

GTC 10.0 – 1 October 2012
RUDDER S.A.M.
Le Panorama – Bloc A/B
57 Rue Grimaldi
MC-98000 - MONACO

“GENERAL TERMS AND CONDITIONS FOR SALE OF BUNKER PRODUCTS”

1. INTRODUCTION

These terms and conditions are the general terms and conditions for sale of bunker products which shall apply to every sale of marine bunker fuels entered into between Rudder S.A.M., Rudder Pte Ltd or any other Company being an affiliate of Rudder S.A.M. (“RUDDER”) as seller (“**Seller**”), and any buyer (“**Buyer**”). These terms and conditions may be referred to as “RUDDER General Terms and Conditions for sale of Bunker Products” (“**the RUDDER Terms and Conditions**”).

Each sale of Bunkers shall be confirmed email from the Seller to the Buyer (“Sales Confirmation”). The Sales Confirmation(s) shall incorporate these terms by reference so that the RUDDER Terms and Conditions thereby supplement and are made part of the particular terms set forth in the Sales Confirmation. The RUDDER Terms and Conditions together with the Sales Confirmation shall together constitute the complete and exclusive agreement (“**the Agreement**”) governing the transaction. No other prior agreements or understandings, whether verbal or written, shall apply, unless specifically referenced in the Sales Confirmation. If there is any conflict between the RUDDER Terms and Conditions and the Sales Confirmation, the Sales Confirmation shall prevail. All sales confirmations will be transmitted using the ‘rudder@rudder.mc’ email or the ‘singapore@rudder.com.sg’ email. Sales confirmations transmitted using any other email address or domain will be declared null and void.

No derogation, addition or amendment to the Agreement shall be of any force or effect unless and until expressly confirmed in writing by the Seller. If any provision of the Agreement shall to any extent be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby. Acceptance of the Sales Confirmation shall be deemed conclusive evidence of the Buyer’s acceptance of these terms and conditions.

2. DEFINITIONS

In these Terms and Conditions

- 2.1 **"The Seller"** shall mean RUDDER S.A.M., Rudder Pte Ltd or any other Company being an affiliate of Rudder S.A.M. (“RUDDER”).
- 2.2 **"The Buyer"** shall include:
 - a) the party identified in the Nomination as the Buyer (“**the Nominated Buyer**”) to whom the Seller contracts to sell Bunkers; and
 - b) the registered / head Owner of the Receiving Vessel (which the Nominated Buyer and/or its agents warrant as having authorised the purchase of the Bunkers and consented to being liable as a principal for the purposes of the Agreement to which these terms and conditions apply); and

- c) any managers, managing company, charterers, brokers, agents or any other party acting for the Nominated Buyer, duly authorized by the Buyer as set out in Clause 14 below, ordering Products.
- 2.3 "**The Physical Supplier**" shall mean the person or entity instructed by or for the Seller to deliver at the Delivery Port to the Buyer the Bunkers which the Buyer has purchased from the Seller. If and where the Seller itself delivers the Bunkers to the Buyer, the Seller shall also be the Physical Supplier.
- 2.4 "**Local Agent**" shall be the Buyer's appointed agent in the Delivery Port.
- 2.5 "**Delivery Port**" means the port, or any other readily identifiable geographical location specified in the Sales Confirmation wherein or adjacent to which is the Point of Delivery, and at which the Seller agrees to supply the Bunkers.
- 2.6 "**Point of Delivery**" means the precise place at which Delivery is to be effected as provided in the Sales Confirmation or as thereafter confirmed, advised or revised by the Seller or the Physical Supplier, being a berth, mooring, anchorage, or other point within, adjacent to or associated with, the Port of Supply.
- 2.7 "**Unit**" one unit is equal to one metric tonne or such other measurement as the Sales Confirmation may specify.
- 2.8 "**Unit Price**" the rate of cost in United States Dollars (or such other currency as specified in the Sales Confirmation) per metric tonne (or such other unit of measurement specified in the Sales Confirmation) of Bunkers as specified in the Sales Confirmation.
- 2.9 "**Basic Cost of Bunkers**" is the cost of Bunkers calculated by multiplying the Unit Price by the number of Units delivered.
- 2.10 "**Further Costs**" as defined in clause 7.2.
- 2.11 "**Working Day**" means the hours of 0800 to 1800 local time on a day which is a working day in both the Delivery Port and Monaco. A working day shall end at 1800 local time at whichever of the Delivery Port and Monaco it occurs the earlier. Any communication not received within such hours shall be deemed to be received at 0800 (Monaco time) on the following Working Day.
- 2.12 "**Receiving Vessel**" shall mean the vessel named in the Nomination as the vessel to receive delivery of the Bunkers. It shall include the Receiving Vessel's owners, operators, Master and crew.
- 2.13 "**Supplying Vessel**" shall include any vessel used for or in connection with the delivery of the Bunkers.

