

**JOHN W. STONE OIL DISTRIBUTOR, LLC**  
**GENERAL TERMS AND CONDITIONS FOR SALES AND PURCHASES**  
**OF MARINE FUELS FOR BUNKERS**

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## **1. GENERAL INTRODUCTION**

1.1 This is a full and complete statement of the terms and conditions according to which John W. Stone Oil Distributor, LLC (hereinafter called "Stone Oil") will sell Marine Fuels and the Buyer, as defined in Section 3, will purchase Marine Fuels.

1.2 These General Terms and Conditions apply to all offers, quotations, orders, agreements, services and all subsequent contracts of whatever nature, except where otherwise is expressly agreed in writing by Stone Oil.

1.3 General purchase, sales, or trading conditions of another party will not apply, unless expressly accepted in writing by Stone Oil.

1.4 In the case that, for whatever reason, one or more of the (sub)clauses of these general conditions are invalid, the other (sub)clauses hereof shall remain valid and be binding upon the parties.

1.5 Stone Oil may from time to time publish amendments, modifications, changes, deletions, etc. to these General Terms and Conditions on its website [www.stoneoil.com](http://www.stoneoil.com). Such amendments, modifications, changes, etc. are deemed to be a part of the entire Terms and Conditions once published on Stone Oil's website.

## **2. APPLICABILITY AND INTERPRETATION**

2.1 Unless otherwise expressly agreed in writing, these General Terms and Conditions shall apply to all contracts for the sale of Marine Fuels by or on behalf of John W. Stone Oil Distributor, LLC or any of its Associated Companies or Affiliates into which contracts they are incorporated by reference.

2.2 These General Terms and Conditions (including, where applicable, Seller's Written Confirmation) contain the entire agreement between the Seller and the Buyer and supersede all representations, prior agreements, oral or written, in connection with the matters which are the subject of these Terms and Conditions.

2.3 In case of any conflict between the Seller's Written Confirmation and these Terms and Conditions, the Seller's Written Confirmation shall prevail.

2.4 All clauses, articles and headings used in the Agreement are for convenience only and shall not affect the construction or interpretation of any of the terms and/or conditions of the Agreement.

2.5 The Buyer and the Seller each warrant that in connection with the Agreement, they have not relied upon any representations, written or oral, made by or on behalf of the other Party, but have relied exclusively on their own knowledge, judgment and expertise.

2.6 Any words following the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### **3. DEFINITIONS**

“Affiliate(s)” means a company or other legal entity which directly, or indirectly through one or more intermediaries, controls, or is under common control with or is controlled by another party. For this purpose, “control” means the direct or indirect ownership of fifty (50) per cent or more of the voting rights attached to the issued share capital of such company or other legal entity.

“Agreement” means these General Terms and Conditions (including, where applicable, together with the Seller’s Written Confirmation).

“Associated Company” means a company in which another company has a stake of between 20% and 50% of voting shares.

“A.S.T.M.” means American Society for Testing and Materials.

“Business Day” means the days on which banks are normal open for business at the Delivery Port or other location where sales are made unless otherwise expressly stated to the contrary in Seller’s Written Confirmation.

“Buyer” means the party stated in the Seller’s Written Confirmation as being the buyer of the marine fuels.

“Buyer’s Delivery Vessel” means a barge, truck, storage tank or coastal tanker nominated by the Buyer. The term “Vessel”, as defined and used herein, includes any Buyer’s Delivery Vessel.

“Day” means a calendar day.

“Delivery Date” means the time frame when the marine fuels shall be delivered to the Buyer. Delivery Document means the document(s) that certifies the delivery of marine fuels on a certain date(s), specifying grade(s) and delivered amount(s). Depending on delivery location, such document may also be known as “On Board Receipt”, “Bunker Receipt”, “Delivery Note”, and “Certificate of Delivered Quantity”, or other names.

“E.T.A.” means Estimated Time of Arrival.

“Marine Fuels” means any commercial grades of bunker fuel oil and/or marine gas oil or their mixtures offered at the time and place of delivery by the Seller according to local specifications.

“M.A.R.P.O.L.” means the International Convention for the Prevention of Pollution from Ships as amended from time to time.

“Office Hours” means from 09:00 hours to 16:00 hours on a full working day in the Seller’s place of business.

“Party” means either the Buyer or the Seller and collectively the “Parties”.

“Payment Security” means the prepayment, Parent Company Guarantee, a guarantee from a guarantor acceptable to the Seller, a bank guarantee or any other financial instrument agreed between the Parties.

“Port” means the port, terminal, berth or other facility at which the Marine Fuels are delivered.

“Stone Oil” means John W. Stone Oil Distributor, LLC and all Affiliates and Associated Companies.

“Sanctions” means any economic, financial and commercial sanctions and embargoes regulations issued by the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC), or similar measures promulgated by the United Nations Security Council, the European Union, Jurisdictions, and EU member state and Switzerland, or other relevant sanctions authority, applicable to the Parties.

“Seller” means the party stated in the Seller’s Written Confirmation as being the seller of the Marine Fuels.

“Seller’s Place of Business” means the Seller’s registered office at the location where the Seller develops and coordinates its main activities where all the communications and notices should be sent.

“Seller’s Suppliers” means any legal entity or natural person being a direct or indirect source of supply for the Seller.

“Seller’s Written Confirmation” means the contractually binding fax, or e-mail, or other form of oral or written agreement in which, by reference, these General Terms and Conditions are incorporated to form the Agreement.

“Ton” means a metric ton or tone in vacuum or air, in accordance with standard practice at the delivery Port (as applicable).

“V.A.T.” means Value Added Tax.

“Vessel” means a tankship or other vessel of any type whatsoever which is wholly or mainly constructed or adapted for the carriage of oil or product in bulk as cargo. As defined and used herein, “Vessel” shall include any Buyer’s Delivery Vessel.

