

TOYOTA TSUSHO PETROLEUM PTE LTD

GENERAL TERMS AND CONDITIONS FOR SALES OF MARINE FUELS

1. Application

These General Terms and Conditions for Sales of Marine Fuels ("General Terms and Conditions") set forth shall, unless otherwise expressly agreed in writing by the Seller, apply to any contract where the Seller agrees to sell and/or deliver; and/or to arrange for the sale and/or delivery of Marine Fuel(s). Where the Seller agrees with the Buyer in writing for a term or terms to be included in the Contract which are inconsistent with these General Terms and Conditions, such particular term or terms shall prevail over these General Terms and Conditions and only to the extent of such inconsistencies.

2. Definitions

Unless the context otherwise requires, the following definitions and meanings shall apply:

- 2.1 **"Buyer"** means the entity or entities named in the "Sales Confirmation" issued by the Seller (**"Contract Document"**) as buying the Marine Fuel(s) under a Contract and shall include its servants, agents and designated representatives and the registered owner of the Vessel to which bunkers are being supplied, her charterers and/or managers and/or operators and/or the buyer of the Vessel on whose behalf the entity or entities named in the Contract is acting.
- 2.2 **"Contract"** means the agreement by the Buyer to buy and a corresponding agreement by the Seller to sell and/or deliver or to arrange for the sale and/or delivery of Marine Fuel(s) as contained in the Contract Document. Unless otherwise expressly stated, references to "Contract" shall include these General Terms and Conditions.
- 2.3 **"Delivered basis"** means delivery "ex-barge".
- 2.4 **"Ex-Wharf basis"** means delivery on "ex-wharf" or "ex-terminal" basis.
- 2.5 **"Marine Fuel(s)"** mean the different grades of bunker fuel oil, intermediate bunker fuels, marine fuel oil, thin fuel oil, marine diesel oil, light marine diesel fuel and gas oil or any other type and grade of oil sold and/or delivered; or contracted to be sold and/or delivered; or arranged to be sold and/or delivered by the Seller.
- 2.6 **"Parties"** mean the Buyer(s) and the Seller and **"Party"** means either the Buyer or the Seller as the case may be.
- 2.7 **"Seller"** means Toyota Tsusho Petroleum Pte Ltd and shall include its branch offices.
- 2.8 **"Vessel"** means the ship or vessel nominated to take delivery, or taking delivery or having taken delivery of the Marine Fuel(s) under a Contract.

3. Price

- 3.1 The price of Marine Fuel(s) shall be the price as quoted by the Seller in writing on either "Ex-Wharf" delivery or "Delivered" basis which was accepted by the Buyer for the relevant grade of Marine Fuel(s) and as stated in the Contract Document. Unless otherwise stated in writing by the Seller, all prices do not include taxes, duties, wharfage dues, port charges or any other charges or costs whatsoever and howsoever arising out of and/or in connection with the delivery of Marine Fuel(s). Any such taxes, duties, wharfage dues, port charges and other charges and/or costs shall be paid by the Buyer at the rate prevailing on the actual date of delivery. In cases of "Delivered" prices, unless otherwise stated in writing by the Seller, such prices comprise only the "Ex-Wharf basis" price and delivery charges.
- 3.2 The price as agreed is valid for a delivered quantity which is within the tolerance of five (5) percent more or less of the agreed quantity. If the delivered quantity falls outside the said five (5) percent tolerance, the Seller shall be entitled at its option to adjust the price upwards to reflect prevailing

market prices. This is without prejudice to any claim which the Seller may have against the Buyer for losses and/or damages.

- 3.3 The price as agreed is valid only for delivery commencing within a 3-day delivery range beginning from the estimated date/time of arrival (“**ETA**”) of the Vessel as indicated in the Contract Document; or if a range of estimated dates/times of arrival was indicated in the Contract Document, from the earliest date/time in that range. If the Buyer begins to take delivery, or requires delivery to commence, outside the said 3-day delivery range, the Seller shall also be entitled at its option to adjust the price upwards to reflect prevailing market prices or to cancel the nomination. This is without prejudice to any claim the Seller may have against the Buyer for losses and/or damages for failing to take delivery within the 3-day delivery range.
- 3.4 Subject always to the above, the prices applicable at the commencement of delivery under the Contract shall remain effective until the completion of delivery.

4. Bunkering Procedures

Marine Fuel(s) sold on “Delivered basis” in Singapore shall be governed by procedures and requirements as stipulated in SS 600 incorporating the latest amendments and revisions applicable at the date of the delivery (“Code of Practice for Bunkering”). The General Terms and Conditions will prevail in the event of any inconsistency with the provisions of the Code of Practice for Bunkering. For deliveries outside Singapore, they shall be subject to the Seller’s and/or the Seller’s suppliers’ standard procedures and requirements applicable at the relevant ports.

