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GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF MARINE FUELS

1. APPLICATION

These general terms and conditions (these "GTCs") for the sale of Marine Fuels are applicable to each and every sale of bunkers by Enacol, S.A. (the "Seller") to any party purchasing bunkers (the "Buyer").

These GTCs, together with the Confirmation Note shall constitute the entire agreement between the parties with respect to the subject matter of the Contract. In the event of any inconsistency between any provision of the Confirmation Note and any provision of these GTCs, the provisions of the Confirmation Note shall prevail.

The Contract supersedes any prior terms and conditions, representations or negotiations between the parties and shall override any other or different terms and conditions stipulated, incorporated or referred to by the Buyer or any broker, whether in a purchase order or in any negotiations, unless otherwise agreed in writing by the parties.

2. DEFINITIONS

Except where the context otherwise requires, the following definitions shall be applied;

"Bunker Tanker" means any bunker barge or tanker or tank truck supplying Marine Fuels to the Vessel;

"Bunker Delivery Receipt, BDR" means a document referring the quantity and quality of the product delivered to the Vessel (receipt for the delivery of Marine Fuel to the Vessel), signed by Chief Officer / Bunkering of the Bunker Tanker and the Chief Engineer of the Vessel, containing as a minimum information set out in clause 9.5;

"Bunker Requisition Form" means a requisition form for the delivery of Marine Fuels in the standard form of the Seller as same may be amended from time to time;

"Buyer" means the party contracting to purchase, take delivery of and pay for the Marine Fuels;

"Cargo Officer" means the person designated by the master of the Bunker Tanker or his representative;

"Chief Engineer" means the chief engineer of the Vessel or his representative;

"Confirmation Note" means the note issued by the Seller in writing (by fax or e-mail) confirming the Contract, which shall incorporate these GTCs;



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"Contract" means the Confirmation Note together with and incorporating these GTCs;

"Delivery Range Period" means a four (4) day period commencing one day before and ending two days after the Estimated Delivery Date;

"Estimated Delivery Date" means the date specified in the Contract as the estimated date of delivery of the Marine Fuels to the Vessel;

"Health and Safety Environmental and Security Procedures for the Handling and use of Marine Fuels" means the health safety environmental and security procedures for the handling and use of Marine Fuels set out on the material safety data sheet for the Marine Fuels which must be displayed on board the Vessel prior to the commencement of delivery and throughout delivery operations;

"Marine Fuels" means products derived from crude oil of a grade(s) delivered or to be delivered to the Vessel, as shall be specified in the Contract;

"Sales Invoice" means an invoice issued by the Seller in respect of the Price and/or any other sums payable by the Buyer under the Contract;

"Seller" means ENACOL, S.A.

"Vessel" means the vessel of the Buyer specified in the Contract to receive the Marine Fuels.

3. PRICE

3.1 Subject to the provisions of this clause 3, the price to be paid by the Buyer for Marine Fuels shall be the price stated in the Contract for each grade(s) of Marine Fuels, for a specific delivery within the agreed Delivery Range Period (the "Price").

3.2 Unless otherwise stated in the Confirmation Note, the Price is for delivery of Marine Fuels ex - barge in bond.

3.3 If after the entry into a Contract the Buyer requests delivery of the Marine Fuels to the Vessel on a date other than the Estimated Delivery Date but within the Delivery Range Period, the price of the Marine Fuels shall remain the Price stated in the Contract.

3.4 If after the entry into a Contract, and subject to the prior agreement of the Seller, the Buyer begins to take or takes delivery outside the Delivery Range Period, the Seller shall be entitled to vary the Price, without prejudice and in addition to any other rights that the Seller may have against the Buyer for any loss or damages for failing to take delivery within the Delivery Range Period.



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4. QUANTITY

4.1 The quantity of Marine Fuels specified in the Confirmation Note shall be subject to an operational tolerance up to 10% (ten percent) at the Seller's option and the Buyer shall take delivery of such quantity or quantities of Marine Fuels and accept the corresponding invoice from the Seller in respect of the delivery.

4.2 The quantities of Marine Fuels to be delivered shall not be less than or exceed the quantities specified in the Confirmation Note without the Seller's prior written agreement (subject only to an operational tolerance in the Seller's option).