- 2.14 **"Supplying Vehicle"** shall include any road or rail vehicle used for or in connection with the delivery of the Bunkers.
- 2.15 **"Bunkers"** means the commercial grades of bunker oils as generally offered to the Seller's customers for similar use at the time and place of delivery and/or services connected thereto and any other marine petroleum products.
- 2.16 **"Agreement"** means the agreement between the Seller and the Buyer as governed by the RUDDER Terms and Conditions and/or the Sales Confirmation.
- 2.17 **"Sales Confirmation"** as defined in clause 1.
- 2.18 **"Due Date"** means the date specified in the Sales Confirmation for the payment of the price specified in Sellers' invoice or, in default, the date of delivery; save that in respect of Further Costs not itemised in Sellers' invoice, the Due Date will be seven days after notification of such Further Costs.
- 2.19 **"Written, in Writing and Notice."** Any requirement for written communication including the giving of any notice may be fulfilled by the use of letter-post, courier, telex, facsimile transmission, e-mail 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 for any electrical or electronic medium, within two Working Days of dispatch for first class inland letter-post, within five Working Days of dispatch for second class inland letter post and air mail and on the expiry of the declared or guaranteed time for delivery of any courier or monitored service.
- 2.20 **"Nomination"** as defined in clause 3.
- 2.21 **"Gender, Singular, Plural."** Unless the context otherwise requires, all references in the Agreement to one gender shall be deemed to include all others and references to the singular shall be deemed to include the plural and vice versa.
- 2.22 **"Banking Day"** means a day on which the bank is held open for business in New York and in the place of Seller's nominated bank.

3. NOMINATIONS

- 3.1 The Buyer shall give the Seller written confirmation of the Nomination within the same Working Day as any Nomination placed verbally.
- 3.2 The Buyer's written Nomination, shall include the following:
- a) Name and IMO code of the Receiving Vessel.
 - b) Port, berth, and area where the Bunkers are requested to be supplied.
 - c) Local Agent - including full telephone, fax, e-mail and postal details.
 - d) ETA /ETD of the Receiving Vessel at the Delivery Port.
 - e) Full title of the Buyer.

- f) Registered office address of the Buyer and principal place where business is conducted from.
- g) Relationship of Buyer with the Receiving Vessel (registered owner, disponent owner, manager, agent etc).
- h) Quantities and grades of Bunkers to be supplied.
- i) Qualities and standards of Bunkers to be supplied.
- j) Unit Price to be paid.
- k) Any agreed additional delivery charges including but not limited to barging, taxes,
- l) and/or wharfage.
- m) Agreed credit period granted by Seller.

3.3 The Seller shall have the option, to be exercised within the same or the following Working Day as the Working Day upon which the written confirmation of the Nomination is received, to refuse such written Nomination if it does not comply with the provisions of clause 3.2 above or it is not in accordance with the terms of any Agreement previously made between the Buyer and Seller. The compliance of the written Nomination with all the requirements of clause 3.2 shall be a legal condition of this contract.

3.4 The Buyer shall be responsible for ensuring that the Physical Supplier is kept fully advised as to any amendments to the ETA or ETD of the Receiving Vessel or to the required delivery date and shall liaise fully with the Physical Supplier to ensure there is no delay to the latter.

4. QUALITY & QUANTITY

4.1 **Quality:** Buyer shall have the responsibility for the selection and acceptance of Bunkers for their intended purpose. The quality of each grade of Bunkers shall be the usual production quality of that grade being sold by the Seller at the time and place of delivery. The Buyer shall have the responsibility for ascertaining that the Bunkers are suitable for use in the Receiving Vessel and also for any determination of compatibility of Bunkers purchased from the Seller with Bunkers already on board of Receiving Vessel. **Any guarantees, conditions or warranties, expressed or implied, as to the satisfactory quality, merchantability, fitness or suitability of the Bunkers for any particular purpose or otherwise, are expressly excluded and disclaimed.**

4.2 **Quantity:** Unless otherwise expressly agreed in the Nomination, the quantity of any grade of Bunkers to be delivered shall be the amount nominated plus or minus 10% (ten per cent) at Seller's option.