5. Quality

- 5.1 Unless otherwise expressly stated in the Contract Document, the specifications of the Marine Fuel(s) supplied to the Buyer shall be the Seller’s or Seller’s suppliers’ commercial grades as available at the time and location of delivery.
- 5.2 The Buyer shall bear sole responsibility and risk for the selection of Marine Fuel(s) for use in the Vessel including but not limited to the selection of Marine Fuel(s) fit for use by the Vessel and the determination of compatibility with other fuels already on board the Vessel. The Seller does not warrant and is not under any obligation to check whether the Buyer’s selection and nomination is suitable for use by the Vessel or any other receiving facilities.
- 5.3 All other warranties and conditions (including but not limited to any warranties or conditions whatsoever relating to quality, fitness for purpose, description, or otherwise) whether expressed or implied by common law, statute, or otherwise are hereby expressly excluded.

6. Quantity

The quantity of Marine Fuel(s) delivered shall be finally and conclusively determined from the measurements of the Seller’s or Seller’s supplier’s delivery facility, using tank gauging or oil meter at the Seller’s or Seller’s supplier’s election. The quantities of Marine Fuel(s) as measured shall be calculated in accordance with ASTM-IP Petroleum Measurement Tables for petroleum and petroleum products or the methods of any other recognised standards authority at the discretion of the Seller or Seller’s supplier. The Buyer shall have the option of appointing a representative to observe the taking of measurements. If the Buyer does not send any representative to witness the measurements of the quantity of Marine Fuel(s) and/or the Buyer’s representative does not personally witness the measurement, the Buyer shall be barred from challenging the finality and conclusiveness of any measurement of the quantity of Marine Fuel(s) and/or to bring any claim of a quantitative nature.

7. Nomination

- 7.1 Where delivery is on “Delivered basis”, the Buyer shall give the Seller at least seventy-two (72) hours prior written notice (excluding Saturdays, Sundays and Public Holidays) of the exact time and exact location at which delivery is required and, if the Contract Document contains an option for the

Buyer, confirmation of the quantity and grade of Marine Fuel(s) to be delivered. The written notice shall be given during the Seller's usual working hours.

- 7.2 Where the delivery is on "Ex-Wharf basis", the Buyer shall nominate a vessel to load not less than 2,000 metric tons of Marine Fuel(s). The Buyer shall give the Seller no less than five (5) working days prior written notice (excluding Saturdays, Sundays and Public Holidays) of the nominated vessel, quantity to be loaded, and the exact time of arrival of the Vessel. Where Marine Fuel(s) are to be delivered in an "Ex-Wharf basis" term Contract (i.e. where the Marine Fuel(s) are to be delivered over a specified period of time), the delivery or deliveries shall be evenly spread out over the delivery period set out in the Contract.
- 7.3 If, at any time, the Vessel fails to meet or is reasonably estimated by the Seller that the Vessel may fail to meet the time of arrival and/or location as stated in the Buyer's notices referred to in Clauses 7.1 and 7.2 above, the Seller shall be entitled to cancel the nomination or the Contract without any liability whatsoever on the Seller's part. Such cancellation shall not prejudice any of the Seller's rights and remedies against the Buyer. Without prejudice to any other rights and remedies of the Seller, where the Seller lawfully cancels any nomination, the Buyer shall pay the Seller a cancellation charge of US\$3.50 per metric ton in addition to any losses and damages which the Seller may incur as a result of the cancellation (including but not limited to any difference between the Contract price and the market price or between the market price and the price in fact achieved by the Seller in a subsequent re-sale (even if the re-sale price is lower than the market price).

