

# General Terms and Conditions of Sale ElbOil UK Ltd

## 1. Definitions

Throughout these Terms and Conditions of Sale, save where the context requires otherwise, the following definitions shall apply:

*"Buyer"* means the party who agreed to purchase the Marine Fuels according to the Confirmation Note, i.e. any party purchasing or otherwise contracting to receive the Marine Fuel from the Seller, including but not limited to the vessel owner and/or charterer and/or operator to whom the Marine Fuel has been delivered and who benefits from the consumption of the Marine Fuel;

*"Confirmation Note"* means the Seller's confirmation (text form is sufficient) setting forth the particular terms of the Marine Fuel Contract;

*"Marine Fuel Contract"* means the agreement between the Buyer and the Seller, as evidenced in the *"Confirmation Note"*;

*"Bunker Delivery Receipt"* means the document, which is issued by the Buyer or its representative, confirming delivery of the Marine Fuels and the relevant sample/seal numbers;

*"Delivery Period"* means the Vessel's ETA/estimated delivery window as stated in the *"Confirmation Note"*;

*"Marine Fuel(s)"* means the product(s) as stated in the *"Confirmation Note"*;

*"Nomination"* is the order or request issued/sent by the Buyer (in text form or orally) relating to Marine Fuels to be delivered by the Seller;

*"Parties"* means both the Seller and the Buyer;

*"Supplier"* means any party instructed by or on behalf of the Seller to supply or deliver Marine Fuels, including sub-suppliers;

*"Seller"* means ElbOil UK Ltd;

*"Vessel"* means the vessel to which the Marine Fuels are delivered as well as any other facility, as the case may be, to which the Marine Fuels are delivered;

*"written"/"(in) writing"* means any text form, e.g. email, fax, any messenger service, letter or other means of communication as long as the text form is used.

## 2. Application of Terms and Conditions of Sale

### 2.1

These Terms and Conditions shall apply exclusively to the Marine Fuel Contract and its conclusion. All other terms and conditions, in particular any terms or conditions referred to by the Buyer shall not apply. Terms which seek to amend or vary the terms and conditions of the Marine Fuel Contract, in particular any such terms proposed by the Buyer shall be of no effect unless they are expressly agreed in writing by both parties. These Terms and Conditions shall also apply to all future contracts between the Parties for the delivery of Marine Fuels by the Seller unless otherwise expressly agreed in writing by both parties.

### 2.2

The Marine Fuel is always supplied for the account of the Buyer, which will always include the Vessel and her registered owner. In cases where the legal entity to which the Confirmation Note is issued is not the registered owner of the vessel, such entity shall be considered to have the authority of the registered owner to make the Marine Fuel Contract and the registered owner will be deemed to be a party to the Marine Fuel Contract. The registered owner will in any event be bound by these Terms and Conditions upon the Vessel's acceptance of the Marine Fuel(s) and the Master (or his representative) signing for receipt of the Marine Fuel(s). The Buyer warrants that these Terms and Conditions are communicated to the owner of the Vessel, that the Buyer is authorized as an agent to order the Marine Fuel for the Vessel and that the Seller has a maritime lien on the Vessel in accordance with clause 11 and the applicable law outlined in clause 22 of these Terms and Conditions.

### **3. Price**

#### 3.1.

The price for delivery of Marine Fuels sold hereunder shall be agreed upon by the Parties [and recorded in the Confirmation Note]. The Seller is entitled, at any time, to charge and the Buyer undertakes to pay, in addition to the agreed price, all applicable duties, taxes and other such costs in respect of any sale and delivery under a Marine Fuel Contract, including but not limited to those costs imposed by governmental authorities and barging and other delivery charges.

#### 3.2.

Prices quoted as "delivered" comprise the ex-wharf price and delivery charges only.

#### 3.3.

All prices and / or tariffs are exclusive of duties and taxes such as, without limitation, customs duty, excise duty, Goods and Service Tax, General Sales Tax, VAT and any other tax, unless specifically stated otherwise.

#### 3.4.

The Seller's price of the Marine Fuels (i.e., the price recorded in the Confirmation Note for the Marine Fuels as well as the additional applicable charges associated with the delivery) is valid only, if the vessel arrives within the Delivery Period. Should the vessel arrive outside the Delivery Period and the Seller agrees to arrange delivery of the Marine Fuels outside the Delivery Period the Seller shall be entitled to amend the price to take into account, without limitation, prevailing market prices and charge any additional costs connected with the late or also early delivery. This right is without prejudice to any claim for damages the Seller may have against the Buyer in respect of the delayed delivery.

### **4. Nomination**

The Seller shall confirm the Marine Fuel Contract by a Confirmation Note following the Buyer's Nomination.

### **5. Deliveries**

#### 5.1.

The Buyer shall provide the Seller with a minimum of three (3) days (or more days as requested by the Seller) prior written notice before the arrival of Vessel specifying the following: Vessel's name, date and time of arrival of the Vessel, delivery location at the port, method of delivery and confirmation of the receiving rates, grades and quantities of Marine Fuels required.

