



# 海橋油供有限公司

## SEABRIDGE BUNKERING PTE LTD

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### GENERAL TERMS AND CONDITIONS FOR MARINE FUELS SALE

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#### 1. GENERAL INTRODUCTION

These General Terms and Conditions shall apply to all deliveries contracted for unless the Seller expressly confirm otherwise in the Contract. Each delivery shall constitute a separate contract.

#### 2. DEFINITIONS

Unless the context otherwise requires:

- (a) “**Seller**” means the party contracting to sell and deliver Marine Fuels (as defined in 2f), hereinafter referred to Seabridge Bunkering Pte Ltd in Singapore.
- (b) “**Buyer**” means the party contracting to purchase, take delivery and pay for the Marine Fuels (as defined in 2e) identified in the Contract (as defined in 2c).
- (c) “**Contract**” means the agreement between the Buyer and the Seller, which shall always be solely and exclusively subject to these General Terms and Conditions. If there is any conflict between these General Terms and Conditions therein and the Contract, the General Terms and Conditions shall prevail. The contract shall not be assigned nor transferred by the Buyer without the prior written consent.
- (d) “**Vessel**” means the vessel, ship, or craft nominated in the Contract to receive the Marine Fuels (as defined in 2e).
- (e) “**Marine Fuels**” means intermediate fuel oil, marine diesel oil, marine gas oil and marine lubricant sold and/or delivered or to be delivered to the Vessel.
- (f) “**Owner**” means the registered owner, group owner, and demise charterer of the Vessel.

#### 3. GRADES AND QUALITY

- (a) The Buyer shall have the sole responsibility for the nomination of the grades of Marine Fuels for use by the Vessel.
- (b) The Seller warrants that the Marine Fuels shall be the Seller or the physical supplier's commercial grade Marine Fuels as currently offered for similar use at the time and place of delivery, unless the Seller agrees to other specifications in the Contract, in which case such specifications shall represent the only quality characteristics which the Marine Fuels is required to meet.
- (c) Unless otherwise agreed in the Contract, the Marine Fuels shall in all respects comply with ISO Standard 8217:2005 or any subsequent amendments thereof.

#### 4. DELIVERY

- (a) Without prejudice to these terms and conditions, the Seller's obligation to make any delivery hereunder is subject to the availability to the Seller of the particular grade(s) of Marine Fuels desired by the Buyer at the bunkering port at which delivery is requested.
- (b) The Seller shall not be required to deliver Marine Fuels into any one of the Vessel's tanks which are not regularly used for Marine Fuels as the case may be, and the Seller shall not be required to deliver any Marine Fuels for export for which a government permit or similar authorization is required and has not been properly obtained.
- (c) Deliveries shall be made at wharf or at shore terminals of the Seller or the physical supplier or by bunker barge(s) or by a combination of the above mentioned supply methods (herein collectively referred to as the bunkering facilities) in the Seller's option as the Seller shall deem appropriate in the circumstances, unless mutually agreed otherwise.
- (d) The Vessel shall be bunkered as promptly as circumstances permit. The Seller or the physical supplier shall not be liable for demurrage, off-charter-hire or for indirect, special, incidental, exemplary, punitive or other consequential damages incurred by the Buyer whether caused by congestion at the bunkering facilities, prior commitments of the available bunker barge(s) or from any other cause whatsoever.
- (e) In the event of delivery by bunker barge(s), the Buyer shall provide free of expense a clear and safe berth for the bunker barge(s)

alongside the Vessel's receiving lines. The Buyer shall pay the Seller the amount due to the Seller according to its current barging rates at the port concerned. All other charges shall be for the Buyer's account.