5. DETERMINATION OF QUALITY AND QUANTITY

5.1 The quality and quantity of Bunkers shall be determined by the Physical Supplier's personnel, using the Physical Supplier's equipment according to Physical Supplier's official methods, and in any case according to refinery/deposit's tickets, custom's certificate and the Bunker Delivery Receipt. 1018410/3934335-1 5

The quantity of Bunkers shall be determined **exclusively** from the official gauge or meter of the bunkering barge or tank (rail, truck) delivering the Bunkers or of the shore tank in case of delivery ex-wharf. Such determination shall be conclusive. **Any figures obtained by measuring Bunkers in the Receiving Vessel's tanks are agreed to be unsuitable / unreliable for this purpose and no claim for short delivery can be based on them.** The Buyer may be present or represented when such quality determinations and quantity measurements are taken, but whether or not the Buyer or Buyer's representative accepts or declines such invitation, the Physical Supplier's determination of quality or quantity shall prevail and be binding

- 5.2 In addition to any MARPOL sample which may be required, the Physical Supplier shall draw at least two representative sealed online samples, at the time of pumping, in accordance with the customary method at the Delivery Port, one set to be retained by the Buyer, the other one by the Physical Supplier, of each grade of Bunkers for every consignment delivered ("**the Sealed Samples**"). The Buyer may attend or be represented during such sample taking. The Sealed Sample(s) shall be conclusively deemed to be representative of the quality of the Bunkers supplied to the Receiving Vessel. Any samples drawn from the Receiving Vessel's tanks shall not be valid as an indicator of the quality supplied.
- 5.3 As a matter of good practice, Buyers undertake to seek to ensure that the Sealed Samples are signed by both a representative of the Physical Supplier and by a representative of the Receiving Vessel.
- 5.4 Seller or Seller's agent may inspect the Buyer's Receiving Vessel in the event of any complaint, whether at the request of Buyer or otherwise. Such inspection or any analysis made in connection therewith shall be made entirely without any obligation on behalf of Seller to consider or act upon any claim or complaint by Buyer or otherwise and shall be entirely without prejudice to Seller's position.
- 5.5 If present at loading, Buyer or Buyer's representative shall furnish to Seller's personnel such Receiving Vessel's data as available pertaining to the accuracy of the quantity and quality determinations initially made (i.e. dryness certificate, Receiving Vessel's ullage before and after loading, Bunkers retained on board from tank washing or cleanage or for other reason, Receiving Vessel experience factors and sample from the cargo tanks).
- 5.6 Adjustment in the volume of Bunkers delivered owing to difference in temperature shall be made in accordance with ASTM-IP petroleum measurement tables or, at the option of the Seller or the Physical Supplier, in accordance with the method of any other recognized standards authority.

6. DELIVERY

- 6.1 Deliveries shall be made at the place specified and agreed in the Nomination. 1018410\3934335-1 6