#### 5.2.

In the event that the Buyer provides a notice of less than three (3) days as required in Clause 5.1, the Seller shall use its reasonable endeavours but shall be under no obligation to make the delivery. Where despite short notice the Seller agrees to make delivery, the Seller shall not be liable for any resulting delay in delivery and the Buyer shall reimburse any and all costs incurred by the Seller in making such delivery.

5.3.

The Buyer, or its agent at the port or place of delivery, shall give the Seller or its representative at the port or place of delivery 72, 48 hours approximate and 24 hours definite written notice of arrival, also advising any change in excess of three (3) hours, and the exact location and time at which deliveries are required.

5.4.

The date (and if applicable time) of delivery, as agreed upon in the Marine Fuel Contract, will only become binding for the Seller after receiving all information necessary for the Seller to comply with its obligations. In the event the Confirmation Note addresses a spread of dates for delivery or a period of time, the Seller has the sole discretion to commence the delivery within any time, day/night/shinc of these dates, always subject to the circumstances set out below in Section 5.5.

For the avoidance of doubt, the Seller's compliance with any agreed delivery date shall in any event not be of the essence.

5.5.

The Vessel shall under all circumstances be bunkered as reasonably promptly as the prevailing circumstances permit, having regard, without limitation to factors such as congestion affecting the port/berth/delivery location and/or delivery facilities of the Seller, its Suppliers or Agents and prior commitments of barges. Seller shall not be liable for any consequences or any time lost due to Buyer's Vessel having to wait for berth for bunkering or for completion of bunkering or any congestion affecting the delivery facilities of the Seller, its Suppliers or Agents, and, unless otherwise agreed in writing, Seller shall not be obligated to deliver prior to or after the date or spread of dates mentioned in the Confirmation Note.

5.6.

The Seller is entitled to arrange deliveries based on the principle of "First Come First Served" but reserves the right to arrange the bunkering sequence to take account of matters such as the Seller's logistics, prior priorities, obligations and deliveries. The Seller shall not be liable for demurrage or loss incurred by the Buyer due to congestion in the port and/or delivery location and/or elsewhere affecting the Seller's Suppliers' delivery facilities, prior commitments of available barges or to any other delay in delivery. The Seller shall not be responsible for onboard safety or storage failures that may affect the delivery and shall have the right to recover from the Buyer any resulting cost incurred.

5.7.

Where delivery is required outside normal working hours and is permitted by applicable regulations, Buyer shall pay all overtime and extra expenses incurred of whatsoever nature.

5.8.

The Seller shall not be liable howsoever for any inability to deliver on public or dock holidays or on customary non-business days of the week.

5.9.

The Buyer shall ensure that the Vessel provides a free, safe and always afloat and accessible site for the delivery of Marine Fuel(s) and that all necessary assistance as required by the Seller or the Seller's representative is rendered in connection with the delivery. If, in the opinion of the Seller or the Supplier a clear and safe berth is unavailable, delivery may be delayed or, in Seller's option, cancelled and all costs related to the delay or cancellation will be for the account of the Buyer.

5.10

The Buyer further warrants that the Vessel at all material times complies with all national and international regulations. It shall be the responsibility of the Buyer and Master of the Vessel to notify the Seller of any condition or defects in the Vessel which could adversely affect delivery.

5.11.

The Buyer's Vessel shall moor, unmoor, hoist and lower bunkering hose(s) from the barge(s) whenever required by the Seller, Seller's representative or Supplier, free of expenses, and shall provide reasonable assistance if required by the Seller, Seller's representative or Supplier to enable the barge to provide a smooth supply. The Buyer shall make and be responsible for all connections and disconnections between the delivery hose(s) and the Vessel's bunker intake manifold/pipe and ensure that the hose(s) are properly secured to the Vessel's manifold prior to commencement of delivery.

5.12.

Any local special requirements for receiving Marine Fuel(s) must be followed strictly by the receiving Vessel, whether advised or not by the Seller, the Seller's representative or Supplier, as it is always the Vessel and the Buyer who remain solely responsible for being aware of such local special requirements and in particular any put in place for safety reasons.

5.13.

Where lightering or barging is employed, lightering or 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 the fuel.

5.14.

Buyer will be liable for all demurrage or other expenses incurred by Seller if Buyer causes delays in effecting delivery. Buyer will also pay for mooring, unmooring and port dues incurred. In addition, the Buyer will be liable for any expenses incurred by Seller resulting from Buyer's failure to take delivery of the full quantity of Marine Fuels agreed upon including, but not limited to, any loss on the resale of the Marine Fuels. The Buyer shall bear the risk and costs of the return transport, demurrage on the barge or trucks, storage or selling of the Marine Fuels.

5.15.

Buyer shall indemnify and hold harmless Seller against all damage and liabilities arising from any acts or omissions of Buyer or its servants or agents, Vessel's officers or crew in connection with the delivery of the Marine Fuel(s) under the Marine Fuel Contract.

5.16.

If Buyer cancels the Nomination as confirmed in the Confirmation Note for any reason whatsoever, cancellation costs/fees/charges become payable as follows, any charges incurred by Seller are for Buyer's account and the Buyer must pay all further costs or expenses incurred by the Seller including, without limitation, barge waiting time, loss of market value, loading costs and all other losses suffered by the Seller in connection with the cancellation.