- (f) The Vessel at its own expense is to moor, unmoor, hoist the bunkering hose(s) from the bunker barge(s) and lower the hose(s), day or night, Saturdays and holidays included, whenever required by the Seller or the physical supplier and the crew of the Vessel is to assist the bunker barge(s) in order to ensure a smooth supply. The Buyer shall make the connections between the pipeline(s) delivery hose(s) and the Vessel's lines and shall provide sufficient tankage and equipment to receive promptly day or night, Saturdays and holidays included all deliveries hereunder. The Buyer shall be responsible for ensuring that Marine Fuels is delivered at a safe rate and pressure and that all equipment utilized is in a safe and satisfactory condition. In case the Vessel is not able to receive deliveries hereunder promptly and without interruption, the Buyer is to be responsible for and to pay reasonable demurrage claims to the Seller, the physical supplier or the bunkering facilities.
- (g) Delivery shall be deemed completed as the Marine Fuels reaches the flange connecting the pipelines or delivery hoses with the intake lines of the Vessel at which point the Seller's responsibility will cease and the Buyer shall assume all risks, including loss, damage, deterioration, depreciation, evaporation or shrinkage as to the Marine Fuels so delivered.
- (h) If the Buyer fails to take delivery of the full quantity of Marine Fuels ordered and tendered, the Buyer shall be liable for any expenses incurred by the Seller resulting from the Buyer's failure to accept the full quantity of Marine Fuels ordered by the Buyer, without prejudice to the Seller's other rights under this agreement for damages or otherwise.

#### 5. DOCUMENTATION, NOTICE AND OTHER DELIVERY REQUIREMENTS

- (a) The Buyer shall submit to the Seller the order for purchase of Marine Fuels of its requirements, specifying the name of the Vessel, the required grades and quantities, the delivery location, the delivery date(s), the Vessel's local agent(s) and any other relevant details. As soon as the deal is concluded, the Seller shall accept such order by the Contract, which shall constitute the terms and conditions of the General Terms and Conditions for Sale.
- (b) The Buyer must give in writing to the physical supplier not less than five (5) working days' notice of the Vessel's readiness to receive Marine Fuels with a copy to the Seller. If the date(s) of delivery agreed is less than five (5) calendar days, the Buyer, or its agent at the port or point of delivery, shall give the Seller, or the physical supplier, a minimum seventy-two (72) / forty-eight (48) / twenty-four (24) hours prior-written notice before arrival. Furthermore it is in all circumstances and on all occasions the responsibility and duty of the Buyer to ascertain and where appropriate to comply with:
  - (i) The precise requirements of the physical supplier and any other person, body or authority in respect of the giving of notice of the Vessel's time of arrival at the Point of Delivery, and
  - (ii) the exact location of the Point of Delivery, and
  - (iii) any particular requirements to enable delivery to be effected as efficaciously as possible.
- (c) It is the responsibility and duty of the Buyer to instruct its agent at the place of supply to liaise with the physical supplier so as to ensure compliance with the provisions at Clause 5b1 – 5biii inclusive.
- (d) Deliveries of Marine Fuels are made on the basis of the firm delivery date(s) as stated in the Contract. The Seller has the right to cancel this Contract without incurring any liability whatsoever if the Vessel does not arrive at the nominated delivery place and present herself for delivery within the delivery date(s) stated in the Contract, unless mutually agreed otherwise.
- (e) The Seller has the right, by giving notice to the Buyer in writing at any time before actual delivery of the Marine Fuels and on or after the Contract, to increase the price of the Marine Fuels to reflect any

increase in the cost to the Seller caused by any change(s) in delivery date(s), grades and/or quantities which is requested by the Buyer or caused by any delay caused by any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions; and the Buyer shall be bound by and pay such increased price.

- (f) The Seller has the right to deliver the agreed quantity of Marine Fuels in one consignment or in part lots, in which case each part lot is considered as a separate transaction, unless mutually agreed otherwise.

#### 6. DETERMINATION OF QUANTITY

- (a) The quantity of Marine Fuels delivered under the Contract shall be measured by and at the physical supplier's option by one of such generally recognized methods of measurement as is appropriate in the circumstances and the physical supplier's measurements shall be final and binding and, absent manifest error, conclusive. In cases of delivery ex-wharf, shore tank figures shall be conclusive. Quantities calculated from the Vessel's soundings shall not be considered. If the port of delivery is Singapore and delivery of Marine Fuels is through Mass Flow Meter (MFM) system, all measurements registered through MFM system shall be deemed as final and binding as per TR48 : 2015 (ICS01.140.30; 47.020).
- (b) The Chief Engineer of the Vessel or his representative shall jointly with physical supplier measure and verify the quantities of Marine Fuels delivered from the bunkering facilities. Should such Chief Engineer of the Vessel or his representative fail or decline to so verify the quantities, measurement of the quantity made by the physical supplier shall be final and binding as to the quantities sold and delivered hereunder and no claims for any difference between the physical supplier's figures and the Buyer's figures shall be made or allowed after delivery.