- 6.2 Deliveries shall be made during normal working hours at the Delivery Port. However, if permitted by the regulations of the Delivery Port and if requested by the Buyer and agreed to by the Seller, deliveries may be made outside normal working hours, in which event the Buyer shall pay all overtime and any other extra expenses whatsoever thereby incurred.
- 6.3 The Buyer shall give the Supplying Vessel or Vehicle a clear and safe berth free of costs alongside the bunker manifold of the Receiving Vessel and the Buyer shall furnish and pay for all necessary wharfage, service or other installation charges incurred. The Seller shall not be obliged to make any delivery where in the opinion of the Seller or the Physical Supplier, a clear and safe berth is not made available.
- 6.4 The Buyer shall make all connections and disconnections of the delivery hose to the Receiving Vessel, unless the custom of the Delivery Port requires otherwise, but in any event it shall be the responsibility of the Buyer to ensure that the connection of the delivery hose to the Receiving Vessel has been properly and safely made. The Buyer shall ensure that the Receiving Vessel renders all customary assistance and provides sufficient tank space and equipment to receive prompt delivery of the Bunkers.
- 6.5 Subject to clause 11.1 below, the Bunkers shall be deemed delivered, when the oil passes the flange connecting the Physical Supplier's delivery facility (pipeline, barge, truck, railcar) with the receiving facilities provided by the Buyer.
- 6.6 The Buyer shall promptly receive delivery of the Bunkers when tendered and shall promptly withdraw the Receiving Vessel from the Suppliers' terminal (if used) upon completion of delivery. If the Buyer or the Receiving Vessel causes delay in the use of the delivery facilities or the Supplying Vessel or Vehicle, the Buyer shall immediately be responsible to the Seller for any costs, damages or liability which the Seller incurs thereby, including but not limited to demurrage at the Physical Suppliers prevailing rate.
- 6.7 Where necessary, the Buyer shall be responsible for obtaining a government permit or licence for the export of the Bunkers. If such a permit or licence is not obtained then the Seller and/or Physical Supplier shall be under no obligation to deliver the Bunkers and shall not be responsible for any such loss or damage resulting from such non-delivery.
- 6.8 On completion of delivery of the Bunkers to the Receiving Vessel, the Buyer or his representative shall give the Physical Supplier a signed receipt therefrom in the form presented for signature by the Physical Supplier.
- 6.9 In the event that the Receiving Vessel's arrival at the Point of Delivery is delayed or likely to be delayed, the Buyer must so advise the Seller. The Buyer should also ensure that the Receiving Vessel's Local Agent at the Place of Supply is similarly informed and that the Local Agent advises the Physical Supplier accordingly. At the Buyer's request, the Seller will use its best endeavours to supply a delayed Receiving Vessel on the terms originally agreed to, but reserves the right to pass on to the Buyer all additional costs, including increases in the Basic Cost from the Receiving Vessel's delayed arrival.

7. PRICE

- 7.1 **Unit Price:** where in the Sales Confirmation the Unit Price is stated not to be subject to variation, the Unit Price will, subject to clause 6.9, not be varied. In all other cases, like floating prices or posted prices, the final Unit Price charged shall be based on the relevant quotations/posted prices ruling on the date(s) agreed between the parties and reported on the Sales Confirmation.
- 7.2 **Further Costs:** in addition to the Basic Cost of the Bunkers, the Buyer agrees to pay for any additional costs such as barging, clean-up costs, demurrage, duties, fees, freight, insurance, overtime, pilotage, port dues, storage, wharfage, taxes, vehicle or wagon charges, or other like costs incurred by or charged to the Seller (including, without limitation, those imposed by governmental authorities). Such costs will be passed on the Buyer at the rates charged to the Seller as and when they are advised to the Seller and together with the Basic Cost shall for all purposes constitute the Price due from the Buyer to the Seller for the Bunkers supplied.
- 7.3 **Notice of the Price:** The Seller will give notice of the Price to Buyer as soon as reasonably practicable after delivery.
- 7.4 **Proof of Delivery:** The Buyer or his representative should attend delivery and obtain at that time all outstanding information relating to delivery, including the exact quantities and precise specifications of Bunkers delivered. Unless otherwise requested by the Buyer, prior to despatch by the Seller of the Sales Confirmation, the Seller shall be under no obligation at any time to produce to the Buyer any evidence of delivery to the Receiving Vessel. It is expressly agreed that the furnishing by the Seller of proof of delivery is not a pre-requisite to payment of the Price.

8. CANCELLATION AND BREACH

In the event of the Buyer at any time cancelling a request for Bunkers or the Receiving Vessel failing to take delivery of part or all of the requested Bunkers, the Seller shall have the right to pursue a claim against both the Buyer and the Receiving Vessel for all loss and damage thereby suffered including loss of profit. 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 thereupon accept the breach, treat the Agreement as repudiated and seek such remedies as it considers appropriate. So however, that the provisions of Clauses 21, 22 and 23 shall survive the determination of the Agreement in any event.

9. PAYMENT

- 9.1 In most cases special payment terms will have been agreed and will be set out in the Sales Confirmation. Each of the following terms apply unless the Sales Confirmation otherwise provides:
- 9.1.1 The Buyer shall make payment to the Seller in United States Dollars.
- 9.1.2 At the sole discretion of the Seller, invoices may be submitted to the Buyer by any form of telegraphic communication, including, but not limited to, e-mail or facsimile. Non receipt of invoice does not relieve the Buyer of its obligation to make full payment of the amount due under clause 9.1.3 of this contract.