5.17

In the event that Seller's is unable to perform for any reason beyond its control, including, but not limited to, a request, suggestion or direction by any official body in charge of supplies, priorities, rationing or allocations of Marine Fuels, the Seller may, without liability, reduce or stop deliveries in such manner as it may in its sole discretion determine and may cancel the Marine Fuel Contract without incurring any liability, cost or payment obligation to the Buyer whatsoever.

5.18

Reservation of self-supply: Any agreed delivery deadline shall be subject to the condition of complete and timely delivery by our contractual partners (self-delivery reservation) to the agreed place of delivery.

## 6. Quality and Specification

6.1.

Buyer shall have the sole responsibility for the selection of the proper grades and specification of Marine Fuels for use in the vessel and the Seller shall not be under any obligation to check whether the grade or specification of Marine Fuels is suitable for any intended purpose. The Marine Fuels shall be of the same quality generally offered for sale at the time and place of delivery, for the grade or specification of Marine Fuels ordered by the Buyer.

6.2.

The Buyer shall be responsible to keep the delivered Marine Fuel segregated from any Marine Fuel(s) onboard the Vessel or from a different delivery to the Vessel. In no event shall the Seller be responsible for the quality, specification and compatibility of the Marine Fuel delivered if the Seller's product is mixed or commingled with any other product(s) onboard the receiving Vessel. This does also apply to any additives which must be applied in case of need but only after consultation with the Seller. The Buyer shall be solely responsible for any losses of whatsoever nature caused by mixing or commingling the Marine Fuel with any other product, including any damage the Marine Fuel may cause on other products on board the receiving Vessel.

## 7. Quantity

7.1

The determination of quantity shall be made solely by the Seller (or its representative). The Seller (or its representative) shall measure the quantity of the Marine Fuel delivered and the Buyer (or its representative) shall witness such measurement at its own expense and without delaying or hindering the delivery operations, but the absence of the Buyer (or its representative) during all or any part of the measurement process shall not prejudice the validity of the measurements.

7.2.

The quantity of Marine Fuel delivered shall solely be determined by the gauge or meter or ullage of the barge or tank effecting the delivery or of the gauge or meter or ullage of the shore tank in case of delivery by ex-pipe and shall be conclusive of the quantity delivered. The Seller (or its representative) shall record the quantity of Marine Fuel delivered on the Bunker Delivery Note. The Buyer accepts that the Seller's measurements in accordance with this Clause 7 shall be final and binding save for manifest error or fraud and shall be the only measurements that will be referred to in the event of a dispute in relation to quantity. The Marine Fuel to be delivered under this Marine Fuel Contract shall be measured and calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.

7.3.

In respect of the quantity agreed upon the Seller shall be at liberty to provide, and the Buyer shall accept a variation of 5% from the agreed quantity, with no other consequence than a similar variation to the corresponding invoice from the Seller.

7.4.

The Buyer shall not be entitled to complain of an incorrect measurement of the volume of Marine Fuels delivered unless the Buyer or its representative has witnessed such measurement and has made a complaint in writing at the time of delivery.

7.5.

In the event of complaint or comment about the quantity of Marine Fuel delivered, the Buyer shall give to the Seller or Supplier a letter of protest only. Any comments on the Bunker Delivery Receipt are not permitted and shall have no effect.

## 8. Sampling

### 8.1.

The Seller or its representative(s) shall arrange for samples to be drawn at the time of delivery of the Marine Fuel. Unless otherwise agreed upon by the Parties prior to entering into the Marine Fuel Contract, the samples shall be drawn from a point and in a manner chosen by the Seller or its representative(s).

### 8.2.

The Buyer or its representative(s) are always invited and are free to attend and witness the sampling of the Marine Fuels. But, the Buyer or its representative(s) attend at their own expense and must not delay or hinder the delivery operations. The absence of the Buyer or its representative(s) during all or any part of the sampling process shall not prejudice the validity of the samples.

8.3. The Seller shall take four samples in accordance with its normal sampling procedures at the port where delivery takes place. Two (2) samples shall be retained by the Buyer or its representative(s), one of these shall be the MARPOL compliant sample. The remaining samples shall be retained by the Seller or its representative(s). All samples must be recorded with their respective seal number in the Bunker Delivery Receipt ("BDR"). Any other samples taken by the Buyer or Owner or their representatives on-board the vessel or elsewhere will not be accepted by the Seller and shall have no validity or effect in the event of a dispute about the quality, grade or specification of the Marine Fuel.

### 8.4.

The aforementioned samples taken by the Seller or its representative shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, product name, delivery date, and place and seal number, authenticated with the Vessel's stamp and signed by the Seller's representative and the Master of the Vessel or his authorized representative.

### 8.5.

In case of a dispute regarding the quality of Marine Fuels delivered one (1) of the samples retained by Sellers shall be forwarded to an independent laboratory to perform a set of tests, the result of which are to be made available to both parties. Those test results shall be final and binding upon both Buyer and Seller as to the parameters tested. The parties are to use best endeavours to agree the independent laboratory to perform the tests. The independent laboratory should be at the port of delivery of the Marine Fuel or at the closest place to that port. 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 five (5) 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. The expenses for the procedure described under 8.5 shall be borne by the losing party in this dispute.