#### 7. DETERMINATION OF QUALITY

- (a) The Seller shall arrange for a representative sample of each grade of Marine Fuels to be drawn throughout the entire bunkering operation and that sample shall be thoroughly mixed and carefully divided into minimum five (5) identical samples. The sampling shall be performed in the presence of both the physical supplier and the Buyer or their respective representatives. The absence of the Buyer or their representatives shall not prejudice the validity of the sample taken. The sample shall be drawn using a mutually accepted sampling device which shall be constructed, secured and sealed in such a way so as to prevent the sampling device and the sample being tampered with throughout the bunkering operation.
- (b) All identical samples referred to in Clause 7a shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, product name, delivery date, place of delivery, point of sampling, seal number and counter-seal number (if available), authenticated with the Vessel's stamp and signed by the physical supplier's representative and the Chief Engineer of the Vessel or his authorized representative.
- (c) Any samples drawn by the Seller's personnel either at the time of bunkering or at any time after bunkering shall not be valid as an indicator of the quality of the Marine Fuels supplied.
- (d) If the quantity is delivered by more than one bunker barge, the sampling procedure shall be repeated as outlined in Clause 7a, 7b and 7c. Quality of the Marine Fuels supplied must be based on tests made as soon as possible and by a mutually agreed, accredited and independent laboratory of sample(s) taken.

#### 8. CLAIM

- (a) Written notice of claim must be given to the Seller within the time limit specified in Clause 8c and 8d below, and any claim not notified within the specified time limit shall be deemed waived and absolutely barred and the Seller shall be discharged of all liabilities whatsoever and howsoever arising. It is the Buyer's responsibility to ensure that notice of claim is received by the Seller whose confirmation receipt should always be sought. Regardless of whether a claim or dispute has risen or is anticipated the Buyer must give notice of claim forthwith to the Seller of any discrepancy, error or omission present in any form or document tendered, submitted or produced by the physical supplier and of any unusual occurrence relating to the delivery.
- (b) The notice of claim must contain sufficient information to enable the Seller to identify the relevant transaction, the nature of the complaint and loss or damage alleged. Any notice of claim which does not give such sufficient information will not be valid for the purpose of compliance with the relevant time limit. In addition the Buyer must provide a full and complete response to any and all

questions, enquiries and requests made of it by the Seller concerning the claim and matters relating thereto.

#### (c) QUANTITY CLAIMS AND DISPUTES

In the event of any disagreement concerning the quantity delivered, the Master, Chief Officer, Chief Engineer of the Vessel or the Buyer's accredited representative shall immediately issue a Letter of Protest to the physical supplier or the physical supplier's representative, failing which any claim for short delivery shall be deemed to be absolutely waived and barred. Furthermore the Buyer may elect, before the Vessel sails, to appoint a mutually agreed and independent surveyor, on behalf of the physical supplier and the Buyer to verify the BDN quantity. If after the issuance of a Letter of Protest, the Buyer, for whatever reason, does not elect to appoint a mutually agreed and independent surveyor to verify the BDN quantity as stated, the Buyer shall notify the Seller in writing of any claim for short delivery within seven (7) calendar days of the date of delivery failing which any such claim shall be deemed to be absolutely waived and barred.

#### (d) QUALITY CLAIMS AND DISPUTES

It is the Buyer's sole responsibility to ensure that Marine Fuels tendered for delivery is fit for use by the Vessel and is delivered into the correct tanks as stated in Clause 3. In the event of the Buyer having grounds to believe that the Marine Fuels supplied does not accord with the description in the Contract or is defective the Buyer shall immediately:

- (i) Take all reasonable steps to mitigate the consequences of having been supplied with possibly defective or incorrect Marine Fuels.
- (ii) Give immediate notice with full details of the possibly defective or incorrect Marine Fuels to the Seller together with the Vessel's position, destination and ETA, the quantities and locations of all Marine Fuels on board and the Vessel/stored in the Vessel, the rate and quantity of consumption since delivery and the location of the Vessel immediately prior to delivery of the Marine Fuels, quality and specification of Marine Fuels supplied, the place and date of supply and the name of the physical supplier.
- (iii) Inform the Seller of the whereabouts of the Buyer's set of samples.
- (iv) 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 the replacement of the nonconforming Marine Fuels. If the Buyer removes the Marine Fuels without the express written consent of the Seller, then all such removal and related costs shall be solely for the Buyer's account.