8. Delivery

- 8.1 Delivery of the Marine Fuel(s) shall be made to the Vessel on either "Ex-Wharf basis" or "Delivered basis" as agreed in the Contract and into the Vessel's tanks normally designated for the fuels.
- 8.2 Unless otherwise expressly agreed in writing, delivery of the Marine Fuel(s) shall only be effected within established port limits.
- 8.3 Without prejudice to Clause 13.2, the Seller shall endeavour to deliver the Buyer's Marine Fuel(s) as promptly as circumstances permit; provided always that the Seller shall have no liabilities whatsoever, including but not limited to any expenses, losses, damages, loss of use, loss of hire, detention, delays or demurrage which may be suffered by the Buyer or any other parties, as a result of any delay whatsoever or congestion affecting the Seller's and/or Seller's supplier's delivery facilities and/or bunker barge(s) or any prior commitments of bunker barges, public holidays or practices at the port of delivery, and/or any other circumstances whatsoever outside the direct and immediate control of the Seller. The Seller's supplier or any other party in supplying Marine Fuel(s) to the Vessel and/or in signing bunker delivery notes (whether or not on Seller's bunker delivery notes) does not in any way whatsoever act in the capacity as the Seller's agent. Where the Seller's bunker delivery note does not expressly state that the Seller is the "Supplier" of the Marine Fuel(s) or does not expressly state any entity as the "Supplier" of the Marine Fuel(s), the Seller's bunker delivery note shall not constitute or amount to a representation that the Seller is the physical supplier and/or supplier of the Marine Fuel(s).
- 8.4 Delivery of the Marine Fuel(s) shall be carried out subject to any regulations, requirements, practices and procedures prevailing at the port and time of delivery. The Buyer shall be solely responsible for ascertaining, acquainting itself and complying with all such regulations, requirements, practices and procedures prevailing at the port of delivery (including but not limited to relevant berth restrictions and requirements). The Buyer shall indemnify the Seller for any losses, costs, damages and expenses which have been incurred by the Seller following the Buyer's failure to comply with such regulations, requirements, restrictions, practices and procedures. Without prejudice to the foregoing, if any government and/or port permit and/or licence are required for delivery of the Marine Fuel(s), the Seller shall have no obligation to deliver until such permit and/or licence has been obtained by the Buyer.
- 8.5 In all cases, the Buyer shall be responsible for making all connections and disconnections of the delivery hose(s) to the Vessel's bunker manifold and ensuring that the hose(s) are properly connected to the Vessel's bunker manifold prior to the commencement of delivery and that they remain properly connected until the completion of delivery. The Buyer shall also render all necessary assistance, and provide sufficient tankage and equipment, to promptly receive the

Marine Fuel(s). Further, where Marine Fuel(s) are delivered on "Delivered basis", the Buyer shall provide a free and safe berth for the barge(s) alongside the Vessel's receiving lines. Where Marine Fuel(s) are delivered on "Ex-Wharf basis", the Buyer shall promptly receive the Marine Fuel(s) and withdraw the Vessel from the wharf or terminal upon completion of the delivery.

- 8.6 Should the Buyer and/or the Vessel cause any delays whatsoever to the delivery of the Marine Fuel(s) for any reason whatsoever, or the Vessel fails to vacate the wharf or terminal promptly for any reasons whatsoever, the Buyer shall be liable for any losses, damages, costs and expenses whatsoever incurred by the Seller arising from any such delays, including but not limited to losses, damages, costs and/or expenses due to delays to the Seller's and/or Seller's supplier's barge.

9. Failure to Lift

- 9.1 If the Buyer fails to take delivery of or rejects any amount of the Marine Fuel(s) to be delivered under the Contract or fails to take all necessary steps to take delivery or otherwise perform its obligations pertaining to the taking of delivery under the Contract, the Buyer shall be liable for all losses, damages and expenses whatsoever incurred by the Seller arising from such failure or rejection by the Buyer, including but not limited to any difference between the Contract price and prevailing market price of the Marine Fuel(s); barging charge of not less than US\$3.50 per metric ton to be applied to the Marine Fuel(s) which are not delivered; any storage costs; and if the Marine Fuel(s) are re-sold to another party as fuels of a lower grade or at prices lower than prevailing market prices, the difference between the prevailing market prices of the Marine Fuel(s) and such lower grade of fuel or such lower re-sale prices.

- 9.2 Without prejudice to any other rights and remedies which the Seller may have, with respect to "Ex-Wharf basis" delivery, if the Buyer fails to timely lift the contracted quantity or fails to timely and validly nominate a vessel to take delivery of the Marine Fuel(s), the Seller shall have the option, at the Seller's discretion, to store the Marine Fuel(s) and impose for the Buyer's account a "storage surcharge" of US\$3.50 per metric ton for the unlifted quantity for every seven (7) calendar days or part thereof. In the event that the surcharge is insufficient to cover the actual storage costs incurred by the Seller, the Seller shall be entitled to claim such excess storage costs from the Buyer. The Buyer shall make payment of the storage surcharge and excess storage costs (if any) on the Seller's demand. The Buyer shall pay interest at the rate of two (2) percent per month or part thereof on the storage surcharge and the excess storage costs until the contracted quantity has been completely lifted; and the interest shall accrue daily. Further, the Seller shall have the right to sell at any time any unlifted quantity of Marine Fuel(s) and the Buyer shall be responsible for all losses and damages incurred by the Seller, any difference between the Contract price and the market price of the unlifted quantity, or any difference between the Contract price and the subsequent selling price of the unlifted quantity (even if below market price), and the "storage surcharge" and excess storage costs and interest thereon incurred up to the date of the sale.

- 9.3 Without prejudice to its other rights and remedies, the Seller shall be entitled to set-off or deduct from any amounts due from the Seller to the Buyer under the Contract and/or any other contract against: (a) all sums due from the Buyer to the Seller under the Contract and/or any other contract; and/or (b) all damages, losses and expenses the Seller suffers or incurs under the Contract and/or any other contract.

10. Vessel

The Vessel nominated by the Buyer for loading Marine Fuel(s) on "Ex-Wharf basis" must be in all ways acceptable to the Seller's or Seller's supplier's terminal, and meet all requirements of the relevant Port Authority, including but not limited to compliance with ISM (International Safety Management) Code and ISPS (International Ship and Port Facility Security) Code.