9.1.3 The Buyer shall pay the Price in full, and expressly agrees to make no deduction, discount or set off for any reason whatsoever therefrom. Such payment shall be made free of all charges to the account of the Sellers stated in the invoice mentioned in clause 9.1.2 above, or to such other account as the Seller may notify in writing to the Buyer.

9.1.3.1 If the last day upon which payment is required hereunder is not a Banking Day, then payment shall be made on or before the nearest Banking Day to that date. If the preceding and succeeding Banking Days are equally near, payment shall be made on or before the preceding Banking Day.

9.1.4 In any event, if payment is not received in full in advance of delivery, or where credit terms have been agreed, at the expiration of the agreed credit period, any amounts outstanding shall bear interest at the rate of 1.5% per month pro rata, or the maximum interest rate permitted by law, whichever is lower, unless otherwise agreed in the Sales Confirmation.

9.1.5 The Buyer agrees that the Seller shall have, and the Seller reserves, the option at its sole discretion to withdraw any credit granted to the Buyer. The Seller may in writing notify the Buyer of the withdrawal of credit, whereupon payment of any sum outstanding from the Buyer to the Seller shall immediately become due. The Buyer in accordance with clause 9.1.3 above shall forthwith make payment in full. Upon receipt of payment the Seller shall be obliged to and shall refund to the Buyer an amount in respect of interest on the payment made, for the period from the date when payment is received by the Seller to the date to which credit had been granted, at the LIBOR rate.

9.1.6 If at any time prior to delivery of the Bunkers under this contract to the Receiving Vessel, the Buyer shall be in default of any of its obligations under this or any other contract between the Seller and the Buyer, the Seller shall be entitled to cancel this contract or to refuse to make delivery under this contract, and shall be under no liability in damages or otherwise to the Buyer under this contract.

9.1.7 All credit terms granted are conditioned upon the Buyer's compliance with all the Due Dates for payment of the earlier supplies, failing which all invoices will be considered immediately due.

10. LOCAL TERMS AND CONDITIONS

The Seller may be required to enter into contracts with local suppliers of Bunkers which contain various terms and conditions similar to, but not the same as, RUDDER's Terms and Conditions. In these cases, the Terms and Conditions that the Seller is required to accept are hereby incorporated into RUDDER's Terms and conditions for the benefit of the Seller in so far as they limit the liability of the local supplier / Seller and / or provide protection and / or grant security to the local supplier / Seller for payment on the supply.

11. TITLE, OWNERSHIP, PROPERTY

- 11.1 The title to, ownership of and property in the Bunkers, free from liens and encumbrances, shall pass to the Buyer only after the Price has been received by the Seller as provided in clause 9. Until such time as the Price is received by the Seller, the person in possession of the Bunkers delivered (e.g. the Receiving Vessel owner) shall hold the Bunkers as a mere bailee.
- 11.2 Bunkers supplied in each Agreement are sold and effected on the credit of the Receiving Vessel, as well as on the promise of the Buyer to pay. It is agreed and the Buyer warrants that the Seller shall have and may assert a maritime and/or contractual lien against the Receiving Vessel for the amount due for the Bunkers. Any such lien shall extend to the vessel's freight and/or hire payments for the particular voyage during which the Bunkers were supplied and to freights and/or hire on all subsequent voyages.

12. RISK

The Seller's responsibility for the Bunkers shall cease and the Buyer shall assume all risks and liabilities relating thereto, including loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage of Bunkers and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties at the time Bunkers have passed the flange connecting the Receiving Vessel's bunker manifold with the delivery facilities provided by the Physical Supplier. The Buyer agrees to indemnify without limit the Seller in respect of any liability, claim or demand for which the Buyer is liable.

13. NOTICES

The Buyer must give not less than 3 (three) Working Days notice of the Receiving Vessel's readiness to receive Bunkers to the Seller and to the Physical Supplier. Notice must be given during the Seller's normal business hours, Monday to Friday inclusive, 08.00 – 18.00 Monaco time. Notice given outside these hours will be deemed to have been given at 08.00 on the first Working Day thereafter. 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:

- 13.1 the precise requirements of the Physical Supplier and any other person, body or authority in respect of the giving of notice of the Receiving Vessel's time of arrival at the Point of Delivery.
- 13.2 the exact location of the Point of Delivery.
- 13.3 any particular requirements to enable delivery to be effected as efficaciously as possible. It is the responsibility and duty of the Buyer to instruct its Local Agent at the Place of supply to liaise with the Physical Supplier so as to ensure compliance with these provisions.