It is pre-condition to the Seller's liability for any quality claim that at the time a notice of claim is given the set of samples retained by the physical supplier are available for analysis by a reputable and independent testing laboratory, approved by the Seller, in accordance with established procedures and the analysis is carried out in the presence of a representative of the Seller. The Buyer hereby acknowledges that the sealed samples retained by the physical supplier are representative of the Marine Fuels delivered and that the Seller has no duty to consider any other independently produced samples. The results of the analysis shall be final, binding and conclusive on all parties. In the event that the physical supplier is unable to make the sample(s) available for analysis within seven (7) calendar days from the date of notice of claim, the Seller will accept the Buyer's set of sealed samples registered in BDN provided by the physical supplier as the representative of the Marine Fuels delivered for analysis in accordance with the provisions of Clause 8d, provided that the Buyer's request in writing to the physical supplier for the sealed samples is copied to the Seller at the same time the request is sent to the physical supplier. The time limit for receipt by the Seller of notice of claim in respect of quality and/or claims arising out of quality is seven (7) calendar days from the date of delivery or such shorter period as may be specified in the Contract.

- (e) Neither party hereto shall be liable for indirect or consequential loss and/or damage arising from the Contract.

#### 9. PAYMENT

- (a) The Seller shall invoice the Buyer for all Marine Fuels delivered hereunder in U.S. Dollars and the Buyer shall pay to the Seller the amount thereof in U.S. Dollars. Such payments shall be made to the credit of the Seller's account with CITIBANK, Singapore or such other bank(s) as the Seller may designate by written notice to the Buyer via telex or fax or email.
- (b) Unless otherwise provided in the Contract, all sales shall be on term of cash in advance. Payment shall be made in full without any set-off, counterclaim, discount and/or deduction whatsoever prior to the date of delivery.
- (c) Any individual bunker transaction not requiring payment of cash in advance shall require credit approval by the Seller's Credit

Department in Singapore. This approval, which will occur prior to the concluding of Contract, shall be construed as the binding act in a bunker transaction and it is agreed that contract formation has occurred in Singapore. The Buyer shall pay the full amount without any set-off, counterclaim, discount and/or deduction whatsoever promptly before or on the agreed due date set in the invoice.

- (d) The Seller may in good faith vary, amend, withdraw, substitute or add to the terms relating to payment at any time in the course of a transaction in such a manner as it shall in its absolute discretion consider necessary to protect its interest.
- (e) All unpaid invoices from the Seller to the Buyer shall immediately be considered overdue, upon occurrence of any of the following events:
  - (i) any vessel owned or operated by the Buyer is arrested or attached by the Seller or a third party for unpaid debts; or
  - (ii) There is a change in the financial circumstances, credit worthiness or structural organization of the Buyer sufficient to cause the Seller to reasonably believe that its likelihood of receiving payment from the Buyer is jeopardized or that its security interest in any of the Buyer's owned, managed, chartered, operated or otherwise controlled vessels is jeopardized.
- (f) All overdue payments shall bear interest at the rate of two per cent (2.0 %) per month or pro rata.
- (g) In the event that any invoice is overdue, the Seller reserves the right to delay or suspend further deliveries of any Marine Fuels if the Buyer fails to make any payments as herein provided in Clause 9.
- (h) Notwithstanding that the Buyer shall remain liable to the Seller for all amounts payable to the Seller under this Contract; deliveries of Marine Fuels are expressly made on the faith and credit of the Vessel's hull to which delivery is made and the Buyer warrants that the Seller or the physical supplier shall have and may assert at any time and at any place in the world a maritime lien against the Vessel (no matter who the present and future Owners may be), her sister vessels and her reserves of Marine Fuels for all amounts due to the Seller under this Contract. The lien shall become effective in accordance with Clause 9 immediately any amount becomes due to the Seller under this Contract.

