract for the Buyer's account and risk. Under such circumstances, the Seller shall not be held liable for any loss, delays, claims or damages incurred by the Buyer, and the Buyer shall be liable to indemnify the Seller against any and all claims, including return of any payment, losses, damages, costs and fines whatsoever suffered by the Seller resulting from any breach of warranty as aforesaid and in accordance with the Contract.
- 18.3** The Buyer must inform the Seller immediately if the Buyer becomes aware of or has reasons to believe that any of the above items are fulfilled/apply. Should the Buyer breach its obligation to inform the Seller, the Buyer shall fully indemnify and keep the Seller harmless for any damage or loss caused by such breach, including consequential or liquidated damaged.
- 18.4** The Buyer acknowledges that anticorruption laws and regulations, including but not limited to the U.S. Foreign Corrupt Practices Act ("FCPA"), shall apply to the parties. The Buyer and Seller shall comply with all applicable anticorruption laws and regulations and will not, offer, promise, pay, or authorize the payment of any money or anything of value, or take any action in furtherance of such a payment, whether by direct or indirect means, to any public official or private individual to influence the decision of such person in the performance of his duties to a government or to his company. Any breach of this clause will void the related Contract and in the sole discretion of the Seller any other Contract between the parties, making any claims for payment, delivery or any other obligation of the Seller under this Agreement void. The Buyer is liable for any and all costs or losses incurred by the Seller due to such breach and/or a Contract becoming void as a consequence.



## **ARTICLE 19 GOVERNING LAW**

- 19.1** The Bunker Contract shall be governed by the general maritime laws of the United States of America. If there are any gaps in the general maritime law of the United States or if the general maritime law of the United States does not address a disputed issue, the law of the State of New York shall apply. The laws of the United States, including but not limited to the Commercial Instruments and Maritime Lien Act, shall always apply with respect to the existence of a maritime lien, regardless of the country in which the Seller takes legal action. The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

## **ARTICLE 20 ARBITRATION**

- 20.1** Any dispute arising out of or in connection with the Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. In cases where the claim or any counterclaim does not exceed the sum of USD 1,000,000 (or such other sum as the parties may agree) the arbitration shall be referred to a sole arbitrator. In all other cases the reference shall be to three arbitrators. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party requiring the other Party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other Party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the Party referring a dispute to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of the sole arbitrator shall be binding on both Parties as if the arbitrator had been appointed by agreement. Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
- 20.2** Notwithstanding section 20.1 above, in case of breach of contract by the Buyer, the Seller shall be entitled to take such legal action in any court of law in any state or country which the Seller may choose and which the Seller finds relevant in order to safeguard or exercise the Seller's rights in pursuance of this Contract. The Seller shall be entitled to assert its rights of lien or attachment or other rights, whether in law, in equity, or otherwise, in any jurisdiction where the Vessel may be found.

## **ARTICLE 21 MISCELLANEOUS**

- 21.1** If any part of this agreement is declared invalid, it shall not affect the validity of the remainder of the agreement or any part thereof.
- 21.2** For the protection against fraud schemes, the Buyer shall obtain oral and written confirmation from its usual contact person within the Sellers organization prior to effecting any payment pursuant to changed payment instructions. If for any reason the Buyer receives payment information from anyone purporting to represent the Seller or purporting to be part of Sellers organisation, which deviates from the account information previously received from the Seller, the Buyer must immediately contact its usual contact person within the Seller's organisation both by telephone and e-mail to ensure that the new bank account information is correct. The Seller undertakes no liability for payments made to accounts not identified by the Seller in the invoice.
- 21.4** These terms and conditions shall be effective as of 29 August 2020 at 00:01 hours GMT and shall apply to any Bunker Contracts concluded after this time.

## **ARTICLE 22 SECTION HEADINGS**

- 22.1** The headings of each section herein are descriptive only, and are provided for organisational purposes.

## **END OF STANDARD TERMS AND CONDITIONS OF SALE**