4.3 In the event that the Buyer or the Vessel fails to take delivery, in whole or in part, of the quantities of Marine Fuels specified in the Confirmation Note, the Buyer shall be liable for all expenses and losses incurred by the Seller as a direct or indirect result of the failure of the Vessel and/or the Buyer to take delivery, including but not limited to hedging losses, demurrage and transportation of the Marine Fuels from the storage tanks to the Vessel and back to the storage tanks (or such other location as the Seller may wish to transport the Marine Fuels).

5. GRADES AND QUALITY

5.1 The Buyer shall have the sole responsibility for the nomination of the grade and specification of Marine Fuels suitable and required for delivery to and for use by the Vessel, including determination of compatibility with Marine Fuels already on the Vessel.

5.2 The Seller gives no guarantee or warranty whatsoever (express or implied) that the Marine Fuels shall be suitable for the Vessel, fit for any purpose (whether or not known to the Seller) or of a satisfactory quality. Any term relating to the quality of or fitness for any purpose of the Marine Fuels implied by the Sale of Goods Act 1979 is excluded.

5.3 Notwithstanding and without prejudice to the foregoing, any specification or quality of Marine Fuels shall be subject to: (a) a tolerance of 5% (five percent); and (b) an acid sediment content of 1.5% (one point five percent). Buyer must be aware and must have knowledge regarding the quality generally offered by the Seller at time of delivery.

6. DELIVERY

6.1 Delivery of the Marine Fuels shall take place ex Bunker Tanker at the place specified in the Confirmation Note (or as otherwise agreed in writing by the Seller) and shall be deemed completed when the Marine Fuels pass the Vessel's permanent hose intake connection.

6.2 The Buyer shall procure that the Vessel shall begin to take delivery of the agreed quantity of Marine Fuels on a date and time nominated by the Seller within the Delivery Range Period.



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6.3 Subject to applicable laws, regulations and weather conditions, the Vessel shall be ready and able to take delivery: (a) on the date nominated by the Seller; and (b) 24 hours per day, Sundays and holidays included.

6.4 The Buyer or its agent at port or place of delivery shall give the Seller in writing by fax or confirmed e-mail; seventy-two (72) hours and forty-eight (48) hours estimated notice of Vessel's time of arrival and twenty four (24) hours definite written notice of the Vessel's time of arrival.

6.5 Any failure of the Buyer to give any of the notices required under the Contract may result in the Seller being unable to deliver the Marine Fuels within the Delivery Range Period and the Buyer shall be liable to the Seller for any delays, costs, losses, damages or expenses incurred or suffered by the Seller as a result. The Seller shall not under any circumstances be liable for any failure to deliver the Marine Fuels within the Delivery Range Period in such circumstances.

6.6 The Buyer shall ensure that the Vessel is in possession of all certificates to comply with all relevant and applicable law and regulations pertaining to the Vessel and the delivery of the Marine Fuels at the place of delivery and shall instruct the Master and any agent of the Buyer to:

- notify the Sellers, in writing prior to delivery, of any special conditions, characteristics, difficulties, peculiarities, deficiencies, or defects in respect of or particular to the Vessel which might adversely affect the delivery of the Marine Fuels;
- provide a free and safe side alongside the Vessel so as to receive the Marine Fuels and to render all necessary assistance which may reasonably be required to safely moor and unmoor the Bunker Tanker.
- advise the Seller in writing prior to delivery, of the maximum allowable pumping rate and pressure and agree on communication and emergency shutdown procedure.

6.7 The Seller shall not be obliged to deliver the Marine Fuels in any location or circumstances which in its sole opinion is unsafe for the Bunker Tanker and/or the delivery process. All deliveries shall be effected in accordance with all applicable laws, regulations, conventions, procedures and guidelines (whether local or international).

6.8 The Seller shall not be required to and shall have no obligation or liability to deliver: (a) any Marine Fuels into any tank of the Vessel which is not a bunker tank; (b) any Marine Fuels for export for which a special governmental authorization is required and which have not been received by the Seller.