#### 10. CONTINGENCIES

- (a) No failure, omission or delay by the Seller to carry out or observe any of the terms and conditions of this Contract shall give rise to any claim against the Seller or be deemed a breach of Contract if such failure, omission or delay arises, directly or indirectly, from any cause beyond the control of the Seller including, but without limitation to the generality of the foregoing, any regulation or embargo issued by any government (or person purporting to act as such) interfering with or affecting, directly or indirectly, the supply of Marine Fuels, any suspension or reduction in production of Marine Fuels by the Seller's main, subsidiary or anticipated supplier(s) occurring at any time, any acts of God, fires, floods, perils of sea, lightning, earthquakes, storms, weather conditions, war (declared or undeclared), strikes, lock outs, work stoppages or other industrial disturbances or difficulties, civil wars, warlike activities, insurrections, rebellions, public disorders, acts of sabotage, civil commotions, riots, disturbances, quarantine, restrictions, epidemics, explosions, accidents, breakdowns or any other cause of whatsoever kind.
- (b) Vessels will be bunkered as promptly as circumstances permit, but if the Seller or the physical supplier at any time for any reason whatsoever believes that there may be a shortage of supply at any port so that he may be unable to meet, the demands of any or all of its customers, the Seller or the physical supplier may allocate their available and anticipated supplies of Marine Fuels among their customers in such a manner or not at all as they may in their absolute discretion determine.
- (c) The Buyer shall make no claim of whatsoever nature against the Seller by reason of the Seller exercising its option pursuant to Clause 10. Should there be any delay, curtailment or interference with the availability of any of the Seller's sources or anticipated sources of supply wherever situated, the Seller shall not be required to increase supplies or obtain supplies from other sources or to purchase Marine Fuels or to replace the supplies so curtailed or interrupted.

#### 11. FINANCIAL RESPONSIBILITY

- (a) In the event of default by the Buyer of any company or companies connected, associated or affiliated with the Buyer in any way in the payment of any indebtedness whatsoever to the Seller whether arising under this Contract or any other contract with the Seller of whatsoever nature or other default in or breach of their obligations to the Seller or in the event of any distress of execution levied upon the Buyer's property or assets or in the case of the Buyer making any agreement or composition with its creditors or its committing any act of bankruptcy or if a petition or receiving order or analogous

proceeding is levied against the Buyer or if any resolution for their winding up is passed or presented or if a Receiver is appointed over the Buyer's undertaking, property or assets or should the Buyer's financial conditions become unsatisfactory in the Seller's sole and absolute judgment, then:

(i) The Seller shall have the right at any time, without prejudice to any other rights or remedies, to cancel the Contract forthwith. In the event that the Seller exercises its right to cancel the Contract, the Buyer shall remain liable in respect of all obligations under the Contract up to the date of cancellation. The Seller is entitled to exercise its right to cancel the Contract at any time, without prior notice to the Buyer, and/or

(ii) the Seller shall be entitled to the immediate payment of any and all sums payable under any contract(s) with the Buyer and/or any company or companies connected, associated or affiliated with the Buyer and including all sums which are already due at the time of the occurrence of any of the events referred to in Clause 11 and all sums which shall become due at any time thereafter.

- (b) As an alternative to cancellation pursuant to Clause 11a, the Seller may delay or suspend temporarily the supply of the Marine Fuels until payment has been made or security in a form satisfactory to the Seller has been provided. If no payment or satisfactory security is provided, the Seller may at any time and without prior notice to the Buyer exercise its right to cancel under Clause 11a above.
- (c) The Seller shall not be liable for any consequences, losses and/or damages howsoever arising from the exercise by the Seller of its rights under either or both of Clause 11a and Clause 11b above.
- (d) In the event that the Buyer purchases less than the full contracted for any reason, without prejudice to the Seller's other rights and remedies it may have against the Buyer, the Buyer shall be liable to the Seller for all damages incurred, including those incurred by the Seller as a result of having entered into the foregoing transactions or having to enter into any replacement transactions, as well as the costs of storing, transporting or disposing of the Marine Fuels not purchased by the Buyer and any related administrative and legal fees. The Buyer further acknowledges that the Seller shall not be obligated to perform any or the Seller's obligations hereunder if there is an event of default or another breach by the physical supplier with respect to the contract with such physical supplier.

