

## 1. General Terms and Conditions

1.1 These general terms and conditions shall apply to the sale and purchase of marine Bunkers and related products of whatever type or grade by Ennero DMCC of Dubai, UAE to any buyer as defined below.

## 2. Definitions

**Agreement** means these standard terms or general terms and conditions “GTCs”, the Bunker Confirmation, the Physical Supplier GTCs and any other relevant contractual documents. In the event of any inconsistency between the provisions of the any of the documents forming the Agreement, the following priority shall be applied: Bunker Confirmation, GTCs, Physical Supplier GTCs and any other relevant contractual document.

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

**Bunkers** means the grade or grades of bunker fuel oil, marine diesel oil and gas oil supplied to the Vessel.

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

**Credit Period** means the period commencing on the date of delivery and expiring on the Due Date.

**Delivery Window** means the period stated in the Bunker Confirmation during which the Bunkers are to be delivered to the Vessel

**Due Date** The date specified in the Confirmation for payment of the Price or in the absence of such date the date of delivery. In respect of Further Costs the Due Date shall be seven days from notification to the Buyer of such costs.

**Further Costs** As set out in Clause 5.16.

**Notice of Claim** Written notice of any claim or potential claim by the Buyer to the Seller.

**Physical Supplier** The person or entity that physically supplies the Product to the Vessel and shall include the Physical Supplier’s servant, agent, successors, sub-contractors and assigns. The Physical Supplier may be the Seller.

**Place of Supply** The port or other readily identifiable geographical location specified in the Confirmation wherein or adjacent to which is the Point of Delivery.

**Point of Delivery** The precise place at which delivery is to be effected as provided in the Confirmation or as thereafter confirmed, advised or revised by the Seller or the Physical Supplier and which may be a berth, mooring, anchorage or other point within, adjacent to or associated with the Place of Supply.

**Price** The agreed Unit Price in United States Dollars or its equivalent in any other agreed currency per Unit of Bunkers together with any other costs including but not limited Further costs.

**Product** The fuels, oils, lubricants, goods, items, equipment and materials of whatever type and description as specified in the Confirmation.

**Seller** means Ennero DMCC, a Seller incorporated under the laws of the United Arab Emirates with License No. DMCC-307726 and registered address at Level 5, One JLT Tower, Dubai

**Sanctions** means United Nations sanctions, United States sanctions, European Union sanctions or any other applicable economic or trade sanctions

**Standard Terms** These standard terms and conditions of the Seller “GTCs”.

**Unit** One metric tonne or such other measurement as the Confirmation may specify.

**Unit Price** The rate of cost in United States Dollars (or such other currency as specified in the Confirmation) per metric tonne (or such other unit of measurement specified in the Confirmation) of Product specified in the Confirmation.

**Vessel** The vessel, ship, facility, tank, container, or craft nominated in the Confirmation to receive Product.

**Working days** Sunday to Thursday inclusive but excluding all public and bank holidays in the United Arab Emirates “UAE” and any other day designated as non-working from time to time as notified in writing by the Seller to the Buyer.

### **3. Bunker Transactions**

3.1 Each sale of Bunker shall be confirmed by a Bunker Confirmation. The Bunker Confirmation shall incorporate the GTCs by reference and the Bunker Confirmation and the GTCs together constitute the complete Bunker Agreement. The Bunker Agreement shall supersede any conflicting terms of other Agreements which the Buyer may seek to enforce against the Seller. In particular, any terms not directly aimed at bunker sales transactions may not be enforced against the Seller to the effect they contravene the Bunker Agreement.

3.2 If a purchase of Bunkers is contracted for by a broker, an agent or a manager for a principal, each such broker, agent or manager shall be bound by and be fully liable for the obligations of the Buyer. Furthermore, delivery shall always take place for the account of the registered owners and

for the account of the current charterers all of whom shall be jointly and severally liable for the payment of the delivery as Buyers. The Buyer warrants that it is authorized as agent to order the Bunkers for delivery to the Vessel, and that the Seller has a lien in the Vessel for its claim.