6.9 The Seller's obligation to deliver Marine Fuels to any Vessel shall be conditional upon the Seller's acceptance of the Vessel and its condition (including without limitation the condition of its plant and equipment).

6.10 The Seller may at any time refuse to accept any Vessel upon any ground the Seller considers reasonable (including without limitation any failure of the Buyer or the Vessel to comply with clause 6.7) and notwithstanding any prior acceptance of such Vessel.



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6.11 The Seller may at any time refuse to effect delivery of Marine Fuels to any Vessel if such Vessel is not free of all conditions, difficulties, peculiarities, deficiencies or any other defects which, in the sole opinion of the Seller, could impose hazards to the Bunker Tanker, the Seller's delivery facilities, its employees or agents, in connection with the delivery, mooring, unmooring or bunkering.

7. DELAYS

7.1 The Buyer shall not be entitled to demurrage or any other compensation for any delay or any waiting period prior to, during or after the delivery, even if the delivery is not completed within the Delivery Range Period.

7.2 In the event of delay in delivery due to any failure, act or omission of the Buyer, its representative, agent or the Vessel for any reason whatsoever, the Buyer shall, without prejudicing or limiting any other rights or remedies available to the Seller, reimburse and indemnify the Seller for any costs or expenses incurred due to such delay.

7.3 Notwithstanding and without prejudice to the foregoing provisions of this clause 7, in the event of any delay resulting from any failure by the Buyer to give proper notice and/or to comply with clause 6.4 and/or any failure by the Vessel to receive Marine Fuels at the pumping rate referred to in clause 6.6, then the Buyer shall be liable to compensate the Seller for that delay at the agreed rate per day, or pro rata, stated in the Confirmation Note for the duration of the delay.

8. PRE-DELIVERY DOCUMENTATION

8.1 The Buyer shall procure, as a condition precedent to any delivery of Marine Fuels, that the Chief Engineer shall provide to the Cargo Officer a completed and signed Bunker Requisition Form, acceptable to the Cargo Officer, which shall confirm the following details:

- the grade(s) of Marine Fuel(s) specified in the Contract;
- the quantity of the Marine Fuel(s) specified in the Contract;
- the rated pumping capacity of the Bunker Tanker; and
- the agreed pumping rate.

8.2 An original and two copies of this Bunker Requisition Form duly completed form shall be signed by the Cargo Officer and the Chief Engineer with their names clearly printed, and endorsed with the Vessel's stamp and the Bunker Tanker's stamp. One duplicate copy shall be given to the Chief Engineer for the Buyer and the original and one duplicate copy shall be retained by the Cargo Officer for the Seller.



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8.3 In the event that the Bunker Requisition Form contains details which differ from any provision of the Contract, the Seller may, but shall be under no obligation to, deliver Marine Fuels so requested subject to its agreement in writing confirmed in a separate Confirmation Note. No delivery of Marine Fuels shall take place until the Bunker Requisition Form is accepted and signed by the Cargo Officer.

8.4 Under no circumstances whatsoever shall the Bunker Requisition Form part of the Contract, vary any provision of the Contract or oblige the Seller to make delivery in accordance with the Bunker Requisition Form.

9. DELIVERY / POST DELIVERY PROCEDURE AND DOCUMENTATION

9.1 Once the pre-delivery requirements have been completed and signed, and bunker hoses have been properly connected, the delivery shall commence only after final confirmation for commencement of delivery shall has been given by the Chief Engineer.

9.2 The Buyer shall be solely responsible for: (a) making all connections and disconnections between the delivery hoses(s) and the Vessel's bunker manifold, ensuring that the delivery hose(s) are properly connected prior to commencement of delivery; and (b) the safe receipt of the Marine Fuels including readiness of all pipes, manifolds and receiving tanks, relevant valves in order to exclude risk of spillages.

9.3 The Vessel shall moor, unmoor, lift the bunkering hoses from the bunker tanker and lower the hoses day or night SHINC, whenever required by the crew of the Seller's vessel to ensure a smooth supply.