### 8.6.

The seal must be breached/broken only in presence of both parties or their representatives, unless one or both have declared that they will not be present. Should either Party fail to reply within 5 days after having received the request to declare whether it will be present during the seal breaking, the other party is free to move forward, breach or break the seal and commence the testing and analysis.

## 9. Assignment of Risk, Reservation of Title

### 9.1.

Risk in the Marine Fuel, including risk of loss, damage, deterioration, evaporation, or any other condition or incidents related thereto shall pass to the Buyer as the Marine Fuel passes the manifold of the shore tank, delivering vessel or truck depending on the method of delivery used. The Buyer

warrants that representatives from the Vessel shall be responsible for ensuring that the Marine Fuel is received in a safe way.

#### 9.2.

The Seller shall retain ownership of the supplied products until payment has been received in full, that is to say title to the Marine Fuel(s) shall pass to the Buyer upon payment of all sums due to the Seller under the Marine Fuel Contract or otherwise outstanding to the Seller. Until that time, the Buyer shall hold the Marine Fuel as bailee, that is to say until such time as payment is made, the Buyer agrees that he is in possession of the Marine Fuels solely as bailee for the Seller and undertakes to 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. If the Buyer is in breach of contract, in particular but not only in the case of payment default, the Seller has the right to demand immediate return of the Marine Fuel. The Buyer shall remain liable to the Seller in conversion even if the Marine Fuel is consumed by a third party.

In the event that the Buyer does return the purchased Marine Fuel, the contract shall be treated as being terminated with effect from the date on which the returned Marine Fuel is received by the Seller or its Supplier. Termination will be without prejudice to such other rights or remedies as the Seller may have against the Buyer and the Seller shall not be obliged to refund any payments already made by the Buyer.

If, prior to payment, the Seller's Marine Fuels are commingled with other marine fuels on board the vessel, title to the Marine Fuels shall remain with the Seller corresponding to the quantity of the Marine Fuels delivered. The above is without prejudice to such other rights as the Seller may have under the laws of the governing jurisdiction against the Buyer or the Vessel in the event of non-payment.

#### 9.3

The Buyer shall be responsible to keep the delivered Marine Fuel segregated from any marine fuel(s) onboard the Vessel or from a different delivery to the Vessel. In no event shall the Seller be responsible for the quality of the Marine Fuel delivered if the Marine Fuel delivered 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 Marine Fuel may cause on other products on board the receiving Vessel.

## 10. Payment

#### 10.1.

Payment for the delivery and of all other charges, fees or expenses or cancellation costs/fees - as the case may be - shall be made in full (without any abatement, deduction, set-off or counter claim whatsoever) in US Dollars and free of any bank charges. The Buyer shall not withhold payment of any amounts due and payable under the Marine Fuel Contract by reason of any set-off of any claim or dispute with the Seller, whether relating to Seller's breach of contract or otherwise.

Payment shall be due with effect from the date of delivery and shall be made by means of telegraphic transfer, automated credit transfer or electronic transfer of same day funds quoting the Seller's invoice number and the Buyer's name. Any amounts owed under the Marine Fuel Contract shall be received no later than 30 days (or such other period as is agreed in writing by the Parties) from the date of delivery (and regardless of whether property has passed to the Buyer), failing which, the Buyer shall be in default. If, however, the Seller's bank is closed for business on the last day of the applicable credit period the Buyer shall make its payment by the last day within such credit period when the Seller's bank is open for business. All bank charges in respect of such payments shall be for the remitter's account.

10.2.

In the event that any invoice is not paid in due time, 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. Furthermore, in case the Buyer does not pay any invoice in time and is in default, the Buyer is obliged to pay interest at 2 % per month on the respective amounts overdue.

10.3.

Notwithstanding any agreement to the contrary, payment will be due immediately and the Seller shall be entitled to withhold future deliveries in case of:

(a) any application being made or any proceedings being commenced, or any order or judgment being given by any court, for

(i) the liquidation, winding up, bankruptcy, insolvency, dissolution, administration or re-organisation, or similar, or (ii) the appointment of a receiver, liquidator, trustee, administrator, administrative receiver or similar functionary of the other party or all or a substantial part of its assets otherwise than for the purpose of a reconstruction or amalgamation);

(b) the Buyer suspending payment, ceasing to carry on business or compounding or making any special arrangement with its creditors;

(c) any act being done or event occurring which, under the applicable law hereof, has a substantially similar effect to any of the said acts or events described above.

The Seller shall not have this right, if the Buyer deposits a sufficient security or if a liquidator demands delivery and guarantees payment.

The Seller shall require the Buyer to effect payment or deposit a security within a reasonable time. If the Buyer fails to comply in time, the Seller shall be relieved from any obligation to make any future delivery.