#### 12. CANCELLATION

- (a) In case the Buyer wishes to cancel the Marine Fuels ordered or the Vessel failing to take delivery of the requested Marine Fuels within the delivery period as agreed in the Contract for any reason, regardless of fault or causation, the Seller shall have the option to cancel the Contract without incurring any liability whatsoever.
- (b) The Seller shall have the right to pursue a claim against both the Buyer and the Vessel, and the Buyer and the Vessel shall be jointly and severally liable for any claims, losses, costs, damages, fines, penalties and expenses however incurred or sustained arising out of or in connection with the cancellation of the Contract, including but not limited to any difference between the Contract price and prevailing market price of the Marine Fuels, cancellation fee payable to the Seller of not less than US\$5.00 per metric ton to be applied to the Marine Fuels not delivered and any storage costs, and
- (c) the Seller shall have the right to sell the undelivered Marine Fuels at any time after the delivery period as agreed in the Contract, and if the Marine Fuels are re-sold to another party or at prices lower than prevailing market prices, the Buyer shall pay the storage costs until the contracted quantity has been completely re-sold.
- (d) The Seller may treat any other breach by the Buyer of any express term of the Contract as a breach of a condition and it may as its discretion accept the breach, treat the Contract repudiated and seek remedies as it considers appropriate. However the provisions of Clause 15 shall survive the determination of the Contract in any event.

#### 13. TAXES OR OTHER CHARGES

Should any tax, freight, insurance premium, pilotage, port dues or other extra expenses at the time of delivery under the Contract be raised or charged after the Contract is made, such additional expenses shall be borne by the Buyer.

#### 14. WAIVER

No delay or omission by the Seller to exercise any right or power under the Contract or at all shall impair such right or power or be construed as a waiver of or as acquiescence in any breach by the Buyer and in any event of the Seller at any time agreeing to waive any such right or power, such waiver shall only be valid if given in writing and agreed by the Seller.

#### 15. LIABILITIES AND INDEMNITY

- (a) Without prejudice to any provisions elsewhere in these General Terms and Conditions, the Seller shall not be, liable for any expenses, claims, losses, damages and liabilities howsoever arising in connection with the Buyer's receipt, use, storage and transportation of Marine Fuels delivered under this Contract unless the expenses, claims, losses, damages and liabilities result from the Seller's personal gross negligence.
- (b) The Buyer hereby indemnifies the Seller against any claim for injury and/or death occurring to any person and/or all damage to any property and against all actions, suits, claims, demands, costs, charges or expenses arising in connection therewith to the extent that the same shall have been occasioned by the negligence or default of the Buyer, its servants, representative, or agents or any third party in the course of performance of or arising out of or in connection with the Contract.
- (c) The maximum liability of the Seller under this agreement and the maximum liability of any other person who may be able to rely upon these General Terms and Conditions, is limited to an amount equal to the purchase price of the Marine Fuels delivered or intended to be delivered under the Contract. No claim or claims against the Seller shall be made which exceed in total the amount of the limit according to Clause 8e.
- (d) The Buyer agrees that physical supplier of the Marine Fuels under this Contract and all employees, agents and representatives of the Seller and of such physical supplier will have the benefit of any and all terms, conditions, rights, exclusions and other benefits provided for the Seller under these General Terms and Conditions.

#### 16. JURISDICTION

- (a) This Contract shall be governed by and interpreted in accordance with the General Maritime Law of the United States of America, the applicable federal laws of the United States of America, and both parties submit to the jurisdiction of the **High Court of Justice in New York**. For the sole benefit of the Seller, it is further agreed that the Seller, without prejudice to any of its rights, has the right to proceed against the Buyer and/or the Vessel and/or any other party in such jurisdiction worldwide as the Seller in its sole discretion sees fit to:
  - (i) exercise its lien over the Vessel, her sister vessel(s) and/or their reserves of Marine Fuels and/or
  - (ii) arrest the Vessel or her sister vessel(s) and/or their reserves of Marine Fuels to secure the Seller's claims for any amounts, costs, expenses, losses or damages payable to him under this Contract and/or
  - (iii) enforce any judgment, and/or
  - (iv) take any other proceedings.