“Working Days” means a regular working day where the Seller’s Place of Business is situated.

#### **4. OFFERS, QUOTATIONS, PRICES AND OTHER CHARGES**

4.1 An Agreement shall only be concluded and binding on the Seller when Seller’s Written Confirmation is sent to the Buyer. Each Seller’s Written Confirmation shall incorporate these General Terms and Conditions by reference so that the General Terms and Conditions are considered a part of the Confirmation and Agreement.

4.2 Agreements entered into via brokers, or any other authorized representative on behalf of the Seller, shall only bind the Seller upon the Sellers’ broker or other authorized representative sending the Order Confirmation to the Buyer or the Buyer’s broker as the case may be.

4.3 The Seller’s offer is based on the applicable taxes, duties, costs, charges and price level of components for Bunkers existing at the time of the conclusion of the Agreement. Any later or additional tax, assessment, duty or other charge of whatever nature and however named, or any increase of components for Bunkers or any additional costs borne by the Seller whatsoever caused by any change in the Seller’s contemplated source of supply or otherwise, coming into existence after the Agreement has been concluded, shall be added to the agreed purchase price, provided that the Seller shall give the Buyer prior notice of this effect within a reasonable (under the prevailing circumstances) time after the Seller becoming aware of the relevant circumstances. All prices and/or tariffs are exclusive VAT, unless specifically stated otherwise. Any VAT or other charge and/or tax applicable and whenever imposed, shall be promptly paid by the Buyer, and unless otherwise agreed in writing all supplies are quoted and invoiced based on quantity calculated in metric tons in vacuum.

#### 4.4 Price and Other Charges

4.4.1 The applicable price of any Marine Fuels supplied shall be the one agreed in the Seller’s Written Confirmation.

4.4.2 The Seller reserves the right to modify the Price if the Vessel arrives forty-eight (48) hours after expiration of the agreed Delivery Date. If Buyer does not accept such adjustment, the delivery shall be cancelled without liability to Seller.

4.4.3 The Buyer shall be liable for all costs, expenses and/or charges incurred by the Seller or Seller’s Supplier on account of the Buyer’s failure, breach and/or non-compliance with its obligations under any agreed Nomination.

4.4.4 All applicable taxes, duties, fees and other costs including, but not limited to demurrage, or those imposed by government and authorities, and other delivery charges, shall be for Buyer’s account and shall be included in the Seller’s invoice.

4.4.5 If the Buyer or the Vessel fails to take delivery, the Buyer shall pay to the Seller any costs resulting from the Buyer's failure to take delivery, including but not limited to the loss derived from the possible reduction in the market value of the Marine Fuels value and costs incurred in returning the Marine Fuels to storage facility together with demurrage, if applicable.

## **5. PAYMENT**

5.1 Payment shall be made in full by the Buyer to the Seller before or on the payment due date, without any discount or deduction, withholding, set-off or counterclaim of any kind whatsoever. Payment shall be made in U.S. dollars or any other convertible currency agreed in the Seller's Written Confirmation (at the Seller's option) by telegraphic transfer immediately against presentation of the documents stated below. Any payment made by the Buyer to the Seller should be net of any applicable bank fees, which should be paid separately by the Buyer.

5.2 Unless otherwise agreed, payment shall be made against presentation of the invoice (invoice in electronic or fax form being acceptable) before or on the due date. If payment is received after the due date for any invoice Seller shall be entitled to apply the payment to earlier invoices at its sole discretion without reducing Buyer's indebtedness for any other invoice(s).

5.3 Unless otherwise agreed, the Seller's invoice shall be prepared based on the quantities contained in the Delivery Document issued at the delivery point.

5.4 Payment(s) shall be made to the Seller's bank, account name and account number as notified by the Seller to the Buyer in writing, ("the payment account"). The Buyer shall notify (or shall instruct its bank to notify) the Seller as soon as payment has been made, quoting the date on which payment was made, the amount, the name of the bank effecting payment and details of each invoice to which the payment relates. Such notification shall be sent to the Seller's contact as stated in the Seller's Written Confirmation.

5.5 In the event that the due date for payment falls on a Saturday, a Sunday, a non-Business Day, payment will be made on the following Business Day (the bank holidays and Business Days will be those applicable to the banking system of the currency in which the payment is to be effected).

### **5.6 Payment Security**

5.6.1 The Buyer shall periodically provide to the Seller that financial information or security deemed necessary by the Seller to support any credit extension.

5.6.2 If Payment Security is not already provided for in the Seller's Written Confirmation, or if it has been provided for in the Seller's Written Confirmation but becomes unacceptable to the Seller, the Seller shall be entitled at any time before the payment due date and/or before Delivery Date or giving the Buyer notice to that effect, to demand payment to be: (a) made by means of prepayment and/or (b) supported by, in the Seller's option, a parental guarantee, a guarantee from a guarantor acceptable to the Seller, a bank guarantee, or any other

financial instrument agreed between the Parties on or before the deadline stated in the Seller's Written Confirmation, in each case in a form acceptable to the Seller.

5.6.3 Failure by the Buyer to provide Payment Security as required by the Seller shall constitute an Event of Default.

5.6.4 In no event shall the Seller be obliged to deliver the Marine Fuels until the required Payment Security is accepted by the Seller.

5.6.5 In all cases above, any delay, costs and damages whatsoever, arising from the failure of the Buyer to issue the Payment Security required by the Seller, shall be for Buyer's account.

#### 5.6.6 Prepayment

5.6.6.1 Where Seller requires prepayment by Buyer the Seller shall issue a provisional invoice and the Buyer shall make due payment. The provisional invoice shall, unless otherwise agreed between the Parties, be based upon the 120% of maximum contractual quantity specified in the Seller's Written Confirmation.