## 11. Maritime Lien

11.1

The Seller will have and may assert a lien against the Vessel; the amount due on the purchase price, together with all delivery and other charges arising under the terms of the Marine Fuel Contract or as a consequence of the delivery of Marine Fuel, shall become a maritime lien against the vessel immediately upon delivery. It is expressly agreed between Seller and Buyer that the delivery of Marine Fuel or other products by the Seller or its Supplier creates a maritime lien in accordance with article 46 US Code § 31342 of the United States Federal Maritime Lien Act.

The Buyer agrees and warrants that a lien of the Vessel is created for the purchase price and other charges forming part of the Marine Fuel Contract. The Seller shall not be bound by any attempt by any person or entity to restrict, limit or prohibit its lien or liens attaching to a Vessel unless notice in writing of the same is given to the Seller before it sends its Confirmation Note to the Buyer.

11.2

When the Master of the Vessel (or any other person authorized by the registered owner or Buyer) is handed the bunker delivery note/Bunker Delivery Receipt for signature on behalf of the Vessel it shall not be permitted to make any endorsement, complaints or comments (such as the insertion of a "no-lien" clause) on the bunker delivery note/Bunker Delivery Receipt, and any such clause shall be without legal effect.

## 12. Liability of Manager, Broker or Agent

Should the Marine 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 of the Buyer under the Marine Fuel Contract 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. The liability of the manager, broker or agent shall be without prejudice to the liability of the Buyer.

## 13. Claims

### 13.1.

(a) The **quantity** of Bunker Fuel delivered shall be determined in accordance with Section 7.1. Any claim regarding the quantity of the Bunker Fuel delivered shall be notified verbally as well as in writing by the Buyer (or its representative) or the master of the Vessel to the Seller (or its representative) immediately upon delivery of the Bunker Fuels, while the delivery hoses are still connected.

Where notification of a quantity claim is received by the Seller (or its representative) after the completion of delivery (defined as the disconnection of hoses or medium through which the Marine Fuel was transferred), such claim shall be extinguished and waived and barred. In any event if written notice is not made within 24 hours of delivery, such claim shall be absolutely waived and barred.

(b) A notification inserted in a separate protest, or the *Bunker Delivery Receipt* handed to the physical supplier of the Bunker Fuel shall not qualify as notice under this Section 13.1 and the Seller shall in no circumstances be deemed to have accepted such notice or protest issued to the physical supplier.

(c) On the basis that a timely claim notice in accordance with section 13.1(a) has been given, any claim for short delivery shall also be extinguished and absolutely waived and barred if it is then not presented with full supporting documentation by the Buyer in writing within 7 days from the date of the delivery; as expressed section (a) above shall remain unaffected.

(d) Quantity claims can be avoided by ensuring that proper pre-delivery and post-delivery checking by the duty officer of the Vessel or any other senior representative of the Buyer ("the Procedures") is conducted. The delivery must be always supervised, and documents be checked to ensure completeness and accuracy, with signings and stampings. Failure to check the documents and/or associated paperwork and/or equipment and/or execution of the Procedures supporting the barge quantity survey, will not substantiate a claim. The Seller will not hesitate to reject claims whereby these Procedures are not followed, or documents have not been properly checked. The Seller refers to paragraph 7.1 above. For the avoidance of doubt, the Seller will not accept a claim for short delivery based on figures obtained by measuring Marine Fuel in the Vessel's tanks and the Procedures must include but are not limited to surveying all barge cargo tanks, ballast tanks, void spaces cofferdams or any other such space as Marine Fuel may reasonably be considered to be stored. All associated documentation, certification, logbooks and reference material must be clearly documented and advised to the Seller as part of the bunker barge survey immediately.,

### 13.2.

Any claim regarding the **quality** of the Marine Fuel or other product delivered shall be presented in writing to the Seller with a clear statement as to the nature of the claim(s) along with supporting documentation as soon as an alleged quality problem has occurred or the Buyer is notified of any alleged quality problem and in any event no later than 14 (fourteen) days from the date of delivery of the Marine Fuel or other product to the Vessel or any shorter deadline stemming from the Supplier which the Seller has informed the Buyer about during the ordering process or in the Confirmation Note, failing which such claim shall be extinguished and absolutely waived and barred. The Seller shall not be responsible for any claim arising from the comingling of Marine Fuel delivered by the Seller with other fuel or substances aboard the Vessel or aboard the fuel barge.

### 13.3.

The Buyer shall be obliged to make payment in full and fulfil all other obligations in accordance with the terms of the Marine Fuel Contract, whether or not the Buyer has any claims or complaints.

13.4.

In the event of any claim presented in accordance with Section 13.1 and 13.2, the Buyer shall:

(a) 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 including, without limitation, its engines, fuel tanks and equipment, the interviewing of crew and the review and copying of Vessel documents including, without limitation, logs, records and copies of communications.

(b) Furnish all necessary information requested by the Seller including, without limitation, any analysis of the Bunker Fuel made by the Buyer and/or Vessel interests to satisfactorily evaluate the claim.

(c) Take all reasonable steps and actions to mitigate any damages, losses, costs and expenses related to any claim of alleged off-specification or defective Marine Fuel. If the Marine Fuel deviates from specifications, the Buyer shall use all reasonable endeavours to mitigate the consequences hereof and shall burn the Marine Fuel, if possible, even if this requires employment of purification tools or other similar measures.