9.4 Upon completion of the delivery and the recording of the quantities of Marine Fuels delivered, an original and three duplicate copies of the Bunker Delivery Receipt shall be signed and stamped by the Master of the Vessel or his authorised representative. The Cargo Officer may sign and stamp the Bunker Delivery Receipt as acknowledgement of the actual volume of Marine Fuels delivered and the actual temperature of delivery only. One (1) duplicate copy shall be retained by the Master of the Vessel.

9.5 Any addition to or deletion from the Bunker Delivery Receipt made by the Buyer or its representative(s) and/or any documents presented by the Buyer or its representative(s) at the time and place of delivery which purport to alter the terms of the Contract shall have no validity.

9.6 The Bunker Delivery Receipt shall contain the following minimum information;

- Density in kg/L at 15 deg C
- Viscosity (cSt) at 50 deg C
- Delivered quantity in Liters or Cubic Meters
- Delivered quantity in Kilograms or Metric Tons
- Delivered Temperature deg C
- Sulphur Content % m/m



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10. MEASUREMENTS OF QUANTITY

10.1 The quantity of Marine Fuels delivered shall be determined from the gauges or meter of the Bunker Tanker effecting delivery, at the Seller option.

10.2 The Buyer may, at its own sole expense, have its representative or an independent inspector present during the taking of the readings against which the quantity of Marine Fuels delivered is calculated. Notwithstanding this right, the determination of the quantity of Marine Fuels delivered shall be made solely by the Seller, and such determination shall be final and binding on the parties, save for fraud or manifest error.

10.3 Any necessary conversion calculations shall be made using ASTM-API-IP Petroleum Measurement Table 54b and Table 56.

10.4 A content of 0.5% (zero point five percent) of water in the Marine Fuels shall be allowed and accepted by the Buyer.

11. SAMPLING

11.1 The Seller shall arrange for five identical representative samples of each grade of Marine Fuels to be taken on-board the Bunker Tanker throughout the entire delivery process ("the Samples") accordingly method used by the local physical supplier. These will be three (3) Commercial samples and two (2) Marpol Annex VI Samples.

11.2 The Buyer may have its representative present during the sampling procedure. The absence of the Buyer's representative shall not prejudice the validity of the Samples.

11.3 The Samples shall be securely sealed and provided with labels showing the Vessel's name and IMO number, the name of the Bunker Tanker, Product name, Delivery date, Seal number, and Name of both the Chief Engineer and the Supplier's representative.

11.4 The Marpol Annex VI sample will be clearly identified as such.

11.5 The Samples must be authenticated with the Vessel's stamp and signed by both the Seller's representative and the Master of the Vessel or his authorized representative.

11.6 One Commercial Sample and one Marpol Annex VI Sample shall be given to the Buyer's representative. The other Samples shall be retained by the Seller in safe custody for twelve months after delivery of the Marine Fuels to the Vessel.

11.7 In the event that the Vessel wishes to offer a Marpol Annex VI sample drawn from the ship's sampling point it will be signed for and accepted by the Seller as "receipt only".



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12. HEALTH, SAFETY, ENVIRONMENTAL PROTECTION AND SECURITY

12.1 The Buyer warrants that it is familiar with, understands and shall at all times comply with the Health Safety Environmental and Security Procedures for the Handling and Use of Marine Fuels (including without limitation during the delivery process and at all times whilst using or handling the Marine Fuels).

12.2 The Buyer shall be responsible for ensuring that its employees, users, agents and any other person potentially exposed to the Marine Fuels supplied hereunder comply fully with the Health Safety environmental and Security Procedures (including without limitation that those employees, users, agents or other persons avoid frequent or prolonged contact with or exposure to the Marine Fuels both during and subsequent to delivery).

12.3 The Seller shall not be liable for any loss, damage, injury or consequence caused to any person or property by such contact or exposure to Marine Fuels (including without limitation if the same arise from any failure of Buyer, its employees or agents, any users, or any other parties to comply with the Health Safety Environmental and Security Procedures).

12.4 Without prejudice to the provisions of clause 12.3, the Buyer shall indemnify and at all times keep the Seller fully indemnified against any liability, costs, loss, damage, claim, demands, proceedings, penalties or expenses whatsoever arising out of, or in connection with, any failure by the Buyer, its employees, agents, users or any other person to comply with the Health and Safety Environmental and Security Procedures.