5.6.6.2 The prepayment shall be received by the Seller no later than two (2) Business Days before the Delivery Date. If the date of the Agreement is later than these two (2) Business Days before the Delivery Date, the Buyer shall make best efforts to prepay as soon as practicably possible but in any case never later than 12:00 hours (local time at Seller's Place of Business) on the Business Day immediately prior to the Delivery Date.

5.6.6.3 If the Buyer does not provide prepayment to the Seller on or before the deadline, the Seller may terminate the Agreement immediately without prejudice to any rights or remedies of the Seller.

#### 5.6.6.4 Parent Company Guarantee

If the Seller agrees that payment shall not be by way of a prepayment, in such a case, at the Seller's option and on notice by the Seller, the Buyer shall provide a Parent Company Guarantee in a form and on terms acceptable to Seller.

### **6. CREDIT OF VESSEL AND BUYER**

6.1 Marine Fuels delivered under this Agreement are sold and delivered on the financial credit of the Vessel being supplied, as well as on the credit of the Buyer and the promise of the Buyer to pay. All sales, supply, and provision of Marine Fuels under this Agreement are made to the registered owner of the Vessel, in addition to any other parties that may be listed as Buyer in the Seller's Written Confirmation. Any Marine Fuels ordered by an agent, manager, charterer, broker or any other party are ordered on behalf of the registered owner of the Vessel and the registered owner of the Vessel shall be considered a principal for payment of the Invoice.

6.2 Buyer is presumed to have authority to bind the Vessel to a lien. Buyer warrants that it is an authorized entity to order Marine Fuels for and on behalf of the Vessel, and that the Seller shall have a lien on the Vessel for any Marine Fuels supplied under this Agreement. Buyer warrants that the Marine Fuels supplied hereunder are for the operation of the receiving Vessel and that Vessel only.

6.3 If the party requesting Marine Fuels is not the owner of the Vessel, Buyer assumes the sole responsibility for communicating the terms and conditions of this Agreement to the owner of the Vessel prior to the date of delivery. Acceptance of the delivery of the Marine Fuels by the Vessel shall be considered ratification of this Agreement by the Vessel and the owner.

6.4 If the party requesting Marine Fuels is not the owner of the Vessel, Seller shall have the right (but will not be obligated) to insist as a precondition of sale that a payment guarantee be provided by the owner or that a Letter of Credit be provided by the Buyer. The Seller shall have the right (but will not be obligated) to cancel any agreement with the Buyer at any time if such payment guarantee or letter of credit is not received upon request thereof from the Seller. The Seller's decision to forego obtaining a payment guarantee under this Section 5.6.2 shall have no effect on Seller's right to a lien on the Vessel for any Marine Fuels supplied under this Agreement.

6.5 Buyer and Seller agree that any notice, clause, provision or stamp by Buyer, contained in or on any offer, quotation, order, nomination, confirmation of nomination, invoice, bunker delivery note, tank measurement form, fuel requisition form, inspection form, survey form, and/or any similar document, contract, or agreement relating to the sale of marine fuels hereunder, which states that a maritime lien on the vessel may not be created because of the existence in Buyer's charterparty, ship mortgage or other instrument of a prohibition-of-lien clause or similar clause, or for any other reason, will be deemed ineffective and void regardless of the time it is given to Seller, whether before or after the initial nomination provided by Buyer, or before or after delivery of marine fuels to the vessel.

6.6 If at any time before the delivery the financial standing of the Buyer appears to the Seller (in its absolute discretion) to have become impaired or unsatisfactory, the Seller may require cash payment or security to be provided by the Buyer prior to delivery, including such form of payment guarantee as set forth in Section 4.4, failing which the Seller may cancel the delivery without any liability on the part of the latter or its subcontractors.

6.7 Where the Buyer is not the master, owner, manager/operator, disponent owner, time charterer, bareboat charterer or charterer, or Buyer otherwise does not have authority to bind the Vessel to a lien, until full payment of the full amount due to the Seller has been made the Buyer agrees that the Vessel or any other customer of Buyer shall be in possession of the Marine Fuels solely as bailee for the Buyer, and shall not be entitled to use the Marine Fuels other than for the propulsion of the Vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the marine fuels to any third party or other Vessel.



## **7. CANCELLATION AND BREACH**

7.1 If at any time the Buyer cancels a request for Marine Fuels or the Vessel fails to take delivery of part or all of the requested Marine Fuels, the Seller is entitled to pursue a claim against both the Buyer and the Vessel for all loss and damage thereby incurred.

7.2 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 sole discretion thereupon accept the breach, treat the Agreement as repudiated and seek such remedies as it considers appropriate.

## **8. QUALITY AND DISCLAIMER OF WARRANTIES**

8.1 The Marine Fuels to be sold and delivered hereunder shall be Seller's usual commercial grades of Marine Fuels as determined in accordance with the RMG test method reference of ISO 8217, which are generally offered to Seller's Marine Fuels customers at the time and place of delivery. Unless stated otherwise in writing by Seller, any other information regarding the characteristics of Marine Fuels, including physical, chemical, regulatory compliance and the like, are not intended to be nor shall they be construed as representations or warranties as to the specifications or overall quality of the Marine Fuels to be delivered hereunder, but only as general descriptions of the characteristics of the Marine Fuels available at a particular location from time to time. The Marine Fuels are sold "as is", "where is" with any and all faults. The specifications set forth in Seller's Written Confirmation shall be the exclusive specifications applicable to the Marine Fuels. Buyer may, prior to the issuance of Seller's Written Confirmation, request additional or other testing of the Marine Fuels at Buyer's sole cost. Should Buyer elect not to request such additional or other testing, Buyer waives all quality claims related to the Marine Fuels other than those related to the conformity of the Marine Fuels with the RMG test method reference of ISO 8217.

Seller specifically disclaims and Buyer waives all other promises, conditions, representations or warranties, including but not limited to representations, conditions or warranties of quality, merchantability and fitness for any particular purpose. All statutory or regulatory warranties are expressly disclaimed and excluded to the extent such exclusions are permitted by applicable law.