In case of the sulphur content is too high or there is any other deviation from the agreed specifications which can be solved by adding any chemical substances, the Buyer/Vessel is obliged to apply such substances in the vessel's tanks and/or on-board the de-/re-bunkering barge.

In case there is no other option than the replacement of the Bunker Fuel (de-bunkering), any replacement takes first and foremost place at the place of performance, i.e. in the port where the Marine Fuel/any product sold has been supplied in the first place. In case this is not possible, the Buyer is obliged to mitigate any loss/damage by accepting any port on the vessel's route/itinerary suggested by the Seller.

(d) Take all reasonable steps to preserve the Seller's recourse against the physical supplier of the Marine Fuel or any culpable third party.

13.5.

A breach by the Buyer of any part of Section 13.4 above will entitle the Seller to set off losses caused by the breach against any liability, if any, to the Buyer.

13.6.

Time Bar: In each and every case any and all claims by the Buyer shall be time barred and extinguished unless arbitration proceedings have been commenced in accordance with Clause 23 hereof within twelve (12) months of the date of delivery of the Marine Fuels or the day that delivery should have commenced as per the Confirmation Note. This does not change the duties of the Buyer to present its claims within the time limits stipulated in clause 13.1 and 13.2.

## 14. Liability

14.1

The Seller warrants that the Marine Fuels shall at the time of delivery conform to the specification agreed in the Marine Fuel Contract. All other obligations of the Seller with respect to the description, quality and fitness for purpose (if any) of the Marine Fuels and accordingly all conditions, terms or warranties, implied by law or otherwise with respect to the description, quality or fitness of the Marine Fuels for any particular purpose are explicitly excluded. If the Marine Fuels are proved not to conform with the agreed specifications at the time of delivery, the Seller where necessary and where no other remedy is available which would mitigate any loss/damage, like e.g. apply additives, undertakes to arrange for replacement of such Marine Fuels, provided such Marine Fuels have been paid for in full by the Buyer.

14.2.

The Buyer acknowledges that it is the Buyer's responsibility to test the fuel provided and to ensure that it is fit for purpose and suitable in all respects prior to the use of such fuel in the Vessel. Accordingly,

the Seller shall not be responsible for any damage to the Vessel whatsoever, including but not limited to any damage to its machinery or tanks or their contents caused by the use of Marine Fuel.

#### 14.3

Regardless whether such liability is based on contract, indemnity, tort, breach of statutory duty or otherwise, the Seller shall in no event be liable to the Buyer under the Marine Fuel Contract or otherwise in connection with it (and including any negligent act or omission on its part) for any loss of profits or revenues, loss of use, cost or capital or business interruption, any indirect or consequential damages or any liability for any of the aforementioned heads of loss or damages suffered by third parties.

#### 14.4

The Seller shall also not be liable for any loss or damage to any vessel or object receiving the Marine Fuels delivered by or for and on behalf of the Seller, including any parts of that vessel (like engines, pumps, pipes etc.) and, in addition, the Seller shall not be liable for any expenses for detention, demurrage costs, loss of (charter) hire, loss of profit, loss of crew wages, towage and/or port charges and/or any similar loss, damage or expense.

In case the Marine Fuels and/or any other products sold do not comply with the agreed specifications, the Seller shall not be obliged to make any payment on account in respect of any potential or even proven heads of damage.

#### 14.5

Notwithstanding any other provision in these General Terms and Conditions, the Seller's maximum liability for all claims for loss or damage (as well as wasted expenditures) whatsoever and howsoever arising under or in connection with the Marine Fuel Contract, including negligence and claims in tort, shall be limited to the invoice value of the Marine Fuels supplied under the respective Marine Fuel Contract (net invoice value, without VAT if applicable) or USD 500,000.00 whichever is the lower figure.

#### 14.6.

Furthermore, the Seller shall under no circumstances (including liability for negligence and/or tort) be liable for any loss or damage for **delay** of delivery of the Marine Fuels, no matter whether such loss or damage has been caused by fault or negligence on the side of the Seller, its agents, servants, directors, officers, employees and/or sub-contractors.

#### 14.7.

The Seller's servants, agents and sub-contractors as well as their servants, including but not limited to the Supplier, may rely on all exclusions and limitations of liability afforded to the Seller both by the applicable law and in this Marine Fuel Contract. The exclusion and/or limitation of liability provisions in the Marine Fuel Contract shall likewise apply to the benefit of and in all cases of any possible liability, if any, of direct or indirect owners or shareholders of the Seller, of any of Seller's affiliates, subsidiaries, directors, officers, employees, representatives, agents, servants and/or subcontractor(s).

#### 14.8.

The aforementioned exclusions and limitations of liability shall not apply with regard to any liability of the Seller arising out of fraud or fraudulent misrepresentation or in case of bodily injury or death culpably caused by the Seller or any person for which the Seller is vicariously liable.