12.5 In the event of any spillage of Marine Fuels causing, or likely to cause, pollution occurring at any stage of the delivery process, the Buyer and the Seller shall promptly take such action as is reasonably necessary to collect and remove the spilled Marine Fuels and to mitigate the effects of such spillage.

12.6 The Seller is hereby authorised by the Buyer in the event of a spillage to take such measures and incur such expenses (whether by employing its own resources or contracting with third parties) as are reasonably necessary in the sole opinion of the Seller to remove the spilled Marine Fuels and mitigate the effects of such spillage.

12.7 The Buyer shall co-operate and render such assistance as is required by the Seller in the course of such remedial action, including without limitation promptly providing any requested documents and information regarding the spillage together with the Vessel's spill contingency plan (if applicable) or any other applicable programme for the prevention or mitigation of pollution as required by applicable law or regulation.

12.8 The Buyer shall indemnify the Seller against all liability, costs, loss, damage, claims, demands, proceedings, penalties and expenses whatsoever (including but not limited to those incurred by the Seller under this clause) arising from any spillage, except to the extent that such spillage has been caused directly by: (a) the negligence of the Seller; or (b) material failure of, or defects in, the Seller's delivery equipment.



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13. RISK AND TITLE

13.1 Risk in the Marine Fuels shall pass to the Buyer as the Marine Fuels passes the Vessel's permanent hose intake connection upon delivery.

13.2 Notwithstanding the passing of risk or the completion of delivery or any rule or law to the contrary, title to the Marine Fuels shall not pass to the Buyer until the Seller has received payment of the Price in full.

13.3 Until full payment of the Price has been made, the Seller's shall be and remain the legal and beneficial owner of the Marine Fuels delivered and shall have an express right of lien over the Vessel for the value of the Marine Fuels delivered.

13.4 In the event that the Marine Fuels have been co-mingled with other bunkers on-board the Vessel, the Seller has, without prejudice to any other right, the right of lien over such part of the co-mingled bunkers as corresponds to the value of the quantity of the Marine Fuels delivered.

13.5 The provisions of this clause 13 are strictly without prejudice to any other rights or remedies the Seller may have under any applicable law against the Buyer or the Vessel in the event of nonpayment.

14. CLAIMS

14.1 No claims may be brought by the Buyer against the Seller unless the provisions of this clause 14 are complied with.

14.2 In the event that the Master of the Vessel has any complaint relating to the Marine Fuels, the Master shall immediately before disconnection of hoses detail the complaint(s) in writing in a separate letter of protest to be delivered to the Seller immediately.

14.3 Any claim in respect of the quantity of Marine Fuels delivered must be notified by the Buyer to the Seller in writing immediately before the delivery hose is disconnected, failing which any such claim shall be deemed to be waived and absolutely barred.

14.4 Any claim in respect of the quality or description of the Marine Fuels delivered must be notified by the Buyer to the Seller in writing together with all relevant documentary evidence, immediately the circumstances giving rise to such claim have been discovered and in any event no later than fifteen (15) days of the date of delivery, failing which any such claim shall be deemed to be waived and absolutely barred.

14.5 The Buyer shall not be entitled to make any claim if the Marine Fuels delivered by the Seller is, or has been, co-mingled with any another product on-board the Vessel.

14.6 Under no circumstances whatsoever shall any claim by the Buyer relieve the Buyer of its obligation to make payment in full on the Payment Date.



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15. PAYMENT TERMS

15.1 Payment of the Price and of all other sums payable by the Buyer under the Contract shall be made by the Buyer in US Dollars or Euro, as per invoice, in full without any deduction, set-off counter claim, including services of correspondent banks shall be on the Customer's account or discount whatsoever and by the payment date specified in the Contract or, if different, in the Sales Invoice (the "Payment Date").

15.2 Unless otherwise agreed between the Seller and the Buyer in writing the payment shall be done as date payment in the Sales invoice.

15.3 Payment shall be made by means of telegraphic or electronic transfer of same day cleared funds, quoting the number on the Sales Invoice, the Buyer's name and the Vessel's name to the bank account as detailed in the Sales Invoice (the "Seller's Bank") or sent in separate.