8.2 Buyer, or those acting on Buyer's behalf as agent or otherwise, shall have the sole responsibility for the selection of suitable Marine Fuels for use in the Vessel(s) nominated by Buyer or its Agent to receive such Marine Fuels, and warrants that such Vessel(s) is/are in compliance with all applicable local, national, international, flag state and classification society regulations and requirements, all applicable port and terminal regulations, and is/are otherwise suitable in all respects to safely load the intended Marine Fuels.

8.3 The certificate of quality (or other equivalent document) issued at the delivery Port shall be, except in cases of manifest error or fraud, conclusive and binding on both Parties.

8.4 It is the duty of the Buyer to take all reasonable actions, to eliminate or minimize any damages or costs associated with any off-specification or suspected off-specifications products. To this end the Buyer shall cooperate with the Seller in achieving the most cost effective solution including the consumption of the Marine Fuels after treatment and/or special handling. In the event that the Marine Fuels is off-specification and cannot be consumed by the Vessel, the Buyer's remedies shall be limited exclusively and solely to replacement of the nonconforming products. If the Buyer removes Marine Fuels without the express written consent of the Seller, then all such removal and related costs shall be solely for Buyer's Account.

## **9. TITLE AND RISK OF LOSS**

9.1 Delivery shall be deemed completed and title to and risk of Marine Fuels shall pass to Buyer as the Marine Fuels pass the flange between Seller's Delivery Vessel's loading hose and the intake manifold of Buyer's Vessel, at which point Seller's responsibility shall cease and Buyer shall assume all risk of loss, damage, deterioration or evaporation to the Marine Fuels so delivered.

9.2 If delivery is made to a Buyer's Delivery Vessel, delivery shall be deemed completed and title to and risk of loss of the Marine Fuels shall pass to Buyer as the Marine Fuels pass the flange between Seller's Delivery Vessel's loading hose and the intake manifold of Buyer's Delivery Vessel.

9.3 Buyer shall be responsible for connection of the loading hose to the intake manifold of the Vessel or Buyer's Delivery Vessel and pumping shall be performed under the direction and responsibility of Buyer's representative and at Buyer's sole risk.

## **10. QUANTITIES AND MEASUREMENTS**

10.1 Subject to the provisions (Claims section) hereunder the quantities of Marine Fuels delivered shall be measured from the Seller's choice of its own equipment, whether the Seller's equipment is the official gauge or manual sounding or meter of the Bunker Tanker effecting delivery, if any, or the Seller's shore-meter or the like equipment.

10.2 The Sellers shall permit the Buyers or their representatives to witness the opening and closing gauge, or manual sounding or meter reading and the taking of bunker temperature of all bunker tanks on the Bunker Tanker and shall be given sufficient information and reasonable access to the official gauge or manual soundings or meter of the Bunker Tanker, if any, or shore-meter and relevant documentation to verify the volume delivered. The absence of the Buyers or their representatives shall not prejudice the validity of the measurement of the quantities of Marine Fuels delivered.

10.3 The Marine Fuels to be delivered under the Contract shall be measured and calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.

10.4 The Buyer waives any claim against the Seller with respect to the quality of the Marine Fuels supplied unless the Buyer's claim is submitted to the Seller in writing within fifteen (15) Days after the date on which the delivery of the Marine Fuels has been completed.

## **11. QUALITY SAMPLES**

11.1 The quality of the Marine Fuels shall be tested from a composite sample taken by the Seller or the Seller's representative at the source of supply (supplying barge, supplying tank truck or supplying pipeline), in accordance with industry standard practice at the delivery Port at the time of delivery.

11.2 These samples will be retained in six (6) sealed numbered/ identified containers (name of the Vessel, delivery facility, means of supply of the Marine Fuels, product grade, Delivery Date, and the delivery Port). These samples will bear the seal of the Vessel and will be signed by the Seller and the ship's master or his representative. The six (6) samples shall be retained by the Seller and by the Vessel, and securely stored, after delivery of the Marine Fuels to the Vessel, for the period as defined as follows: Four (4) commercial samples: These commercial samples will be stored for each Party for a minimum period of sixty (60) Days and will be distributed: Sample 1 delivered to Buyer Sample 2 retained by Seller Sample 3 retained by Seller Sample 4 retained by Seller Pursuant to the terms and conditions set forth in Annex VI of M.A.R.P.O.L. Convention 73/78, the Seller shall take two additional samples of the Marine Fuels supplied during the operation, in the presence of the Buyer or the Vessel's Master, or their respective representatives. These two samples will be retained by each Party for a minimum period of twelve (12) months. Two (2) M.A.R.P.O.L. samples: Sample 1 delivered to Buyer Sample 2 retained by Seller .

11.3 Any samples drawn from receiving Vessel's tank/manifold shall not be valid as an indicator of the quality supplied.

11.4 In the event delivery is done by pipe or tank truck, samples will be taken as per the delivery Port's good standard practice.

11.5 The Seller's samples shall be the only authentic, conclusive, binding proof for the Parties, to determine the quality of the Marine Fuels supplied to the Vessel, and the absence of the Buyer or the ship's master or their respective representatives during the sample taking process shall be considered irrelevant to those ends.

## **12. QUALITY CLAIMS**

12.1 The Buyer waives any claim against the Seller with respect to the quality of the Marine Fuels supplied unless the Buyer's claim is submitted to the Seller in writing within fifteen (15) Days after the date on which the delivery of the Marine Fuels has been completed. Any complaint of variation of quality shall be admissible only if the claim presented to the Seller is fully documented including a copy of the report of analysis carried out by a first class inspection company of international prestige, showing that the sample kept by the Buyer differs by a greater amount than the reproducibility and repetitively as per applicable standards. Any analysis report from samples taken by receiving Vessel shall not be admissible.