## 15. Indemnity

#### 15.1.

The Buyer shall be liable towards the Seller and indemnify and hold harmless the Seller, its officers, directors, agents, servants, representatives, employees and/or sub-contractors from any and all damages, claims, penalties, fines, damage to life, body or health (including death), costs, expenses, including lawyer's fees, of whatsoever nature suffered or incurred by the Seller, its officers, directors, agents, servants, representatives, employees and/or subcontractors due to a breach of contract and/ or fault or neglect of the Buyer, its agents, servants, sub-contractors, representatives, employees and officers, crew and/or other people whether or not onboard any Vessel.

15.2

The Buyer furthermore undertakes to indemnify and hold harmless the Seller, its officers, directors, agents, servants, employees and/or sub-contractors in case any third party institutes a claim of whatsoever kind against the Seller, its officers, directors, agents, servants, employees and/or sub-contractors under or in connection with the Marine Fuel Contract.

15.3

In case the before outlined indemnity in clause 14.2 is not valid or applicable the Buyer undertakes at least to indemnify and hold harmless the Seller, its officers, directors, agents, servants, representatives, employees and/or sub-contractors in case any third party institutes a claim of whatsoever kind against the Seller its officers, directors, agents, servants, employees and/or sub-contractors to the extent such claim(s) exceed(s) the Seller's liability towards the Buyer according to the liability exclusions and limitations provided for in clause 14.1-14.8..

## **16. Costs and Legal Fees**

The Buyer shall be responsible to pay any and all expenses, legal fees and court costs incurred by the Seller due to a breach by the Buyer of any provision of the Marine Fuel Contract and which become necessary to (i) secure, collect and obtain payment of any amount due to the Seller (including lawyers' and court costs associated with enforcing a maritime lien, attachment, right of arrest, or other available remedy in law, equity or otherwise); (ii) to recover any damages or losses suffered by the Seller; and (iii) to defend any unjustified claim(s) or any claim(s) for which the Buyer under this Marine Fuel Contract is liable and/or has to indemnify the Seller.

## **17. Rights of Third Parties**

No term of this Contract shall purport to confer a benefit on a third party and be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Contract. Should any third party for whatever reason or on whatever basis be entitled to claim against the Seller under this Contract the Seller is entitled to invoke all rights, limitations, exceptions, including the limitation of liability and time bar defence etc., towards such third party.

## **18. Force Majeure**

The Seller shall not be liable for its failure or delay in performing any of its contractual obligations if such failure or delay is caused by circumstances beyond its reasonable control, including but not limited to industrial action, fire, flood, wars, storms/fog which suspend traffic and/or hinder bunkering, de-bunkering or re-bunkering operations, armed conflict, terrorist act, riot, civil commotion, malicious damage, explosion, unavailability of fuel, pandemic (regardless of whether already ongoing), or governmental or other regulatory action (hereinafter collectively referred to as "Force Majeure Event").

The delivery and/or warranty obligations of the Seller will be suspended to the extent and during the time its ability to fulfil such obligations is affected by a Force Majeure Event. The Seller shall accordingly be entitled to an extension of time for performance which is reasonable, and in any event equal to the period of delay caused by the Force Majeure Event.

The Seller shall notify the Buyer in writing when such circumstances cause a delay or failure in performance and when they cease to do, unless such delay or failure of performance or cause thereof is known to the Buyer or is otherwise obvious.

If a Force Majeure Event continues for a period of more than six (6) months, either party may terminate the affected Contract by written notice (email is sufficient) to the other party.

## 19. Environmental Protection

In the event of a spill or discharge, before, during or after supplying the Marine 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 supplied 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. Buyer shall hold Seller harmless as to any delays, claims, losses, expenses or penalties arising from breach by Buyer of this warranty, including attorney's fees.

## 20. Salvage, General Average, Limitation of Liability

### 19.1.

In case a salvage claim arises in respect of the Marine Fuels after their delivery to the Vessel for which the Seller is responsible, the Buyer shall hold harmless and indemnify the Seller in respect of these claims. The same applies if the Seller is subject to claims for general average contributions.

### 19.2.

If the Marine Fuels are delivered by bunker barge, the Seller's right to limit liability in accordance with international law such as the Convention on Limitation of Liability for Maritime Claims, 1976, and any subsequent amendments, or the Strasbourg Convention on Limitation of Liability in Inland Waterway Shipping (CLNI), and any subsequent amendments, or any national law applicable in this regard shall remain unaffected by the provisions of the Marine Fuel Contract.

## 21. Sanctions Compliance Clause

- (a) "Sanctions laws" means any sanction, prohibition or restriction imposed by any Country or international State organisation, including but not limited to the United Nations, the European Union, the United Kingdom, the United State of America (including but not limited to the US Department of the Treasury of Foreign Asset Control ("OFAC") including the OFAC Specially Designated Nationals or Blocked Persons List (SDN) and the US Department of State).
- (b) The Buyer warrants that at the date of entering into the Marine Fuel Contract and continuing until delivery of the Marine Fuels and payment by the Buyers to the Sellers in full:
  - a. The Buyer is not subject to any of the Sanctions Laws referred to in subclause 21(a) (Sanctions Compliance Clause) which prohibit or render unlawful any performance under the Marine Fuel Contract.
  - b. The Buyer is purchasing the Marine Fuel as principal and not as agent, trustee or nominee of any person with whom transactions are prohibited or restricted under subclause 21(a) (Sanctions Compliance Clause).
  - c. The Buyer warrants that the Vessel is not a designated vessel, its registered owners and Ultimate Beneficiary are not the subject of any sanctions law and that the vessel

is not or will not be chartered to any entity or transport any cargo contrary to the restrictions or prohibitions in subclause 21(a) (Sanctions Compliance Clause).