15.4 If the Seller's Bank is closed for business on the Payment Date, the Buyer shall make payment on the last business day before the Payment Date when the Seller's Bank is open for business.

15.5 All bank charges in respect of such payments shall be for the Buyer's account.

15.6 In the event that payment has been made in advance of the delivery of Marine Fuels, the Buyer shall make prompt payment of any difference between the amount paid and the Price payable based on the actual quantities delivered and actual charges incurred. The Seller shall refund any overpayment to the Buyer promptly.

15.7 The Buyer shall notify (or shall instruct its bank to notify) the Seller as soon as payment has been made, quoting the reference number, the date on which payment was made, the value date being a date not later than the Payment Date, the amount, the name of the bank effecting such payment, and details of each invoice to which the payment relates and to confirm that the payment is irrevocable.

15.8 The Seller is not obliged to give any credit to the Buyer. The Seller may in its sole discretion grant to the Buyer such credit and on such terms as it shall decide in its sole discretion.

15.9 If the Seller has granted credit to the Buyer and/or if, in the sole opinion of the Seller, the Buyer's creditworthiness becomes impaired or unsatisfactory, the Seller may at any time upon written notice to the Buyer:

- (a) withdraw any credit granted to the Buyer;
- (b) if delivery has already taken place, require immediate payment of the Price;
- (c) vary the payment terms of the Contract to require advance payment prior to delivery;
- (d) require that the Buyer provide to the Seller, as a condition precedent to delivery, security in a form and amount satisfactory to the Seller; and/or
- (e) demand immediate payment of any outstanding amount due to the Seller in respect of any other delivery of Marine Fuels by the Seller to the Buyer under the Contract or any other contract between the Seller and the Buyer.



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15.10 If the Buyer fails to comply with the Seller's written notice pursuant to clause 15.9, the Seller shall have no obligation to make any delivery of Marine Fuels to the Buyer and may forthwith terminate the Contract on giving notice to that effect to the Buyer.

15.11 Without prejudice to and in addition to any other rights of the Seller under the Contract or at law, the Buyer shall pay interest upon any amount not paid by the Payment Date at an interest rate of two (2) per cent over LIBOR per thirty day period and pro rata for part thereof. Such interest shall accrue from the Payment Date until the date on which payment is received in full by the Seller, including before as well as after judgment.

15.12 In the event of default by the Buyer, the Seller shall have, by way of security, a lien upon Vessel(s) and the Marine Fuels delivered for all amounts due and payable to the Seller and any losses of the Seller arising out of the default. Such lien shall include an automatic power of sale (without requiring court order) and a right to receive the proceeds of sale.

16. TAXES AND LICENCES

16.1 The Buyer shall be liable for and shall indemnify the Seller on an after tax basis in respect of the full amount of all taxes, duties, tariffs, imposts, fees, expenses, levies, overtime charges, costs or other applicable charges (whether retrospective or not and whether in connection with the Marine Fuels or its sale, storage, delivery, transportation or otherwise) arising upon or after delivery and/or levied in the country where delivery takes place, including without limitation any VAT or excise duty (or similar tax) ("Taxes").

16.2 If any authority (governmental or otherwise) charges Taxes to the Seller or imposes any obligation to pay Taxes upon the Seller and/or if the Seller incurs any costs, penalties and/or interest as a result of the Buyer's failure to promptly pay any Taxes ("Penalties"), the Buyer shall pay such Taxes and/or Penalties as part of the Price or, at the Seller's discretion, immediately upon the Seller's demand and, for this purpose, the Buyer expressly waives any applicable statute of limitations or prescription.

16.3 The Buyer shall obtain and maintain all licences, consents, permits, approvals and authorizations necessary to enable it to perform all of its obligations under the Contract. Any failure to comply with this provision shall not constitute frustration or be sufficient grounds for a declaration of force majeure.

17. SELLER'S AND BUYER'S LIABILITIES AND CONSEQUENTIAL LOSS

17.1 Under no circumstances whatsoever shall the Seller's liability, whether in contract, tort or otherwise, exceed the Price payable by the Buyer plus 10% (ten percent).