3.3. Any notice or any stamp in the Bunker Delivery Receipt or similar text to the contrary, cannot waive the Seller's maritime lien on the Vessel.

#### **4. Bunkers Grade and Quality**

4.1 The Buyer alone shall be responsible for and bear the risk of the grade of Bunkers ordered from the Seller, and the Seller shall not be under any obligation to check whether the grade of Bunkers is suitable for the Vessel. The Bunkers shall be of the same quality generally offered for sale at the time and place of delivery, for the grade of Bunkers ordered by the Buyer.

4.2 **DISCLAIMER.** Any implied warranties, including the warranties of merchantability and fitness for a particular purpose that the Seller may be deemed to have made, are expressly excluded and disclaimed.

4.3 The Buyer shall be responsible to keep the delivered Bunkers segregated from any Bunkers(s) onboard the Vessel or from a different delivery to the Vessel. In no event shall the Seller be responsible for the quality and compatibility of the Bunkers delivered if the Seller's product is mixed or comingled with any other product(s) onboard the receiving Vessel. The Buyer shall be solely responsible for any losses caused by mixing or comingling the Bunkers with any other oil, including any damage the Bunkers may cause on other products on board the receiving vessel.

4.4 If the Bunkers deviates from specifications, the Buyer shall use all reasonable endeavors to mitigate the consequences hereof and shall burn the Bunkers if possible even if this requires employment of purification tools or other similar measures. The Seller shall cover reasonable costs related hereto provided that the Seller is given reasonable opportunity to investigate, assist and suggest methods of handling the Bunkers, all on a strictly without prejudice basis.

#### **5. Delivery**

5.1 **Allocation** If the Seller at any time and for any reason believes that there may be a shortage of Product at the Place of Supply it may allocate its available and anticipated supply of Product among its buyers in such a manner as it may in its absolute discretion determine. Any such allocation shall constitute full and proper performance of the Seller's obligations.

5.2 **Tolerance** In respect of the quantity agreed upon the Seller shall be at liberty to provide, and the Buyer shall accept a variation of plus or minus 5% from the agreed quantity, with no other consequence than a corresponding variation to the invoice from the Seller, unless specified otherwise in the confirmation. If Buyer has purchased a Fixed Forward Price Agreement (FFP) from the Seller, the specific conditions pertaining to Buyer's obligations with respect to minimum quantity liftings for the FFP continue to apply.

**5.3 Restrictions** The Seller shall not be required to deliver Product into any Vessel or other places which are not regularly used for storage of bunkers or lubricants or other products as the case may be and shall not be required to deliver any Product for export for which a government permit is required and has not been obtained by the Buyer.

**5.4 Means of delivery** Delivery shall be effected in one or more consignments at the Point of Delivery by such means as the Seller shall deem appropriate in the circumstances.

**5.5 Barging** In the event of delivery by barge the Buyer shall, as its own expense, provide a clear and safe berth for the barge(s) alongside the Vessel's receiving lines and shall provide all necessary facilities and assistance required to effect delivery. The Buyer shall pay and indemnify the Seller against all claims, costs, losses and expenses in respect of any loss, damage or delay caused by the Vessel and/or the Vessel's personnel to any barge and/or its equipment and injury and/or death caused by the Vessel and/or the Vessel's personnel to any of the personnel effecting delivery in the course of or in connection with delivery of Product.

**5.6 Connection/Disconnection** the Buyer shall be responsible for making all connections and disconnections between the pipelines or delivery hoses and the Vessel's intake line and shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly each and every consignment of the delivery. The Buyer shall be responsible for ensuring that Product is delivered at a safe rate and pressure and that all equipment utilised is in a safe and satisfactory working/operating condition.

**5.7 Delivery** shall be deemed complete when the Product has passed the flange connecting the Physical Supplier's delivery facilities with the Vessel provided by the Buyer and/or, where appropriate, has passed the Vessel's rail and/or Point of Delivery.