- (c) If at any time during the performance of the Contract the Seller becomes aware that the Buyer is in breach of warranty as aforesaid, the Seller shall comply with the laws and regulations of any Government to which the Seller or the vessel is subject and follow any orders or directions which may be given by any regulatory authority or administrative body, acting with powers to compel compliance. In the absence of any such orders, directions, laws or regulations, the Seller may terminate the Marine Fuel Contract forthwith.
- (d) The Buyer shall be liable to indemnify the Seller against any and all claims, including return or any payment, losses, damage, costs and fines whatsoever suffered by the Seller resulting from any breach of warranty as aforesaid and in accordance with the Marine Fuel Contract.
- (e) Notwithstanding anything to the contrary in this Clause, the Buyer and the Seller shall not be required to do anything which constitutes a violation of the laws and regulations of any State to which either of them is subject.

## **22. Anti-Corruption Clause**

- (a) The Buyer agrees that in connection with the performance of the Marine Fuel Contract it shall:
  - a. Comply at all times with all applicable anti-corruption legislation and have procedures in place that are to the best of its knowledge and belief, designed to prevent the commission of any offence under such legislation by any member of its organisation or by any person providing services for it or on its behalf; and
  - b. Make and keep books, records and accounts which in reasonable detail accurately and fairly reflect the transactions in connection with any Marine Fuel Contract.
- (b) If a demand for payment, goods or any other thing of value ("Demand") is made to the Buyer by any official, contractor or sub-contractor engaged by or acting on behalf of either Party or any other person not employed by either Party and it appears that meeting such Demand would breach any applicable anti-corruption legislation, then the Buyer shall notify the Seller as soon as practicable and the Parties shall cooperate in taking reasonable steps to resist the Demand.
- (c) If the Buyer fails to comply with any applicable anti-corruption legislation, it shall defend and indemnify the Seller against any fine, penalty, liability, loss or damage and for any related costs (including without limitation, court costs and legal fees) arising from such breach.
- (d) Without prejudice to any of its other rights under a Marine Fuel Contract, the Seller may terminate the contract without incurring any liability to the Buyer if:
  - a. At any time, the Buyer or any member of its organisation has committed a breach of any applicable anti-corruption legislation in connection with any contract.
  - b. Such breach causes the non-breaching party to be in breach of any applicable anti-corruption legislation.

Any such right to terminate must be exercised without undue delay.

- (e) The Buyer represents and warrants that in connection with the negotiation of any Marine Fuel Contract neither it nor any member of its organisation has committed any breach of applicable anti-corruption legislation. Breach of this sub-clause shall entitle the Seller to terminate the contract without incurring any liability to the Buyer.

## 23. Applicable Law, Place of Performance, Jurisdiction

### 23.1.

This Agreement shall be governed and construed in accordance with **the law of England & Wales**, except with respect to the existence of the Seller's maritime lien. The General Maritime Law of the United States of America, in particular Article 46 US Code § 31342 of the United States Federal Maritime Lien Act, shall always apply with respect to the existence of the Seller's maritime lien, regardless of the country in which the Seller takes legal action. The 1980 UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

### 23.2.

Any and all disputes arising out of or in connection with this Contract or concerning its validity shall be finally settled by arbitration in accordance with the Arbitration Rules of the **German Maritime Arbitration Association (GMAA)** current at the time when the arbitration proceedings are commenced. The arbitration tribunal shall consist of two arbitrators unless the parties agree that it shall consist of three arbitrators or a sole arbitrator. If the two arbitrators cannot agree on a decision in the proceedings they shall appoint a third arbitrator. If a party fails to appoint an arbitrator within two weeks after being requested to do so in writing (e.g. by letter, fax or e-mail) by the other party, the Chairman or Vice Chairman of the Board of GMAA shall appoint the arbitrator at the request of the other party. The foregoing shall apply correspondingly in respect of the appointment of a substitute arbitrator. The seat of arbitration shall be Hamburg.

### 23.3.

However, the Seller is also entitled to commence proceedings against the Buyer at the courts of the Buyer's principal place of business or any other competent court as long as the Buyer has not already started arbitration proceedings beforehand in the same matter by appointing an arbitrator and having notified the Seller thereof.

## 24. Miscellaneous

### 24.1.

If any part of this agreement is invalid, it shall not affect the validity of the remainder of the agreement or any part thereof.

### 24.2

The Marine Fuel Contract including, but not limited to, these Terms and Conditions constitute the whole agreement made between the Seller and the Buyer and the Buyer may not rely on any pre-contractual or post-contractual statement, representation or warranty, collateral or other communication as constituting an agreement with the Seller or as the basis for imposing any liability whatsoever on the Seller.

### 24.3.

These terms and conditions shall be effective as of 1<sup>st</sup> May 2025 and shall apply to any Marine Fuel Contracts concluded after this time.