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17.2 The Seller shall not be liable in any respect whatsoever and howsoever arising, whether in contract, tort or otherwise, for:

- (a) (whether direct or indirect) any loss, damage or injury resulting from any hazards whether known or unknown inherent in the nature of Marine Fuels;
- (b) (whether direct or indirect) any loss of profit or anticipated profit, loss of time or hire, costs of repairs, costs of overheads thrown away, demurrage or loss of schedule, cost of substitute vessel(s) loss related to loss of operational use of the Vessel, physical loss or damage to any cargo, or loss of contract(s); or
- (c) any consequential, indirect or special losses or special damages suffered by the Buyer.

17.3 The Buyer shall indemnify and hold the Seller harmless from and against any and all losses, costs, expenses, claims, demands, suits or liabilities (including without limitation for damage to property or for injury or death of any person, or for non-compliance with any requirement of any governmental entity) arising out of an act or omission of the Buyer or its agents or representatives in receiving, using, storing or transporting Marine Fuels delivered hereunder.

18. FORCE MAJEURE

18.1 Neither party shall be liable to the other party in damages or otherwise in respect of any failure to perform any obligation of the Contract if and to the extent that:

- (a) a party (the "Affected Party") is hindered, prevented or delayed in the performance of any obligation under the Contract by reason of a Force Majeure Event; and
- (b) the Affected Party has promptly given written notice to the other party of the Force Majeure Event, its affect upon the Affected Party's obligations and its expected duration (a "Force Majeure Notice").

18.2 Provided that a Force Majeure Notice has been given in accordance with clause 18.1 (b), the time for performance of the affected obligation shall be extended during and for the period of hindrance, prevention or delay so caused, up to a maximum of thirty (30) calendar days from the date of the Force Majeure Notice.

18.3 If the period of hindrance, prevention or delay continues for more than thirty (30) calendar days from the Force Majeure Notice, either party shall have the right to terminate the Contract by written notice to the other party, in which case neither party shall be responsible for further performance nor liable in any way to each other, save to the extent of any breaches arising prior to the hindrance, prevention or delay.

18.4 The term "Force Majeure Event" shall mean a cause or causes beyond the control of the Affected Party and shall include, without limitation: any restriction on, impairment to, curtailment of failure of, or default by the Seller's intended source of supply (including its production, manufacture, transportation or distribution), any delay of the Bunker Tanker due to breakdown or adverse weather, act of God, perils of the sea, adverse weather conditions, flood, storms, earthquakes, tidal waves, explosion, war (declared or undeclared), hostilities, military operations, terrorism, act of public enemy, national emergency, blockade, revolution,



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disturbance, trade restriction, requests or orders or action by any government or governmental or civil or military authority (or compliance by the Seller therewith), embargo, strike, lock-out or labour dispute, fire, ice conditions, prohibitions on export, or any other cause of a similar nature as described herein not reasonably within the control of the respective parties.

18.5 The provisions of this clause shall not apply to the Buyer's obligation to make payment to the Seller and no Force Majeure Event shall justify non-performance of such obligations.

19. TERMINATION

19.1 The provisions of this clause 19 shall be strictly without prejudice to any provision to the contrary (express or implied) in the Contract and shall be in addition to any other rights or remedies of the Seller under the Contract or at law.

19.2 An "Event of Default" shall mean any of the following:

- (a) any failure by the Buyer to make any payment under the Contract when due;
- (b) any failure by the Buyer to comply with any one or more of its obligations under the Contract (whether such obligation relates to one or more deliveries under a Contract);
- (c) the Buyer (i) makes an assignment or any general arrangement for the benefit of creditors, (ii) files a petition or otherwise commences, authorises or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed for 30 days after such filing, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) is unable to pay its debts as they fall due, makes a composition with its creditors, commits any act of bankruptcy, becomes subject to an order for winding up or dissolution or to the appointment of an administrator, examiner, receiver, custodian, liquidator, trustee or other similar official;
- (d) the occurrence of a material adverse change in the financial standing or creditworthiness of the Buyer when compared to the Buyer's financial standing as at the date of the Contract which change, in the opinion of the Seller, affects the Buyer's ability to perform its financial obligations in respect of the Contract; or
- (e) the occurrence of an Event of Default under any other Contract between the Seller and the Buyer.