12.2 The Parties expressly agree that as per Seller's unique discretion one of the commercial samples retained in custody by the Seller, shall be analyzed by a first class inspection company of international prestige, specialized in performing analysis of Marine Fuels, appointed by mutual agreement between the Parties.

12.3 The results of the new analysis shall be conclusive and binding for both Parties and will determine each Party's liabilities in this matter.

12.4 In case that the results prove the Marine Fuels to be on specification, the cost of such analysis shall be borne by the Buyer. In case that the results prove the Marine Fuels to be off-specification, the cost of such analysis shall be borne by the Seller.

12.5 If the Buyer fails to comply with the procedure in this Section 12 all claims regarding quality shall be deemed to have been waived by the Buyer and no claim may be brought in respect of them.

12.6 It is the duty of the Buyer to take all reasonable actions, including retention and burning of Marine Fuels in accordance with the Seller's instructions, to eliminate or minimize any costs associated with an off-specification or suspected off-specification supply. The Seller's obligation hereunder shall not exceed direct expenses incurred in the removal and replacement of Marine Fuels and shall not include any consequential or indirect damages, including without limitation, demurrage and any actual or prospective loss of profits. If the Buyer removes such Marine Fuels without the consent of the Seller, then all such removal and related costs shall be for Buyer's account.

12.7 Nothing in this Section 12 shall relieve the Buyer of its obligation to make payments in full when due as provided herein.

### **13. LIMITATION OF SELLER'S LIABILITY**

13.1 Other than as set forth below and in Section 18 of this Agreement, Seller, Seller's affiliates and Seller's suppliers, agents and representatives ("Seller's Group") shall not be liable for, and Buyer waives, any loss or damages of any kind whatsoever arising in connection with the marine fuels or their use, howsoever or whensoever caused, in contract, tort, or otherwise, and regardless of whether such loss or damage is a result of any negligent act or fault of any member of Seller's Group, or resulted from some defect, latent or otherwise, in the marine fuels supplied. Seller's total liability for defective marine fuels shall be limited in any event to the direct expenses for the removal and replacement of such marine fuels from the vessel(s) and shall not include any other direct or indirect, special, punitive, exemplary, incidental or consequential damages, including, without limitation, damage to any vessel, including but not limited to third party vessels or Buyer's delivery vessels or to their engines, equipment, machinery or tanks, personal injury to or death of any person (other than employees of members of Seller's Group), loss of or damage to property (other than the property of members of Seller's Group), deviation costs, demurrage claims, port fees, port costs, fuel consumption, business interruption, loss of contract or actual or prospective loss of profits or anticipated cost savings. The liability of Seller's Group to Buyer

hereunder in any event shall not exceed the price paid by Buyer for the marine fuels supplied under this Agreement.

13.2 Seller shall not be responsible for any quality claim arising in circumstances where there is or has been commingling of Marine Fuels delivered by Seller with other fuel either previously or subsequently supplied by a third party to the Vessel or to Buyer's Delivery Vessel.

13.3 Except where contrary to local governmental or port regulations, all deliveries to Buyer by Seller shall be on a "first-come, first-served" basis, which means if Seller has multiple buyers whose vessels are also scheduled for delivery of Marine Fuels on the Accepted Delivery Date, Seller intends to deliver Marine Fuels to those buyer(s) (including Buyer) whose vessel(s) is/are first ready, willing and able to receive such delivery. Seller shall not be liable for demurrage incurred by a Vessel or for any loss due to congestion at the Delivery Port if Seller's Delivery Vessel was ready and able to commence delivery on arrival of the Vessel, but was delayed due to performing Marine Fuel deliveries to other buyers' vessels which arrived at the Delivery Port and/or were ready, willing and able to receive delivery(ies) earlier than Buyer's Vessel. Any claim involving demurrage incurred by Buyer's Vessel or Buyer's Delivery Vessel must be submitted by Buyer to Seller in writing within thirty (30) calendar days after the date of delivery of the Marine Fuels. If Buyer fails to submit a demurrage claim within thirty (30) calendar days after the date of delivery, any such claim shall be deemed to be waived and forever barred. Demurrage compensation, where applicable, shall only be made if Buyer provides Seller with supporting documentation deemed reasonably acceptable by Seller. In no event shall Seller be liable for payment of demurrage in excess of the amount that is actually paid to the Vessel or Buyer's Delivery Vessel by Buyer for demurrage related to the Marine Fuels delivered by Seller.

#### **14. SAFETY AND ENVIRONMENTAL PROTECTION**

14.1 If, at any time prior to or during delivery, Seller reasonably determines that the environment for delivery is unsafe or could create the potential for a spill due to conditions such as, but not limited to, (i) unsafe working environment, (ii) unsafe practices/procedures, facilities, or conditions on Vessels, (iii) unsafe use of tools/equipment, (iv) incompatible configuration, or (v) bad weather, Seller reserves the absolute right in its sole discretion to cancel or delay such delivery immediately without any prior notice to Buyer and without liability to Buyer or the Vessel for any costs or expenses, losses or damages incurred by Buyer or the Vessel arising out of or in connection with such cancellation or delay.

14.2 Buyer represents and warrants that it is familiar with the health effects related to the Marine Fuels purchased hereunder and with relevant protective safety and health procedures for the handling and use of such Marine Fuels. Buyer shall adhere to such safety and health procedures while using or handling Marine Fuels. Buyer shall also disseminate necessary health and safety information to all employees, users, and others potentially exposed to such Marine Fuels. Buyer shall be responsible for compliance by its employees, agents, and other users with all health and safety requirements or recommendations related to the Marine Fuels and shall exercise its best efforts to ensure that all of its employees or agents, users, and others avoid frequent or prolonged contact with or exposure to the Marine Fuels both during and subsequent to delivery. Seller and Seller's Supplier accept no responsibility for any consequence arising from failure by

Buyer, its employees or agents, any users, or any other party to comply with relevant health and safety requirements or recommendations relating to such contact or exposure, or in any other way in connection with the Marine Fuels.