#### 17. TITLE AND RISK OF LOSS

- (a) The Contract between the Seller and the Buyer on these General Terms and Conditions shall constitute an agreement to sell the Marine Fuels and no title to the Marine Fuels shall pass to the Buyer by reason of delivery or acceptance of the Marine Fuels.
- (b) The Seller shall remain the sole and absolute owner of the Marine Fuels delivered to the Vessel until such time as the agreed price of the Marine Fuels has been paid to the Seller by the Buyer, pursuant to the terms of Clause 9. Until such time the Buyer shall be the mere bailee of the Marine Fuels for the Seller.
- (c) The Marine Fuels which is the subject of any agreement by the Seller to sell to the Buyer shall be at the risk of the Buyer as soon as they are delivered by the Seller to the Vessel and reach the flange connecting the bunkering facilities to the vessel's lines.
- (d) If, prior to payment, the Seller's Marine Fuels are commingled, admixed, or united in any way with other marine fuels on board the Vessel, title to the Marine Fuels shall remain with the Sellers corresponding to the quantity of the Marine Fuels delivered.
- (e) The Buyer's right to possession and use of the Marine Fuels shall cease at whichever is the earliest of the following dates or occurrences:
  - (i) on the expiration of the agreed period of credit, if any
  - (ii) if the Buyer commits any of the acts, or any of the events occur which are set out in Clause 11 and Clause 12 giving rise to the Seller's right to cancel the Contract forthwith and the Seller exercises its right and cancels the Contract.
- (f) If the Buyer's right to possession and use of the Marine Fuels ceases, the Seller is entitled (but not obliged) to repossess the Marine Fuels without prior judicial intervention, without prejudice to all other rights or remedies available to the Seller.

#### 18. SAFETY AND ENVIRONMENTAL PROTECTION

- (a) It shall be the sole responsibility of the Buyer to comply and advise its personnel, agents and/or customers to comply, both during and after delivery, with all the health and safety requirements applicable

to the Marine Fuels and to ensure so far as possible that any user of such Marine Fuels avoids, without limitation, any frequent or prolonged contact with the Marine Fuels. The Seller accepts no responsibility for any consequences arising from failure to comply with such health and safety requirements or arising from such contact. The Buyer shall protect, indemnify and hold the Seller harmless against any damages, expense, claims or liability incurred as a result of the Buyer, or any user of the Marine Fuels, or its customers failing to comply with the relevant health and safety requirements.

- (b) The Buyer warrants that the Vessel is in compliance with all governmental, port/terminal and pollution rules and regulations. The Vessel will not be moored at a wharf or alongside other marine loading facilities of the Seller or the physical supplier unless free of all conditions, deficiencies or defects which might impose hazards in connection with the mooring, unmooring or bunkering of the Vessel.
- (c) If an escape, spillage or discharge of Marine Fuels ("a spill") occurs before, during or after bunkering, pursuant to this Contract, the Buyer shall promptly notify the appropriate governmental authorities and take whatever action is necessary, and pay all costs to effect the clean-up and mitigate the effects of such a spill. Failing prompt action, the Buyer authorizes the Seller and the physical supplier, if any, to conduct such clean-up on behalf of the Buyer at the Buyer's risk and expense, and the Buyer shall indemnify and hold the Seller and the physical supplier, if any, harmless against any damages, expense, claims or liability arising out of any such spill or clean-up unless such spill or clean-up shall be proven to be wholly and solely caused by the Seller's gross negligence.
- (d) However, notwithstanding the cause of such a spill, the Seller is hereby authorized at its option to take such measures which it considers necessary to protect the environment either in cooperation with the Buyer or exclusively as the sole party at any time. If the Seller has exercised its option to remove the oil and mitigate the effect of such spill, the Buyer agrees to cooperate and render such assistance as is required by the Seller in the course of such action. Any action so taken shall be on behalf of and at the expense of the Buyer and the Buyer shall indemnify the Seller for any expenses, damages, costs, fines and penalties arising out of any such spill or clean-up unless such spill or clean-up shall be proven to be wholly and solely caused by the Seller's gross negligence. The Buyer agrees to give or cause to be given to the Seller upon demand any documents and other information concerning any spill, which are requested by the Seller or are required by laws or regulations applicable at the time and place where the Seller delivers Marine Fuels to the Buyer.