14. BROKERS AND AGENTS

- 14.1 Unless the party with whom the Seller is corresponding specifically declares to the Seller prior to dispatch by the Seller of the Sales Confirmation that the party with whom the Seller is corresponding is not the Buyer and that at the same time provides to the Seller the full name and address of the Buyer then the party with whom the Seller is corresponding shall be deemed to be the Buyer.
- 14.2 Without prejudice to the provisions of clause 14.1, in the event that the party with whom the Seller is corresponding is an agent of the Buyer, duly authorized by the buyer in accordance with Annex I here attached, then the party with whom the Seller is corresponding shall be jointly and severally liable with the Buyer to perform the Buyer's obligations under the Agreement notwithstanding that the party with whom the Seller is corresponding purports to contract as a mere agent.

15. ASSIGNMENT

The Buyer shall not assign its interest in the Agreement without the prior written approval of the Seller. The Seller may assign the Agreement and shall thereafter give notice to the Buyer.

16. FORCE MAJEURE AND CONTINGENCIES

- 16.1 The Seller shall not be liable for any failure to fulfil any term or condition of the Agreement if fulfilment has been delayed, hindered or prevented or made substantially more expensive by any circumstances whatsoever which are not within the immediate control of the Seller (whether foreseeable or not) including but without limiting the generality of the foregoing, any fire, explosion, mechanical breakdown, flood, storms, earthquakes, tidal waves, acts of God, war, military operations, national emergency, civil commotion, strike, lockout or labour dispute or reasonable apprehension thereof, any governmental order, request or restriction, any limitation, restriction or interruption to existing or contemplated sources of supply of Bunkers or the means of supply thereof. Nothing in this provision shall be deemed to excuse the Buyer from its obligation to make payments for Bunkers received.
- 16.2 In the event that performance is prevented or delayed or made substantially more expensive by any of contingencies above, the Seller may reduce or stop deliveries in any manner as it may determine in its sole discretion, or elect to continue deliveries and increase prices in fair proportion to the increased cost of operation under such contingency.

17. ENVIRONMENTAL PROTECTION

- 17.1 If an escape, spillage or discharge of oil occurs during the delivery of the Bunkers (“a Spill”), the Buyer shall promptly take such action as is reasonably necessary to remove the oil and mitigate the effect of a Spill.
- 17.2 Notwithstanding the cause of such Spill, the Seller and Physical Supplier are authorised by the Buyer to take such measures and to incur such expenses, by employing its own resources or by contracting with other persons, either in co-operation with the Buyer and/or the Receiving Vessel, or alone as are in the opinion of the Seller or the Physical

Supplier reasonably necessary to remove the oil and mitigate the effect of a Spill. The Buyer agrees that it and the Receiving Vessel will render such co-operation and assistance as is required by the Seller or the Physical Supplier in the course of such action. The Seller and Physical Supplier shall not be considered volunteers in taking such action or incurring such expense, whether or not they or the Buyer have caused the Spill.

- 17.3 Any expenses, damages, costs, fines or penalties arising from the Spill or the consequences of Spill or the removal of oil or the mitigation of the effect of a Spill, shall be paid for by the party that caused the Spill, and that party shall promptly reimburse the other party if that other party has borne those expenses, damages, costs, fines or penalties in the first instance, provided that if both Seller or Physical Supplier and Buyer have caused the spill, any such expenses, damages, costs or fines or penalties shall be borne by them (and as appropriate reimbursed by one to the other) in accordance with their respective degrees of fault.
- 17.4 It shall be presumed that the Physical Supplier has not caused any Spill and that the Buyer or the Receiving Vessel has caused it unless the Buyer proves otherwise.
- 17.5 The Buyer shall disclose or cause to be disclosed to the Seller or the Physical Supplier all documents and other information concerning the Spill or any measures for the prevention or remedy of a Spill which may be requested by the Seller or the Physical Supplier or the disclosure of which is required by any applicable law including the law applicable at the Delivery Port.

18. MARPOL ANNEX VI COMPLIANCE

Compliance with Marpol Annex VI can be guaranteed, upon request, only if/when bunkering takes place in Marpol Annex VI compliant countries.