14.3 If a spill occurs while Marine Fuels are being delivered, Buyer and Seller shall promptly take such action as is reasonably necessary to contain and remove the spill and mitigate the effects of same. Seller is hereby authorized, at its option and at the expense of Buyer, to take such measures and incur such expenses (whether by employing its own resources or contracting with others) as are reasonably necessary in the judgment of Seller to contain and remove the spill and mitigate the effects of same. Buyer shall cooperate and render such assistance as is required by Seller in the course of such action. All expenses, claims, losses, damages, liabilities and penalties arising from a spill shall be borne by the Party that caused the spill. If both parties are at fault, all expenses, claims, losses, damages, liabilities and penalties shall be divided between the parties in accordance with their respective degrees of fault.

14.4 In the event of a spill during delivery of the Marine Fuels, Buyer shall provide Seller with such documents and information concerning the Spill and any programs for the prevention of spills as may be required by Seller or by law or regulations applicable in the Delivery Port where the spill occurred.

14.5 Buyer warrants that the Vessel is in compliance with all applicable local, national and international laws and regulations. The Vessel is subject to Seller's ongoing acceptance and will not be supplied Marine Fuels unless free of all conditions, difficulties, peculiarities, deficiencies or defects that might impose hazards in connection with its mooring, unmooring or bunkering. Buyer warrants that the Vessel must also supply a safe mooring for the Seller's delivery vessel to come alongside for bunkering.

## **15. FORCE MAJEURE**

15.1 In addition to any other relief provided by law, no failure or omission by either Party to comply with any of its obligations under this Agreement (save for any obligation to make payment) shall give rise to any claim against that Party, or be deemed to be a breach of contract, insofar as the failure or omission is caused by "Force Majeure", which shall mean any cause not reasonably within the control of that Party, whether or not foreseen, including such causes as governmental intervention, compliance with any law, regulation or ordinance, or with any order, demand or request of an international, national, port, transportation, local or other authority or agency or of any body of person purporting to be or to act for such authority or agency or any other corporation directly or indirectly controlled by any of them, acts of administrative authorities, decisions of the courts, riot, wars, military operations, terrorism actions, civil commotion, hijacking, fire, explosion, flood, storm, quarantine, mechanical breakdown, natural disasters or any act of God. Any curtailment, failure or cessation of supplies of Marine Fuels from any of Seller's sources of supply (whether in fact sources of supply for the purpose of this Agreement or not), provided that such curtailment, failure or cessation is related to a circumstance which is outside the control of Seller, shall be considered as an event of Force Majeure for the purpose of this Agreement.

15.2 If, by reason of any event of Force Majeure, either the availability from any of Seller's sources of supply of Marine Fuels or the normal means of transport and/or delivery of such Marine Fuels is delayed, hindered, interfered with, curtailed or prevented, then Seller shall be at liberty to withhold, reduce or suspend deliveries under any contract to such extent as Seller may in its absolute discretion think fit. Any additional quantities which Seller does acquire from other suppliers or from alternative sources may be used by Seller at its complete discretion and need not to be taken into account by Seller for the purpose of determining the extent to which it is to withhold, reduce or suspend deliveries under this Agreement or any other contract. Buyer shall be free to purchase from other suppliers any deficiencies of deliveries of Marine Fuels caused by the operation of this Section, but Seller shall not be responsible for any additional cost thereby incurred by Buyer.

15.3 Seller reserves the right to increase the price charged for any Marine Fuels if there is any increase in the costs incurred or to be incurred by Seller in making the relevant supply due to factors which constitute a Force Majeure event.

15.4 Where the event of Force Majeure continues for a continuous period of more than thirty (30) calendar days, and unless agreed otherwise between Buyer and Seller, either of them may then terminate this Agreement, by written notice to the other. Such termination shall not give rise to any liability, compensation or indemnity of any kind.

## **16. ASSIGNMENT**

16.1 Neither Party shall assign all or part of its rights and obligations under the Agreement without the prior written consent of the other Party (which shall not be unreasonably withheld or delayed), save that the Seller shall be free to assign its rights and obligations under the Agreement to any of its Associated Companies or Affiliates.

16.2 Additionally, the Seller may assign its rights to receive and obtain payment to any third party without the prior written consent to the Buyer.

16.3 The assignee shall not contravene any applicable law, order or regulation.

16.4 If such written consent is given to an assignment of rights and obligations of the Buyer, the assignee of the Buyer shall fully comply with the terms of payment contained herein or any other payment provision substituted with the consent of the Seller.

16.5 Except as expressly agreed in writing by the other Party, the assignor shall nevertheless remain jointly and severally liable with the assignee for the proper performance of all its obligations under the Agreement, including but not limited to all payment obligations.

16.6 Any assignment not made in accordance with the terms of this section shall be null and void.

## **17. TERMINATION**

17.1 Each of the events specified below with respect to either Party (the “Defaulting Party”) shall constitute an “Event of Default” under this Agreement and any Seller’s Written Confirmation:

- a. The Defaulting Party:
  - (i) Has insolvency or bankruptcy proceedings instituted against it;
  - (ii) Becomes insolvent;
  - (iii) Makes an assignment for the benefit of its creditors;
  - (iv) Proposes or makes any arrangements for the liquidation of its assets;  
or
  - (v) Appoints or becomes subject to the appointment of an administrator, liquidator, receiver or other similar official.
- b. The Defaulting Party fails to provide Payment Security in accordance with the requirements of the Agreement, within the stipulated period;
- c. The Defaulting Party fails to make a payment due in full by the payment due date and does not correct such a failure within five (5) Working Days of notice being given by the non-Defaulting Party of this breach;
- d. Where the Defaulting Party is the Buyer, it fails to take delivery of the Marine Fuels in accordance with quantity or delivery provisions in the Agreement.