11. Title and Risk

Delivery of the Marine Fuel(s) shall be deemed to be complete and risk shall pass to the Buyer as the Marine Fuel(s) pass the flange connecting the delivery facilities provided by the Seller with the receiving facilities (including but not limited to the Vessel) provided by the Buyer. Title shall pass to the Buyer only upon payment by the Buyer of the full amount of invoiced value due for the Marine

Fuel(s) delivered, even if the Marine Fuel(s) are no longer in the possession or custody of the Buyer. Until such time as payment is made, the Buyer agrees, on behalf of itself and the Vessel that the Buyer and the Vessel are in possession of the Marine Fuel(s) as bailees of the Seller. If, prior to payment, the Seller's Marine Fuel(s) are commingled with other marine fuel(s) onboard the Vessel, title to the Marine Fuel(s) shall remain with the Seller corresponding to the quantity of Marine Fuel(s) delivered. If the Marine Fuel(s) are commingled with marine fuels owned by third parties and the total commingled marine fuels is reduced through use to an amount less than the amount delivered under the Contract, title in the unused Marine Fuel(s) will remain with the Seller on a pro rata basis calculated using the amounts as they were when first commingled. The foregoing is without prejudice to such other rights and remedies which the Seller may assert or may have, including but not limited to any rights and remedies against the Buyer and/or the Vessel.

12. Payment

- 12.1 Payment for the Marine Fuel(s), all related charges, interest (if any) and any other monies payable by the Buyer to the Seller shall be made by the Buyer in full without any deduction, set-off and counterclaim whatsoever in United States Dollars free of all charges by electronic or telegraphic transfer of same day funds to the Seller's nominated bank account, quoting the Seller's invoice number and the Buyer's name. Where applicable, the Seller shall provide the Buyer with a documentary invoice or fax invoice.
- 12.2 Unless otherwise expressly agreed in writing between the Parties, all payments hereunder shall be made within thirty (30) days from the date of delivery (date of delivery to count as day one). The Seller reserves the right to charge interest at a rate of two (2) percent per month and pro rata for part thereof on any amount not paid by such time, and such interest to accrue on a daily basis. All overdue payments may be applied, at the sole and absolute discretion of the Seller, first towards the settlement of interest outstanding before application to the principal payment under this Contract or any other contract between the Buyer and Seller. Should the Seller incur legal fees, costs and expenses in connection with the recovery of any amount due from the Buyer to the Seller, the Buyer shall reimburse the Seller on a full indemnity basis for all such fees, costs and expenses incurred by the Seller.
- 12.3 If the payment due date falls on a Saturday or bank holiday other than Monday in New York or at such other place as designated by the Seller for payment, then payment shall be made on the preceding banking day. Where the payment due date falls on a Sunday or Monday bank holiday in New York or such other place so designated, then payment shall be made on the next following banking day.
- 12.4 Notwithstanding any terms and conditions in the Contract, if the Marine Fuel(s) are supplied on credit and if the Buyer's financial condition or credit standing is deemed at any time by the Seller (at its sole discretion) to be impaired or otherwise unsatisfactory, the Seller may, whether before, during or after delivery of the Marine Fuel(s), require the Buyer to make full payment at any time before the date due for payment or to provide at any time satisfactory security such as a standby letter of credit or a performance bond to the Seller. The Seller shall be entitled to withhold or suspend delivery of Marine Fuel(s) pending provision of the said security or full payment by the Buyer. In the event of failure by the Buyer to make payment or give security required within the time stipulated by the Buyer, the Seller shall be entitled to withhold, suspend or terminate any delivery of Marine Fuel(s) under the Contract, without prejudice to the Seller's other rights and remedies, including asserting all its rights and remedies against the Vessel. In the event of such suspension or termination, the Buyer shall have no recourse whatsoever against the Seller.
- 12.5 The Buyer shall, on the Seller's written notification to provide security pursuant to Clause 12.5, be obliged to procure a standby letter of credit or performance bond as demanded by the Seller on wording to be determined by the Seller up to the value of the Marine Fuel(s) to be supplied to the Buyer or an estimate of such value (such estimate to be undertaken solely by the Seller at its discretion). Such standby letter of credit or performance bond shall be issued by a first class international bank acceptable to the Seller.