19. CLAIMS, DISPUTES AND PRECAUTIONS

- 19.1 **TIME LIMITS: AS THE SELLER IS SUBJECT TO STRICT TIME LIMITS FROM ITS PHYSICAL SUPPLIERS FOR ANY CLAIM PRESENTATION, SELLER MUST IN TURN IMPOSE RIGID TIME LIMITS ON RECEIVING NOTICE OF CLAIMS FROM ITS BUYERS. THEREFORE, BUYERS SHOULD ENSURE THAT THEY MAINTAIN THEIR OWN STRICT INTERNAL CHECKING AND REPORTING PROCEDURES. THE SELLER WILL NOT RELAX ITS TIME-LIMITS IN ANY CIRCUMSTANCE. ANY CLAIM AGAINST THE SELLERS NOT RECEIVED WITHIN THE TIME LIMITS SET OUT BELOW, SHALL BE DEEMED WAIVED AND ABSOLUTELY BARRED.**
- 19.2 **Notification:** Written notice of any claim or potential claim must be given to the Seller within the specified time limit. It is the Buyer's responsibility to ensure that the notice is received by the Seller whose confirmation of receipt should always be sought. Regardless of whether a claim or dispute has risen or is anticipated, the Buyer must always give prompt notice to the Seller of any discrepancy, error or omission present in

any form or document tendered, submitted or produced by the Physical Supplier and of any unusual occurrence relating to the delivery.

19.3 **Sufficiency of information:** To enable the Seller to investigate and pursue a claim, the notice must give sufficient information for the Seller to be able to identify the relevant transaction, the nature of the complaint and the alleged loss or damage. Any notice which does not give sufficient information will not be valid. For the same reasons the Buyer must provide a full and complete response to any and all questions, enquiries and requests made of it by the Seller concerning the claim and matters related thereto.

19.4 Claims fall into 3 categories: 19.4.1 Quantity claims and disputes
19.4.2 Quality claims and disputes
19.4.3 Other claims and disputes

19.4.1.1 **Quantity claims and disputes:** these are most easily avoided by ensuring high standards of checking before, during and after delivery by an officer of the Receiving Vessel's crew or other senior representative of the Buyer.

19.4.1.2 For bulk deliveries, delivery barges, wagons and vehicles must be checked by tank-dipping to measure the contents and ensure full out-turn. Flow meters must be checked for seals, correct settings and calibration and general condition. All of these checks must be carried out before and after delivery of each consignment and each barge, wagon or vehicle tank load. The delivery must be supervised at all times and care must be taken in ensuring that all documentation is complete and accurate before signing and stamping. Any discrepancies must be recorded on the Physical Supplier's delivery receipt. Unless these procedures are followed, it is nearly always impossible for a claim to be substantiated. The Seller regrets therefore that it will be obliged to reject claims for short delivery where these receiving procedures are not followed.

19.4.1.3 **THE TIME LIMIT FOR RECEIPT BY THE SELLER OF NOTICE OF A QUANTITY DISPUTE IS 7 (SEVEN) DAYS FROM THE DATE OF DELIVERY OR SUCH SHORTER PERIOD AS IS SPECIFIED IN THE SALES CONFIRMATION.**

19.4.2.1 **Quality claims and disputes:** it is the Buyer's responsibility to ensure that the Bunkers tendered for delivery are those which are required by the Receiving Vessel, and are delivered into the correct tanks.

19.4.2.2 It is the duty of the Buyer to instruct the Physical Supplier to take at least two representative samples of each grade of Bunkers delivered, as per clause 5.2.

19.4.2.3 It is important to check that all documentation is in order and to note discrepancies on the Physical Supplier's delivery receipt before signing and stamping.

19.4.2.4 In the event of the Buyer having grounds to believe that the Bunkers supplied do not accord with the relevant description in the Sales Confirmation or are defective, the Buyer shall immediately:

- 19.4.2.4.1 take all reasonable steps to mitigate the consequences of having been supplied with possibly defective or incorrect Bunkers.
- 19.4.2.4.2 give notice with full details of the possibly defective or incorrect Bunkers to the Seller together with the Receiving Vessel's position, destination and ETA; the quantities and locations of all Bunkers on board the Receiving Vessel, the rate and quantity of consumption since delivery and the location immediately prior to consumption of Bunkers; for each of the three preceding deliveries to the Receiving Vessel, the quantity, quality and specification of Bunkers supplied, the place and date of supply and the name of the Physical Supplier;
- 19.4.2.4.3 inform the Seller of the whereabouts of the Buyer's set of samples.
- 19.4.2.5 It is a pre-condition of the Seller being prepared to consider any quality claim that at the time notice is given, the Buyer has retained its complete set of the Sealed Samples (as per clause 5.2). The Buyer agrees that the Sealed Samples are representative of the delivery and that the Seller has no duty to consider any other independently produced samples. The results of the analysis performed on the Sealed Samples by a reputable independent testing laboratory, approved by the Seller and by the Physical Supplier, in accordance with established procedures in the presence of a representative of the Seller and/or of the Physical Supplier, to be binding on all parties. In the event that the Buyer is unable or unwilling to produce its samples for analysis within 28 days of a request from the Seller to do so, the Seller may proceed to have the Physical Supplier's samples analysed, the results of such analysis shall also be binding upon the parties hereto. Cost of analysis will be anticipated at 100% by each party to the laboratory, which will refund them to the party which will result to be successful.
- 19.4.2.6 If it is alleged that any equipment of machinery had been damaged by defective Bunkers, full details must be given to the Seller at the earliest opportunity and the item must be preserved and made available for inspection on demand at any reasonable time or times to the Seller or its representative.
- 19.4.2.7 **THE TIME LIMIT FOR RECEIPT BY THE SELLER OF NOTICE OF A QUALITY CLAIM IS 14 (FOURTEEN) DAYS FROM THE DATE OF DELIVERY OR SUCH SHORTER PERIOD AS IS SPECIFIED IN THE SALES CONFIRMATION.**
- 19.4.3 **Other claims and disputes:** Notice of all other claims, specifically excluding any and all claims relating or associated with matters of quantity and quality which are subject to the time limits set out in sub-clauses 19.4.1 and 19.4.2, respectively, should be given to the Seller as soon as reasonably possible and in any event no later than 14 (fourteen) days after delivery. If the Sales Confirmation provides for a shorter period, such shorter period shall apply.
- 19.5 **Summary of time limits:** Quantity claims and disputes 7 (seven) days;

Quality claims and disputes 14 (fourteen) days;

All subject to the provision of shorter time limits in the Sales Confirmation message and/or in the local suppliers' general terms and conditions.

- 19.6 **Claims settlement:** claims, if any, have in any case to be settled separately from payment of the invoice, which, in all cases, has to be honoured in full without delay, deduction or set-off.

20. WAIVER

The failure by any party to the Agreement to enforce any right against any other party shall not be construed as a waiver of that right or in any way affect the validity of the Agreement. In particular, the granting by the Seller of any additional time to make payment or the waiving or reducing of any financial or other charge shall not prevent the Seller at any time thereafter from relying upon its strict contractual rights.

21. INDEMNITY

The Buyer hereby indemnifies the Seller in respect of all damage or injury occurring to any person or to any property and against all actions, suits, claims, demands, costs, charges or expenses arising in connection therewith to the extent that the same shall have been occasioned by the negligence or default of the Buyer, his servants or agents or any third party in the course of performance of or arising out of the Agreement.

22. LIABILITY

The Seller shall not be liable to the Buyer for any direct or indirect loss or damage including any loss of profit or any, other indirect, special, incidental or consequential loss or damage whatsoever arising from any cause whatsoever whether in contract, tort or otherwise including the acts or omissions or negligence of the Seller, its servants, agents or sub-contractors, including, without limitation, fuel transporters or fueling agents. For the avoidance of doubt and without limiting the generality of the foregoing in any way whatsoever, no liability will be borne by the Seller for demurrage, detention or other vessel delay, or any damages or loss arising from the exercise of Seller's right to suspend and/or terminate delivery of the Bunkers.

23. COMPENSATION

Notwithstanding the foregoing, in the event that the Seller is found to be liable to the Buyer, the total amount payable by way of compensation other than in respect of personal injury or death shall not exceed the Basic Cost charged to the Buyer for the Bunkers supplied under the Agreement. It is a pre-condition to the payment of any compensation by the Seller that all sums due to the Seller from the Buyer are first paid and settled, in full, without deduction or set-off.

24. INSURANCE

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 from the Agreement and delivery.

25. LICENCES, PERMITS AND APPROVALS

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

26. GOVERNING LAW

The Agreement is subject to the law of England and the jurisdiction of the English High Court. However, 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, and the Seller shall have the power to enforce, safeguard, secure or assert its rights under the Agreement and any rights of lien, attachment, arrest in any court or tribunal or any state or country, including any jurisdiction where the Receiving Vessel or a sister- or associated ship may be found.