17.2 Upon the occurrence of an Event of Default, the non-Defaulting Party at its sole discretion, without prejudice to its other rights, including its right to claim damages for breach of contract, by notifying the Defaulting Party orally (confirming such notification in writing) or in writing, may:

- a. Immediately terminate the Seller’s Written Confirmation; or;
- b. If it is the Seller, suspend or withhold delivery under the Seller’s Written Confirmation;
- c. If any such Event of Default occurs after a Vessel or Buyer’s Delivery Vessel has loaded Marine Fuels under this Agreement but before Buyer has paid for such Marine Fuels, or in the event of the arrest, seizure or other legal action against the Vessel or its owners after loading of Marine Fuels but before payment therefor, Sellers shall be entitled to recover possession of the Marine Fuels belonging to Seller, as evidenced by the presentation of at least one original Bill of Lading, if original Bill(s) is/are issued, or, if



Bill(s) have not been issued, at least one original of all relevant Bunker Delivery Receipts, or otherwise pursuant to this Section, and/or Admiralty Supplemental Rule D. The Vessel and Buyers or Buyer's Delivery Vessel remain a bailee of the Marine Fuels, and as such are obligated to safely discharge same into Seller's or its Agent's custody, subject to the evidence of rightful ownership. Buyer and Vessel shall fully cooperate with instructions and requests by Seller, so as to aid Seller in promptly and efficiently recovering possession of its Marine Fuels. Buyer shall procure that this Section or its equivalent shall be included in any charterparty for any Vessel or Buyer's Delivery Vessel nominated by Buyers to load Marine Fuels under this Agreement.

17.3 If the Seller has any reason whatsoever to doubt the continuing ability of the Buyer to perform its obligations hereunder, the Seller may suspend deliveries until the Buyer has either agreed to make prepayment for future deliveries or has provided such other Payment Security as the Seller, in its absolute discretion may require or, alternatively the Seller may terminate the Seller's Written Confirmation by written notice without prejudice to any right of action or claim accrued to its benefit at the date of termination. If the Buyer should fail to pay in whole or in part the invoiced amount by the due date, the Seller may, upon written notice to the Buyer, immediately suspend all or any supplies of Marine Fuels until the Buyer has paid all of the amount owing, or may, at the Seller's option, upon written notice to the Buyer immediately terminate the Seller's Written Confirmation without prejudice to any right of action or claim accrued at the date of termination.

17.4 Written notice of termination provided for under this Section shall be effective at the time it is received to the Buyer.

## **18. LIABILITY AND INDEMNITY**

18.1 Except as specifically provided in the Agreement, in no event, including the negligent act or omission by it or its Affiliates, agents and/or servant, shall either Party be liable to the other in contract, tort or otherwise for any special, consequential or indirect losses, nor shall either Party be liable to the other for any prospective or speculative profits.

18.2 In any event, the Seller's liability for any claims, whether arising from quality, accidental, delay, spill, or other cause, shall not exceed the agreed price of the Marine Fuels according to the Seller's Written Confirmation. If no Marine Fuels are delivered, the Agreement price shall be deemed to be the price that should have been applied according to the Seller's Written Confirmation.

18.3 The Buyer shall assume all risks and liability for loss, damage or injury to persons or property arising out of its possession, use, or resale of the Marine Fuels either singly or in combination with other substances, and shall indemnify Seller accordingly.

18.4 There are no guarantees, conditions, warranties or representations, express or implied, given in relation to the quality, merchantability, fitness or suitability of the Marine Fuels, for any particular purpose or otherwise, which extend beyond the description of the Marine Fuels and any specification contained in the Agreement.

18.5 The provisions of this Section shall continue to apply notwithstanding the termination or expiry of the Agreement for any reason whatsoever.

## **19. CONFLICT OF INTEREST; IMPROPER PAYMENT; RIGHT TO AUDIT**

19.1 Except as otherwise expressly provided herein, no director, employee or Agent of Buyer, its subcontractors or vendors, shall give or receive from any director, employee or agent of Seller or any Affiliate, any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Agreement. In addition, no director, employee, or agent of Buyer, its subcontractors or vendors, shall enter into any business arrangement with any director, employee, or agent of Seller or any Affiliate who is not acting as a representative of Seller or its Affiliate without prior written notification and prior approval from Seller.

19.2 In carrying out its responsibilities under this Agreement, Buyer shall not offer or make any payment, or offer or give anything of value, to any government official, any immediate family member of a government official, or any political party to influence the government official's or organization's decision, or to gain any other advantage for Seller, arising out of this Agreement. In addition, Buyer shall not offer or make payment, or offer or give anything of value, to any person if Buyer knows or has reason to believe that any portion of the payment or gift will be given directly, indirectly or through a third party to any government official, any immediate family member of any government official or any political party. Any representative(s) authorized by Seller may audit the applicable records of the last three years of Buyer for the sole purpose of determining whether there has been compliance with this Section 18.

## **20. TIME LIMITATION**

In addition to the specific provisions and time limits in the Agreement concerning quality, legal proceedings in respect of any dispute or difference whatsoever arising under the Agreement must be commenced within either one (1) year of the date of the Agreement or within one (1) year of the date of the event giving rise to the cause of action, whichever occurs later, failing which such dispute or difference shall be deemed to have been waived and shall be time barred and no claim whatsoever may be brought in respect thereof.