13. Indemnity / Liability

- 13.1 The Buyer shall indemnify the Seller and the Seller's supplier, the Seller's contractors and sub-contractors, the Seller's supplier's contractors and sub-contractors and the servants, employees, directors and agents of each of the foregoing against any claims, losses, costs, damages, liabilities, fines, penalties and expenses incurred and/or sustained out of and/or in connection with the act, omissions, neglect and/or default of the Buyer, its servants, employees, officers, directors, agents, the Vessel's officers, crew and agents in the purchase, delivery, receipt, use, storage, handling and/or transportation of the Marine Fuel(s).
- 13.2 The Seller's liability under any circumstances whatsoever (including without limitation, the performance, non-performance or partial performance, whether wilful or otherwise) shall be limited to the payment of damages but shall always exclude special, punitive or exemplary; and indirect or consequential damages. Without prejudice to the foregoing in this Clause 13.2, the Seller shall not under any circumstances whatsoever (including without limitation, the performance, non-performance or partial performance, whether wilful or otherwise) be liable for any loss or damage in the nature of loss of profits, loss of freight, loss of revenue, and loss of use or hire of the Vessel (or any other assets or vessels whatsoever) whether or not such losses are claimed as direct, indirect or consequential losses or damages. Notwithstanding any other provisions in the Contract, the Seller shall not be liable under any circumstances whatsoever (including without limitation performance, non-performance or partial performance, whether wilful or otherwise) (a) for more than the total selling price of the Marine Fuel(s) under this Contract; and/or (b) for any acts or omissions of the Seller's agents and Seller's contractors including but not limited to those transporting and/or delivering the Marine Fuel(s) and fueling agents.

14. Force Majeure

- 14.1 The Seller shall not be responsible for any failure to fulfill and perform its obligations if the fulfillment and/or performance has been partially or wholly delayed, interfered with, curtailed or prevented by any causes or circumstances whatsoever (whether or not foreseeable at the time of the Contract) including but not limited to weather, prior commitments of the Seller, act of God, fires, floods, wars, riots, strikes, lock-out or labour disputes, accidents, transportation or terminal mechanisms, any terminations, curtailments, cessations, delays or failures of supplies of Marine Fuel(s) from any of the Seller's and/or Seller's suppliers' sources of supply or of the petroleum from which such Marine Fuel(s) are derived, or compliance with any order, demand or request, measure or action of any international, national, port, transportation or government or quasi government authority or agency, breakdown of any machinery, vessel, equipment or any facility, inoperability of any machinery, vessel or equipment or any facility, or any other causes or circumstances whatsoever outside the direct and immediate control of the Seller.
- 14.2 If by reason of any of the causes described in Clause 14.1, the Seller's availability of Marine Fuels or means of transportation is wholly or partially delayed, interfered with, curtailed or prevented, then the Seller shall have the liberty to withhold, reduce and/or suspend delivery and/or deliveries at its sole discretion and shall not be bound to make good shortages resulting therefrom, and the Seller shall be entitled to allocate at its absolute discretion the available supply to itself, its affiliates, the Buyer and other buyers in any manner which the Seller deems fit, including not allocating any supply to the Buyer. In such an event, the Buyer shall have the right to purchase any undelivered portion thereof from a third party.

15. Samples/Quantity and Quality Claims

- 15.1 The Seller or Seller's supplier shall take representative samples of each grade of Marine Fuel(s) delivered in accordance with its usual sampling procedure applicable at the port (for "Delivered basis") or at the loading terminal (for "Ex-Wharf basis") – the number of such representative samples being four (4) and two (2) respectively. The Buyer shall be at liberty to appoint a Buyer's representative to witness the sampling, provided always that the sampling procedure is not delayed and/or interfered with by the Buyer's representative. Two sealed samples (for "Delivered basis") or one sealed sample (for "Ex-Wharf basis") shall be handed to the Buyer, the Buyer's representative, or the Vessel's representative, and the remaining sample(s) to be retained by the Seller or Seller's supplier for thirty (30) days. The remaining sample(s) retained by the Seller or Seller's supplier as

aforesaid shall be the umpire sample to be used for analysis by the independent laboratory referred to in Clause 15.2 below.

- 15.2 In the event of a quality dispute, the Parties shall have the quality of the umpire sample referred to in clause 15.1 analysed by a mutually appointed independent laboratory. If the Parties do not agree on the independent laboratory within five (5) working days of the dispute arising, the Seller shall have full discretion to decide on and appoint the independent laboratory. The results of the analysis of the umpire sample by the independent laboratory shall be final and conclusive of the quality of the Marine Fuel(s) delivered and shall be binding on the Parties. Any costs involved including the costs of the analysis of the "umpire sample" shall be borne by the losing Party.
- 15.3 Where the Buyer makes a claim pertaining to the quality of Marine Fuel(s), the Seller shall be entitled upon its request and the Buyer shall allow (or where the Vessel is not under the ownership or charter or control or possession of the Buyer, the Buyer shall procure the necessary authorisation to allow) the Seller's representatives to board the Vessel to fully investigate the claim, including but not limited to inspecting and taking copies of the Vessel's logbooks, documents and written records (including but not limited to the Engine Room log, the Deck Log, and maintenance documents), and any documents and records whatsoever which the Seller considers necessary for its investigations, and to have full access to the Vessel's spaces (including but not limited to the engine room spaces). The Buyer's failure to allow (or to procure the necessary authorisation to allow) boarding to fully inspect the claim as aforesaid shall afford the Seller a full and complete defence to any claim brought by the Buyer.
- 15.4 If the Buyer does not lodge a quality or quantity claim with the Seller in writing specifying the full details of the claim with full supporting documents within thirty (30) days from the date of delivery of the relevant Marine Fuel(s), the Buyer's claim shall be extinguished and the Buyer shall be barred from making such a claim for damages and/or losses and/or expenses and/or for any compensation whatsoever. For the avoidance of doubt, the submission of claims on the part of the Buyer shall not relieve it of its obligations to make payment in full as required under Clause 12.

16. Environmental Protection

- 16.1 The Buyer warrants that the Vessel shall at the time of nomination and at all times during delivery be in compliance with all applicable standards, requirements and regulations imposed by the relevant government or quasi government authorities, port authorities and international conventions.
- 16.2 If an oil spill (which includes but is not limited to any leakage, escape, spillage, overflow of the Marine Fuel(s)) occurs while the Marine Fuel(s) are being delivered, the Buyer shall promptly take all necessary actions to limit the extent and damage of the oil spill; and also to remove the spill. The Seller and/or its supplier is hereby authorised, at its option on giving notice to and at the expense of the Buyer, to take measures and incur such expenses as deemed necessary to remove the spill. The Buyer shall co-operate and render all necessary assistance as required by the Seller and/or its supplier in the course of such action.
- 16.3 All expenses, claims, losses, damage, liability and penalties arising from the spill shall be borne by the Party that caused the spill through its acts and/or omissions (whether negligent, intentional, reckless or otherwise and including the act and/or omission of its directors, employees, servants, agents and subcontractors). If the spill was caused by the act and/or omission of both Parties (whether negligent, intentional, reckless or otherwise and including the act and/or omission of their directors, employees, servants, agents and subcontractors), both Parties shall bear the expenses, claims, loss, damage liabilities and penalties according to their respective degrees of fault.

17. Termination by Default

Without prejudice to the foregoing or any other rights and remedies available to the Seller, the following shall constitute events of default by the Buyer, entitling the Seller to forthwith terminate the Contract by written notice to the Buyer and immediately claim all sums due under the Contract and any losses and damages arising from the default and/or the termination against the Buyer:

- (a) Failure by the Buyer to perform any obligations under the Contract; and/or

- (b) The Buyer or any of its affiliates or related companies becomes insolvent or has a liquidator, receiver, or judicial manager appointed or enter into a deed of arrangement or a composition for the benefit of its creditors, or do or suffer any equivalent act or thing under any applicable law, the Seller may at its sole discretion, by written notice, forthwith terminate the Contract without prejudice to any right of action and claim which may have accrued at the date of termination.

18. Assignment

- 18.1 Save as provided in Clause 18.2 below, the Buyer shall not assign the Contract or any of its rights and obligations under it without the written consent of the Seller.
- 18.2 The Buyer hereby agrees to assign and upon written notification from the Seller shall be deemed to irrevocably assign to the Seller all rights, receivables, benefits, interests, rights of suit, profits, claims and price ("assigned proceeds") to which it is entitled under any contract of sale and/or supply and/or delivery which it may enter into with the Vessel, shipowner, charterer, manager, operator or trader or any other party whatsoever, pursuant to which it sells, re-sells or otherwise delivers or supplies the Marine Fuel(s) sold by the Seller (or any part thereof), whether commingled with marine fuel sold or supplied by other parties or otherwise. The Buyer irrevocably authorises and consents to the giving of any notice of assignment by the Seller the commencement of any legal proceedings or arbitration (whether jointly in the name of the Seller and the Buyer, or in the sole name of the Buyer and including any arrest of vessel or attachment of assets) in any jurisdiction or venue for the recovery of such assigned proceeds. Without prejudice to the generality of the foregoing, the Buyer agrees to provide all necessary assistance and cooperation to the Seller in the recovery of such assigned proceeds, including but not limited to providing discovery and disclosure of documents, procuring witness statements and attendance of witnesses for meetings and hearings; and execution of any documents reasonably required by the Seller in order to effectively and/or validly exercise these rights against another party. It is hereby agreed that the Seller has the sole right to retain for itself any money recovered from a third party pursuant to this Clause. Any claim brought against a third party under this Clause shall be entirely without prejudice to any claims, remedies and rights the Seller may have against the Buyer, the Vessel and any other parties.

19. Waiver

No waiver by either Party of any breach of any terms and conditions of the Contract shall be effective unless the waiver is issued in writing by the waiving Party. No waiver of breach of any of the terms and conditions herein by either Party to be performed by the other Party shall be construed as a waiver of any succeeding breach of the same or any other terms and conditions.

20. Maritime Lien

- 20.1 Without prejudice to any other claims, rights and remedies of the Seller, and Clause 18.2 in particular, insofar as the Buyer is to be entitled to a maritime lien for the supply of Marine Fuel(s) to a vessel, her owner, charterer or any other party, the Buyer shall, at the election of the Seller, either:-
- 20.1.1. assign in favour of the Seller such lien and all proceeds, receivables, interests, rights, benefits due to the Buyer from the vessel, her owner, charterer or any other party to whom the Buyer supplies the Marine Fuel(s); and/or
- 20.1.2. commence admiralty proceedings or actions in rem in its own name or the joint names of the Buyer and Seller or in the name of the Seller (as the Seller may direct) in such jurisdiction as may be nominated by the Seller to enforce such maritime lien against the vessel to which the bunkers are supplied.
- 20.2 Without prejudice to the foregoing Clauses (Clauses 17 and 20.1 in particular) and in addition to any other security or rights and remedies which the Seller may have, the Contract is entered into and the Marine Fuel(s) are supplied upon the faith and credit of the Vessel. It is agreed and

acknowledged that the sale of the Marine Fuel(s) to the Buyer and/or their acceptance on the Vessel create a maritime lien over the Vessel for the price of the Marine Fuel(s) (and all interest and costs payable in respect thereof; including but not limited to lawyers' fees and disbursements), such maritime lien afforded to the Seller over the Vessel. In any event, and to the fullest possible extent, nothing shall prejudice the right of the maritime lien of the Seller afforded hereunder or under any applicable law, whether at the place of delivery, or the flag of the Vessel, or the place of jurisdiction and/or an arrest of the Vessel, or any other jurisdiction whatsoever.

21. The Contracts (Rights of Third Parties) Act

The Contracts (Rights of Third Parties) Act of Singapore shall not apply so as to extend, amongst others, any rights, interests, benefits, defences or exemptions conferred on the Buyer pursuant to this Contract to any third party.

22. Trade Sanctions

22.1 The Buyer warrants that nothing in connection with the Contract and the performance of the Contract including but not limited to the Vessel, the employment and operations of the Vessel, the Vessel's beneficial owners, her managers, charterers or operators, the cargo carried by the Vessel, or any other things, persons or parties connected to the Vessel, the Vessel's trade or employment, and her cargo (including but not limited to the nature, type, origin, intended use(s) or destination) exposes the Sellers, financial institutions, insurers or any other parties involved in any way whatsoever with the performance of the Contract (including but not limited to the remittance of any sums pursuant to the Contract) ("**Interested Parties**") to the risk of violating, contravening, acting inconsistently with, or the risk of being penalized or prejudiced under any laws, regulations, rules, requirements or legislation relating to trade controls, sanctions, export controls, boycotts, and embargoes whatsoever (whether national or supranational) in the world, including but not limited to those of the Republic of Singapore, and the United States of America ("**Trade Restrictions**"). In the event that the Seller and/or any of the Interested Parties incurs any losses, damages, expenses and/or costs whatsoever as a result of a breach of this warranty, the Buyer shall indemnify the Seller and/or any Interested Parties for all of the said losses, damages, expenses and/or costs thereby caused.

22.2 Nothing in the Contract should be interpreted or construed to induce or require either Buyer or Seller to act in any manner (including but not limited to failing to take to any actions in connection with a transaction) which violates, contravenes, is inconsistent with, which may be penalized or prohibited under, or exposes the Seller to the risk of penalty or prejudice under, any Trade Restrictions.

22.3 The Buyer shall forthwith provide to the Seller any information, documents and written certifications which the Seller may require to satisfy the Seller and/or any Interested Parties that nothing in connection with the Contract and/or the performance of the Contract, including but not limited to the Vessel, the employment or operations of the Vessel, the Vessel's beneficial owners, her managers, charterers or operators, the cargo carried by the Vessel, or any other things or persons and parties connected to the Vessel, the Vessel's trade and employment, or her cargo (including but not limited to nature, type, origin, intended use(s) or destination) exposes the Sellers and/or the Interested Parties to the risk of violating, contravening, acting inconsistently with, or the risk of penalty or prejudice under, any Trade Restrictions.

22.4 If in the Seller's reasonable opinion, the Seller's performance of the Contract exposes the Sellers and/or the Interested Parties to the risk of violating, contravening, acting inconsistently with, or the risk of penalty or prejudice under, any Trade Restrictions, the Seller shall be entitled to cancel the Contract without any liability whatsoever, provided that the Seller gives written notice of the cancellation as soon as reasonably practicable. Nothing in this clause shall prejudice any other rights and remedies which the Seller may have against the Buyer.

23. Entire Agreement

The Contract contains the entire agreement between the Parties and supersedes all previous negotiations, understanding, representations, agreements, promises and commitments with regards to its subject matter and any implied terms in the Contract.

24. Miscellaneous

24.1 The Buyer warrants that it is authorised by the Vessel's owners, charterers and operators to order the Marine Fuel(s) to be delivered to the Vessel and that it has provided a copy of these terms and conditions to the Vessel's owners, charterers, operators and/or Master. The Buyer further warrants that by receiving the Marine Fuel(s) and signing the Bunker Receipt by the Chief Engineer or the Master, the Master acknowledges that the Vessel is bound by the terms and conditions contained herein.

24.2 Without prejudice to Clause 13.2, and subject always to Clause 24.4 below, the Seller shall in any event be discharged and released from liability, if any, in respect of any claim relating to the delivery or non-delivery of Marine Fuel(s) (including without limitation claims in the nature of delay, demurrage, detention or deviation) unless a claim in writing (together with full supporting documentation and full details) is presented to the Seller promptly after the circumstances giving rise to the claim are discovered, but in no event later than thirty (30) days following:

- the date of delivery; or
- the date of delivery as stated in the Contract Document, in the case of non-delivery,

failing which the Buyer's claim shall be extinguished and the Buyer shall be barred from making such a claim for damages and/or losses and/or expenses and/or for any compensation whatsoever. For the avoidance of doubt, the submission of claims on the part of the Buyer shall not relieve it of its obligations to make payment in full as required under Clause 12.

24.3 Subject always to any other term of the Contract which provides for a different time period and without prejudice to Clause 13.2, any claim whatsoever against the Seller shall be time barred unless proceedings are validly commenced within three (3) months from the date of delivery of the Marine Fuel(s) or the date of delivery as stated in the Contract Document (in the case of non-delivery).

24.4 Notwithstanding the time limits stated in Clauses 24.2 and 24.3 above, if the Seller's supplier(s) and/or physical supplier(s) in connection with this Contract ("Seller's Suppliers") impose time limits which are shorter than the time limits stated in Clauses 24.2 and/or 24.3 above, then the shorter time limits of the Sellers' Suppliers shall apply to this Contract so as to time-bar or otherwise extinguish the Buyer's claim in the event the Buyer fails to present its claim or otherwise validly commence proceedings before the expiration of the time limits imposed by the Seller's Suppliers. At the Buyer's request in writing, the Seller shall as soon as practicable notify the Buyer of the time limits imposed by the Seller's Suppliers. For purposes of this Clause, the Seller's Suppliers shall be deemed to have imposed a shorter time limits so long as their time limits expire before the time limits stated in Clauses 24.2 and/or 24.3.

24.5 Should any provisions in the Contract be finally determined to be contrary to the applicable laws and therefore invalid and unenforceable, such provisions shall be deemed amended or omitted, but only to the extent necessary to conform with such applicable laws, and no further.

25. Arbitration

Subject to Clause 26.3, any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in accordance with the Singapore International Arbitration Act (Chapter 143A) and any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration (SCMA) current at the time when the arbitration proceedings are

commenced.

The reference to arbitration of disputes under this clause shall be to three arbitrators. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party requiring the other Party to appoint its own arbitrator and give notice that it has done so within fourteen (14) calendar days of that notice and stating that it will appoint its own arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other Party does not give notice that it has done so within the fourteen (14) days specified, the Party referring a dispute to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be binding on the Parties as if he had been appointed by agreement.

Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator. In cases where neither the claim nor any counterclaim exceeds the sum of US\$150,000 (or such other sum as the Parties may agree) the arbitration shall be conducted before a single arbitrator in accordance with the SCMA Small Claims Procedure current at the time when the arbitration proceedings are commenced. In the event that the arbitration is conducted in accordance with the SCMA Small Claims Procedure, the limitation(s), if any, on the legal costs which can be awarded by the arbitrator, shall not apply.

26. Governing Law

- 26.1 The procedural and substantive law of the United States shall always apply with respect to the existence and enforcement of a maritime lien against the Vessel, regardless of the country in which the Seller takes legal action. The Seller shall be entitled (but shall not be obliged) to assert its rights of lien and/or attachment and/or other rights against the Vessel, whether in law, in equity or otherwise, in any jurisdiction where the Vessel may be found.
- 26.2 Subject to the Seller's right to enforce its maritime lien against the Vessel in any jurisdiction in accordance with the procedural and substantive law of the United States of America, the construction, validity and performance of the Contract shall be governed by the laws of the Republic of Singapore. The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Except for circumstances referred to in Clause 27.3 below, all claims and disputes arising out of or in connection with the Contract shall be referred to arbitration in Singapore according to Clause 26 above.
- 26.3 Without prejudice to any other Clause in this Agreement, any issue and/or claim arising out of and/or in connection with the Vessel being detained and/or arrested by the Seller pursuant to a maritime lien against the Vessel at any port, place or anchorage within the United States in connection with any claim arising out of and/or in connection with the Contract shall be submitted to the United States District Court for the Southern District of New York.

October 2017