**5.8 Title** Ownership of the Product shall pass to the Buyer only after the Price has been received by the Seller as provided in Clause 7.5. Until such time as the Price is received by the Seller the person or entity in possession of the Product delivered shall hold the Product as a mere bailee and shall hold the Product on behalf of the Seller and to the Seller's order. For the avoidance of doubt, where a mortgagee bank enforces any rights against the vessel and becomes a mortgagee in possession of the product then as bailee the mortgagee bank is liable to the Seller for fulfilment of the Agreement. For the avoidance of doubt, the Seller retains title to the Bunkers delivered to the Vessel until the Invoice has been paid in full in so far as the Seller has this right according to the law of the place of delivery or according to the law of the Vessel's flag state or according to the law at the location where the Vessel is found.

**5.9 Risk** The Seller's responsibility for Product shall cease and the Buyer shall assume all risks and liabilities relating thereto, including loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage of Product and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties at the time Product reaches the Physical Supplier's end of the delivery hose or pipeline connecting Physical Supplier's delivery facilities to the Vessel's receiving facilities, or in the event that the Buyer arranges its own transportation, the receiving

facilities of the barge or coastal tanker nominated by the Buyer. The Buyer agrees to indemnify without limit the Seller in respect of any liability, loss, damages, costs, expenses, claim or demand arising in connection with the Product after risk has passed to the Buyer.

**5.10 Measurement** The quantity of Product delivered under the Agreement shall be measured by and at the Physical Supplier's option by one of such generally recognised methods of measurement as is appropriate in the circumstances, by the Seller or its representative.

**5.11 Specification** The Product to be delivered shall be as specified in the Confirmation and in respect of marine bunkering and lubrication products, save where more precisely specified in the Confirmation, these shall be of the Seller's commercial grades of product as currently offered generally to its buyers at the time and Point of Delivery for marine bunkering or lubrication purposes. No other warranties, express or implied as to quality or fitness for any purpose, are given or form part of the Agreement.

**5.12 Compatibility and Segregation** Responsibility for establishing compatibility of Product delivered with any other product or products and for segregating or co-mingling the same rests solely with the Buyer.

**5.13 Substitution** The Seller may discharge its obligation to deliver Product as specified in the Confirmation by supplying in substitution product of a different grade and/or brand name provided always that such substitute product is of an equivalent or superior specification to that specified in the Confirmation.

**5.14 Availability** Subject to the availability of Product, the availability of facilities at the Place of Supply and Point of Delivery, and the customary priority and to the Buyer giving notice, the Seller will use its best endeavours to ensure that Product is delivered promptly upon the Vessel's arrival but the Seller shall not be responsible for any loss, expense, damage or increased costs incurred in consequence of the Vessel not being supplied promptly or otherwise being delayed or restrained for any reason whatsoever.

**5.15 Time** The Buyer is responsible for ensuring that the Vessel is ready to receive Product at the Point of Delivery on the expiry of the notice given in accordance with Clause 5.17.

**5.16 Delay** In the event that the Vessel's arrival at the Point of Delivery is delayed or likely to be delayed the Buyer must so advise the Seller and the Vessel's agent at the Place of Supply and must ensure that the Vessel's agent advises the Physical Supplier accordingly. At the Buyer's request the Seller will use its best endeavours to supply a delayed Vessel on the terms originally agreed but reserves the right to pass on to the Buyer all further additional costs including increased costs arising from the Vessel's delayed arrival.

**5.17 Notice and Other Delivery Requirements** The Buyer must give in writing to the Physical Supplier not less than 72 hours general notice and 48 hours and 24 hours specific notice of the Vessel's arrival time and readiness to receive Product, with a copy of the notices to the Seller. Notice must be given during the Physical Supplier's normal business hours. Notice given outside

these hours will be deemed to have been given at 08.00 on the first working day thereafter. Should the Buyer fail to give notice as required the Seller reserves the right to pass on to the Buyer all additional costs which may arise. 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:

5.17.1 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

5.17.2 the exact location of the Point of Delivery, and.

5.17.3 any particular requirements to enable delivery to be effected as efficaciously as possible.

5.18 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 5.17.1 to 5.17.3 inclusive.

5.19 **Information** In response to a specific request for information from the Buyer in respect of the Point of Delivery the Seller will use its best endeavours to obtain or provide the information requested. Whilst every care will be taken to ensure that such information is accurate and up-to-date it is furnished on the strict understanding that it is not a contractual representation and that no responsibility whatsoever will attach to the Seller for its accuracy and veracity.

5.20 **Environmental Protection** The Seller may at any time without notice take any steps which it considers necessary to protect the environment from damage arising from spillage or transport of Product. 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 loss, costs, damages or expense incurred by the Seller for any such steps taken by the Seller.

## 6. Risk of Loss

6.1 Risk in the Bunkers, including loss, damage, deterioration, evaporation, or any other condition or incident related thereto shall pass to the Buyer at the time the Bunkers passes the fixed bunker connections of the delivering Vessel. The Buyer warrants that representatives from the Vessel shall be responsible for ensuring that the Bunkers is received in a safe way.

## 7. Payment

7.1 The Buyer shall pay for the Bunkers at the price agreed in the Confirmation as set forth in Seller's invoice(s) (hereinafter the "Invoice"). In addition, the Buyer shall pay the costs of the delivery irrespective of whether the delivery takes place from a terminal facility, barge, lorry, or other method of delivery. The delivery costs shall be set forth in the Confirmation and/or in the invoice. Unless otherwise agreed, the final volume stated in Seller's or its representative's delivery documentation is to be considered final in respect of the quantity to be invoiced.

7.2 All prices are excluding VAT and/or taxes. The Seller is entitled, at any time, to charge additional VAT and/or taxes prevailing at the Place of Delivery.

7.3 If not otherwise specifically agreed between Buyer and Seller at time of ordering, the confirmed costs including possible additional extra costs are only valid for delivery performed to the Vessel on the agreed and confirmed delivery date(s). Should the date(s) of delivery for any reason change, the Seller is entitled to change the price.

7.4 Payment shall be made in full, free of bank charges, without discount or deduction, and without set-off for any claim or counterclaim of any nature whatsoever. Should the Buyer nevertheless set-off any amount; the Seller's claim will be increased by 20 (twenty) percent as liquidated damages for the Seller's losses.

7.5 Payment shall be made to the Seller by bank transfer, according to the payment instructions contained in the Seller's Invoice or any copy hereof forwarded by fax, e-mail or by any other means. The Seller shall be under no obligation to provide any accompanying documents with the Invoice such as a bunker delivery receipt or other documents.

7.6 If the Buyer fails to pay any Invoice at the time of maturity set forth in the Invoice, the Buyer shall pay interest at the rate stated in the Invoice. In the absence of an indication in the invoice the Seller shall be entitled to 3 (three) percent monthly interest. The interest rate will be charged monthly from the date of maturity, without prejudice to any other right or claim of the Seller. Interest will be added to the principal as it falls due.

7.7 In the event that any Invoice is not paid in due time, the Seller shall be entitled, at its sole discretion, to specify any particular Invoice or part thereof to which any subsequent payment(s) shall be applied, including, but not limited to, payment covering interest charges, legal fees and other charges. Moreover, the Buyer shall indemnify the Seller against any loss which is caused by adverse currency fluctuations between the Invoice currency and the value of the United States Dollar from the latest due date of the Invoice until the date on which payment is made.

7.8 Notwithstanding any agreement to the contrary, payment will be due immediately and the Seller shall be entitled to cancel all outstanding stems and/or withhold future deliveries in case of (i) bankruptcy, liquidation or suspension of payment or comparable situation of the Buyer, (ii) arrest of assets of the Buyer, (iii) if the Buyer fails to pay any invoice to the Seller at the time of maturity set forth in such invoice, (iv) if the Buyer fails to comply with any other obligation pursuant to the Bunker Agreement, including, but not limited to, the Buyer's failure to take delivery of Bunkers in full or in part, or (v) in case of any other situation, which in the sole discretion of the Seller is deemed to adversely affect the financial position of the Buyer. In any of the foregoing situations the Seller shall have the option to either (a) cancel the Bunker Agreement, (b) to store the Bunkers in full or in part for the Buyer's account and risk, (c) to demand that the Buyer complies with its obligations pursuant to the Bunker Agreement or (d) to make use of any other remedy available under the law. The full legal and other costs and expenses incurred by the Seller including those of the Seller's own legal and credit departments and of other lawyers in connection with any breach by the Buyer of any term of the Agreement including but not limited

to actions for debt shall be for the Buyer's account and shall for all purposes form part of the Price due from the Buyer to the Seller for Product supplied.

In the event that the Buyer or any subsidiary or parent thereof shall commit an act of bankruptcy or shall be the subject of proceedings judicial or otherwise commenced for debt, bankruptcy, insolvency, liquidation or winding up the Seller may forthwith determine the Agreement

## 8. Claims

8.1 If not otherwise agreed, the final supplied volume is to be determined by the Seller or its representative's measurements. Any claim regarding the quantity of the Bunkers delivered shall be notified verbally as well as in writing by the Buyer or the master of the Vessel to the Seller immediately during delivery of the Bunkers. In the event immediate verbal as well as written notice is not made, such claim shall be deemed to be waived and barred. A notification inserted in the Bunker Delivery Receipt or in a separate protest handed to the physical supplier of the Bunkers shall not qualify as notice under this clause 8.1 and the Seller shall under no circumstances be deemed to have accepted such notice or protest handed to the physical supplier.

8.2 Any claim regarding the quality of the Bunkers delivered shall be presented in writing to the Seller as soon as an alleged problem has occurred or the Buyer is notified of any alleged problem and in any event no later than within 7 (seven) days from the date of delivery to the Vessel. Should the Buyer fail to make timely notification of any claim regarding the quality of the Bunkers the claim shall be deemed waived and barred.

8.3 In the event of any claim presented in accordance with Clause 8.1 and 8.2, the Buyer shall:

- Cooperate with the Seller and make all necessary arrangements for the Seller or its representatives to investigate such claim, including but not limited to the boarding and inspection of the Vessel, the interviewing of crew, and the review and copying of Vessel documents. Failure to provide boarding and inspection and copying shall constitute a waiver and bar of any such claim.
- Take all reasonable steps and actions to mitigate any damages, losses, costs and expenses related to any claim of alleged off-specification or defective Bunkers.

8.4 The Seller shall not be liable to pay damages if the Buyer has failed to safeguard the Seller's recourse against the physical supplier of the Bunkers or any other wrongdoer, or has failed to ensure the existence of the necessary evidence.

8.5 Any claims against the Seller in respect of this Agreement shall be brought before the relevant court or arbitral tribunal in accordance with Clause 12 within 1 (one) year of the date of delivery of the Bunkers, failing which such claims shall be time barred.

## 9. Liability

9.1 The Seller's liability for any damage or loss whatsoever arising under this Agreement whether caused by negligence or not, whether based in tort or Agreement and whether falling on the Buyer or third party shall be limited to a maximum of US\$20,000 (Twenty Thousand United States Dollars). For the avoidance of doubt the foregoing shall include product liability claims.



9.2 The Seller shall under no circumstances be held liable for any consequential losses whatsoever, including, without limitation, delay, detention, demurrage, charter hire, crew wages, pilotage, towage, port charges, lost profits or increased cost or expenses for obtaining replacement fuel.

9.3 Any liability for damage to the Vessel shall in any event be reduced by 20 (twenty) percent of the invoice value of spare parts for each year or fraction thereof in which the replaced part has been in use.

9.4 The Buyer undertakes to indemnify the Seller against any claims, losses or costs of whatever kind related to the Bunker Agreement instituted by third parties against the Seller to the extent such claims exceeds the Seller's liability towards the Buyer according to this Clause 9.

## **10. Force Majeure**

10.1 The Seller shall not be liable for any loss or damage of whatever nature resulting from any delay or failure in performance under the Bunker Agreement (i) caused by any circumstance beyond the Seller's direct control, or (ii) if the supply or source of the Bunkers from any facility of production, distribution, storage, transportation or delivery contemplated or intended by the Seller's supplier is disrupted, unavailable or inadequate due to war or war-like situations, riots, strikes, congestion, governmental order or intervention, unavailability of barges or other means of transport or stem, weather, act of God, changed market conditions, or similar situations.

10.2 In the event of a failure of performance as set out in clause 10.1, the Seller may, but is under no obligation, to source, procure or obtain alternative Bunkers or product, and in such case the Seller shall be entitled to receive from the Buyer payment of any additional costs of performance.

10.3 The Buyer shall have no right of cancellation of the Bunker Agreement.

## **11. Collection and Indemnity**

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

## **12. Jurisdiction**

12.1 The Agreement and all claims and disputes arising under or in connection with the Agreement shall be governed by English law and any dispute arising out of or in connection with the Agreement shall be subject to the non-exclusive jurisdiction of the English Courts. So however,

that nothing in this Clause shall, in the event of a breach of the Agreement by the Buyer, preclude the Seller from taking any such action as it shall in its absolute discretion consider necessary, the Seller shall have the power to enforce a judgment of the English Courts (whether or not subject to appeal), safeguard and/or secure its claim under the Agreement in any court or tribunal or any state or country.

12.2 Any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London or elsewhere as mutually agreed, in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

12.3 The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

12.4 The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 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 both parties as if he had been appointed by agreement.

12.5 Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

12.6 In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

12.7 In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small Claims Procedure and neither the claim nor any counterclaim exceeds the sum of USD 400,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceeding are commenced.

12.8 Where the reference is to three arbitrators the procedure for making appointments shall be in accordance with the procedure for full arbitration stated above.

12.9 Nothing contained in this Clause shall limit the right of the Seller to commence any proceedings against the Buyer in any other court of competent jurisdiction nor shall the

commencement of any proceedings against the Buyer in one or more jurisdictions preclude the commencement of any proceedings in any other jurisdiction, whether concurrently or not.

12.10 Notwithstanding the above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement.

12.11 In the case of a dispute in respect of which arbitration has been commenced under the above, the following shall apply:

(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the “Mediation Notice”) calling on the other party to agree to mediation.

(ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal (“the Tribunal”) or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.

(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.

(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.

(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator’s costs and expenses.

(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

### **13. Headings**

13.1 The use of headings and sub-headings is for convenience and elucidation only and do not form part of the GTCs.

### **14. Cancellation and Breach**

14.1 In the event of the Buyer at any time cancelling a request for Product or the Vessel failing to take delivery of part or all of the requested Product for any reason, regardless of fault or causation, 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 all loss and/or damage and/or

expense thereby suffered including loss of profit and, (where the Seller has engaged in derivative hedging instruments to offer a fixed price to the Buyer for the Product), loss and damage incurred arising from the Seller's purchase of derivative instruments to include, but not limited to, the premium cost of such instruments, net payments made by the Seller to the instrument writer and administrative fees. The Seller may treat any other breach by the Buyer of any express term of the Agreement as a breach of a condition and it may at its discretion accept the breach, treat the Agreement repudiated and seek such remedies as it considers appropriate.

## 15. Sanctions

15.1 The Buyer represents, warrants and undertakes that:

15.1.1 it shall at all times comply with Sanctions applicable to the Seller and/or the Buyer that affect the performance of either party's obligations under this Agreement;

15.1.2 it is not, whether directly or indirectly, the subject of any Sanctions and that it will promptly notify the Seller should it become, or have reasonable cause to suspect it will become, subject to Sanctions during the term of this Agreement; and

15.1.3 it will not nominate any Vessel to receive Product or perform any of its obligations under this Agreement in violation of any Sanctions or which would put the Seller in breach of any Sanctions.

15.2 If the Buyer is or becomes subject to Sanctions which affect the ability of either party to perform any Obligations under this Agreement or the performance of any aspect of this Agreement becomes Prohibited by Sanctions, the Seller may, at its sole discretion, terminate this Agreement by notice To the buyer.

15.3 The Seller will have the right to reject any Vessel nomination which violates any Sanctions or puts the Seller in breach of any Sanctions by serving a rejection notice on the Buyer detailing the grounds for the rejection. If the Seller rejects a nomination of a Vessel on these grounds it shall be entitled, at its sole discretion, to (i) require the Buyer to promptly nominate a suitable substitute vessel; or  
(ii) terminate this Agreement.

15.4 The service of notice to the Buyer pursuant to Clause 15.2 or 15.3 shall not constitute a breach of this Agreement and the Seller shall not be liable to the Buyer for any losses, claims, costs, expenses, damages or liabilities arising in connection with any such termination or rejection.

15.5 To the full extent permitted by applicable law, the Buyer shall indemnify the Seller against any and all costs, expenses, losses and liabilities it incurs as a result of the Buyer being in breach of its obligations under this Clause 15.

## 16. Anti-Bribery and Corruption

16.1 The Buyer represents, warrants and undertakes that it shall at all times comply with all laws, rules and regulations applicable to the Seller and/or the Buyer relating to bribery, corruption and money laundering, including the Bribery Act 2010 (UK) (as amended from time to time).

16.2 The Buyer represents and warrants that it has neither paid nor received a bribe or made a corrupt payment, whether directly or indirectly, in connection with this Agreement.

16.3 The Buyer shall promptly notify the Seller if, at any time during the term of this Agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the representations and warranties set out in Clause 15.1 and/or Clause 15.2.

16.4 In the event the Buyer is in breach of this Clause 16, the Seller may terminate this Agreement and the Seller shall not be liable to the Buyer for any losses, claims, costs, expenses, damages or liabilities arising in connection with any such termination.

16.5 To the full extent permitted by applicable law, the Buyer shall indemnify the Seller against any and all costs, expenses, losses and liabilities it incurs as a result of the Buyer being in breach of its obligations under this Clause 16.

## **17. Severability**

17.1 If any provision of this Agreement is found to be void or unenforceable, that provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect and the Parties shall use their respective reasonable endeavours to procure that any such provision is replaced by a provision which is valid and enforceable, and which gives effect to the spirit and intent of this Agreement.

## **18. Non – Waiver**

18.1 A waiver by the Seller of any right or remedy or of any breach of the Agreement shall be effective only if given in writing and shall in no way preclude or restrict the further exercise of that or any other right or remedy, nor constitute a waiver of any subsequent breach.

## **19. Assignment**

19.1 Assignment of any right or delegation of any obligation hereunder by the Buyer without the Seller's prior written consent shall be void. The Seller may assign any of its rights or, delegate or sub-Agreement any of its obligations hereunder to others, however, the Seller shall remain responsible for the performance of the Agreement

## **20. Liens**

20.1 Where Product is supplied to a Vessel, in addition to any other security, the Agreement is entered into and Product is supplied upon the faith and credit of the Vessel. It is agreed and acknowledged that a lien over the Vessel is thereby created for the Price of Product supplied and

that the Seller in agreeing to deliver Product to the Vessel does so relying upon the faith and credit of the Vessel. The Buyer, if not the owner of the Vessel, hereby expressly warrants that he has the authority of the owner to pledge the Vessel's credit as aforesaid and that he has given notice of the provisions of this Clause to the owner. 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 to the Buyer.

## **21. Insurance**

21.1 The Buyer is responsible for effecting and maintaining in force adequate insurance which will fully protect the Buyer, the Seller and all third parties from all risks, hazards and perils associated with or arising out of or in connection with the Agreement and delivery.

## **22. Licenses Permits and Approvals**

22.1 The Buyer is responsible for obtaining all necessary permits, licenses and approvals required to enable both parties to execute all of their obligations under the Agreement.

## **23. Written, In Writing and Notice**

23.1 Any requirement for written communication including the giving of any notice may be fulfilled by the use of courier, facsimile transmission, email or any other medium which produces a tangible result for the intended recipient. The communication shall be deemed to have been given and received upon completion of transmission of any electrical or electronic medium, and on the expiry of the declared or guaranteed time for delivery of any courier or monitored service.