19.3 Upon the occurrence of an Event of Default and during the investigation by the Seller of any potential Event of Default of which the Seller has notified the Buyer in writing, any and all payments due from the Buyer to the Seller shall become immediately due and payable and the Seller may in its sole discretion (whether or not the Event of Default is then continuing):

- (a) treat the Contract or any delivery or deliveries as terminated by repudiation on the part of the Buyer by giving written notice of termination to the Buyer;
- (b) withhold any payments due to the Buyer until such Event of Default is cured;



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(c) suspend or postpone performance of any one or more of its obligations under the Contract (including without limitation any obligation to make delivery of Marine Fuels) until such Event of Default is cured or until the Seller exercises its right of termination hereunder;

19.4 If an Event of Default occurs, the Seller may (in its absolute discretion) proceed to set off any or all amounts which the Buyer or one or more of its affiliates owes to the Seller or one or more of its affiliates (under the Contract, any other contract and/or on any account whatsoever) against any or all amounts which the Seller or one or more of its affiliates owes to the Buyer or one or more of its affiliates (whether under the Contract, any other contract and/or on any account whatsoever).

19.5 If the Seller suspends the performance of its obligations in accordance with clause 19.3(c) above, the Seller shall be under no obligation to perform at a later date an obligation the time for the performance of which has expired during the suspension.

19.6 The Buyer shall indemnify and hold the Seller harmless from all losses, damages, costs and expenses including legal fees that the Seller would not have incurred but for the Event of Default and/or the exercise by the Seller of any of its rights or remedies hereunder.

20. ARBITRATION AND GOVERNING LAW

20.1 The Contract (including any question as to its existence or validity) shall be governed by and construed in accordance with Capeverdian Law.

20.2 Any dispute or disagreement arising out of or in connection with the Contract (including without limitation any question regarding its existence, validity or termination) shall be referred to and resolved by arbitration in London, England in accordance with the Arbitration Act 1996 or any statutory modification, and under the rules of the London Maritime Arbitrators' Association ("LMAA"), which rules are deemed to be incorporated by reference into the Contract.

20.3 The arbitral tribunal shall be comprised of three arbitrators, all of whom shall have experience of shipping and trading matters. Each party shall appoint its own arbitrator and the third arbitrator shall be appointed by the two so appointed.

20.4 Notwithstanding the foregoing provisions, the Seller shall have the right to commence and pursue proceedings for interim or conservatory relief against the Buyer in any court in any jurisdiction and the commencement and pursuit of such proceedings in any one court or jurisdiction shall not preclude the Seller from commencing or pursuing proceedings in any other court or jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.

20.5 The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.



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21. WAIVER AND AMENDMENTS

21.1 No amendment, modification or waiver of any provision of the Contract or of any right, power or remedy shall be effective unless made expressly and in writing.

21.2 No waiver of any breach of any provision of the Contract shall: (a) be considered to be a waiver of any subsequent or continuing breach of that provision; and (b) release, discharge or prejudice the right of the waiving party to require strict performance by the other party of any other provisions of the Contract.

22. ASSIGNMENTS

The Buyer shall not assign any Contract or any of its rights and obligations under any Contract without the express written consent of the Seller.

23. SEVERABILITY

The invalidity, illegality or unenforceability of any one or more of the provisions of the Contract shall not affect or impair the validity and enforceability of any other provisions of the Contract in any way whatsoever.

24. RIGHTS OF THIRD PARTIES

Except for Affiliates or mortgagees or chargees of the Seller or other persons that may have security interests in the assets of the Seller and its or their directors, employees and agents, the parties do not intend any term of the Sales Contract to be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person (a "third party") who is not a party to the Contract. The parties may rescind or vary the contract, in whole or in part, without the consent of any third party including, without limitation, those listed above. "Affiliate" means any company that directly or indirectly controls, is controlled by or is under common control with the Seller; for this purpose one company controls another if it owns more than 50% of the voting rights of the other.