## **21. GOVERNING LAW, JURISDICTION AND VENUE**

21.1 This Agreement shall be governed and construed in all particulars in accordance with the substantive laws of the General Maritime Law of the United States, excluding any conflicts of law principles that would direct the substantive law of another jurisdiction to apply, and, to the extent necessary and not in conflict with such General Maritime Law, the laws of the State of Louisiana, United States of America, without regard to those laws that would reference the laws of another jurisdiction. Without prejudice to any other Section herein, the Buyer and

Seller agree that any suit, claim, dispute, controversy or action arising out of or in connection with this Agreement, including without limitation, any dispute or action with multiple defendants/claimants and indemnity claims, shall be litigated, if at all, in a federal court located in New Orleans, Louisiana to the exclusion of the courts of any other country, state, county, or city. In the event that a federal court lacks jurisdiction, then the Buyer and Seller agree to litigate any suit, claim, dispute, controversy or action arising out of or in connection with this Agreement, including without limitation, any dispute or action with multiple defendants/claimants and indemnity claims, in a state court of competent jurisdiction located in Jefferson Parish, Louisiana to the exclusion of the courts of any other country, state, county, or city. Buyer and Seller agree that any dispute or claim arising in connection with a Vessel detained by Seller at any port, place or anchorage within the United States of America and its territories shall be transferred and submitted to a federal court located in New Orleans, Louisiana to the exclusion of the courts of any other country, state, county, or city. In the event that substitute res is provided as security in place of the Vessel, such substitute res shall also be transferred and submitted to a federal court located in New Orleans, Louisiana to the exclusion of the courts of any other country, state, county, or city.

21.2 This Agreement shall constitute good cause that in the event Seller assert its rights of lien or attachment or other rights, including as set forth in Section 17.2, Seller shall not be required to post counter-security under Rule E of the Supplemental Rules for Admiralty and Maritime Claims or similar laws or rules of any jurisdiction.

## **22. RIGHTS, POWERS AND REMEDIES**

22.1 No failure or delay on the part of the Seller or the Buyer in exercising any right, power or remedy under the Agreement and no course of dealing between the Seller and the Buyer shall operate as a waiver by the Seller or the Buyer of any such right, power or remedy, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy under the Agreement.

22.2 The remedies in the Agreement provided to the Seller are cumulative and not exclusive of any legal rights or remedies which the Seller may otherwise have.

22.3 Except as required by the Agreement, no notice or demand upon the Seller or the Buyer in any case shall entitle the Seller or the Buyer to any other or future notice or demand in similar or other circumstances or constitute a waiver of the right of the Seller or the Buyer to take any other or future action in any such circumstances without notice or demand.

## **23. AMENDMENTS AND WAIVERS**

23.1 Any amendment or waiver of any provision of the Agreement or of any amendments, modifications, changes, deletions, etc. to these General Terms and Conditions published on Seller's website shall not be effective unless it is made by the express written agreement of both Parties.

23.2 Any waiver of any breach of any provision of the Agreement by either Party shall not be considered to be a waiver of any subsequent or continuing breach of that provision unless expressly agreed otherwise by the Parties in writing.

23.3 No waiver by either Party of any breach of any provision of the Agreement shall release, discharge or prejudice the right of the waiving Party to require strict performance by the other Party of any other of the provisions of the Agreement.

23.4 Failure by either Party to take action against the other Party in case of any breach of any provision of the Agreement shall not be considered to be a waiver by either Party of their right to take action for any subsequent breach of that or any other provision of the Agreement.

#### **24. SEVERABILITY AND SURVIVABILITY**

24.1 Severability If any provision of the Agreement is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction or either Party's compliance with any applicable ruling or resolution has a like or similar effect, the remainder of the Agreement (and of such provision) shall not be affected except to the extent necessary to delete such illegal, invalid or unenforceable provision (or part thereof).

24.2 Survivability If for any reason the Agreement shall be terminated then such termination shall be without prejudice to any rights, obligations or liabilities of either Party which have accrued at the date of termination but have not been performed or discharged, and any parts of the Agreement having any relevance thereto or any bearing thereon shall, notwithstanding the termination of the Agreement for any reason, continue in force and effect.

#### **25. ANTI-MONEY LAUNDERING AND ANTI-TERRORISM FINANCING**

25.1 The Parties agree that in connection with the Agreement, they will comply with all treaties and regulations of the United Nations, European Union, Spanish government and, as the case may, be any other legislation or requirements that could be applicable to such Party relating to anti-money laundering and anti-terrorism financing.

25.2 In particular each Party represents to the other that they shall not employ in transactions in connection with the Agreement any financial resources, assets or securities originated or derived from: (a) unlawful activity of any nature; (b) terrorists or terrorist organizations; or (c) persons or entities subject to Sanctions, and as the case may be, any other legislation.

25.3 Either Party may terminate the Agreement forthwith upon written notice to the other Party at any time, if in its reasonable judgment, supported by credible evidence, the other Party is in breach of any of the above representations, warranties or undertakings in this Clause.

## **26. FACILITATION PAYMENTS AND ANTI-CORRUPTION**

26.1 The Parties agree that in connection with the Agreement, they will each respectively comply with all applicable laws, rules, regulations, decrees and/or official government orders of the European Union, any EU member state, Switzerland, the United Nations and the United States of America relating to anti-bribery/anti-corruption and anti-money laundering.

26.2 The Buyer and the Seller each represent, warrant and undertake to the other that they shall not, directly or indirectly and with the intent to obtain or keep business or to secure some other improper advantage: (a) pay, offer, give or promise to pay or authorize the payment of, any monies or otherwise convey any other things of value to: (i) any employee of a state or government owned business, school, hospital or other entity; (ii) an officer or employee of any government entity, department or agency; (iii) any person acting in an official capacity for or on behalf of any government; (iv) a public international organization or any department, agency, or instrumentality thereof; (v) any political Party or official thereof, or any candidate for political office; (vi) any director, officer, employee or agent/representative of an actual or prospective counterparty, supplier or customer of the Buyer or Seller; (vii) any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities; or (b) engage in other acts or transactions, in each case if such could in violation of or inconsistent with the anti-bribery/anti-corruption or anti-money laundering legislation of any government, including the U.S. Foreign Corrupt Practices Act, the U.K. Anti-Terrorism, Crime and Security Act 2001, the Money Laundering Regulation 2007 and the Proceeds of Crime Act 2002 and the applicable country legislation implementing the O.E.C.D. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions