



## **STANDARD TERMS & CONDITIONS FOR SALE OF BUNKERS**

### **A. Interpretation:** In these Terms:

1. “**BDR**” or “**BDN**” shall mean the Bunker Delivery Receipt/Note issued by the Seller and/or Supplier upon completion of delivery of the Bunkers to the Vessel.
2. “**Buyer**” means the parties as listed in the Sales Confirmation and shall include the Vessel, the Owners, her Master, Operators, Charterers, Brokers, any parties benefitting from consuming the Bunkers, and any other parties ordering the Bunkers, all of whom shall be jointly and/or severally liable as the Buyer under the contract. Buyer shall be deemed to include the Buyer’s servants, agents or designated representatives.
3. “**Bunkers**” means the marine fuel(s), bunkers, lubricants, oils, etc, which the Seller is to supply in accordance with the Sales Confirmation.
4. “**Contract**” shall mean and include the Sales Confirmation, these Terms and any other document referred to therein.
5. “**Invoice**” shall mean the final invoice issued by the Seller to the Buyer and/or Owner and/or Vessel and/or Vessel Interests setting out the principal unit price, taxes, duties, all fees, wharfage and/or other costs or charges, including but not limited to, pipeline charges, and charges imposed by government, port, and local authorities, barging and delivery charges and interest @ 2% per calendar month *pro rata* and compounded on a daily basis from the due date stated on the Invoice.
6. “**Nomination**” shall mean the initial order for Bunkers.
7. “**Owner**” means the registered owners, beneficial owners and/or bareboat charterers of the Vessel.
8. “**Sales Confirmation**” means the confirmation in writing from the Seller to the Buyer setting forth the particular terms of sale of the Bunkers. The Sales Confirmation shall be deemed to incorporate these Terms.
9. “**Seller**” means Shiny Shipping & Logistics Pvt Ltd and shall include its servants, agents or designated representatives.

10. **“Supplier”** means the party (if any) supplying the Bunkers for and on behalf of the Seller.
11. **“Terms”** means the standard terms and conditions set out in this document. If there is any conflict between these Terms and any terms and conditions in the Sales Confirmation, the latter shall prevail.
12. **“Vessel”** means the vessel nominated by the Buyer to receive and take delivery of the Bunkers.
13. **“Vessel Interests”** means and includes the Owner, managers, Master and Chief Engineer of the Vessel.
14. **“Working Day”** means a day on which banks are open for business customarily in India, United Arab Emirates) and the United States of America.

**B. Basis of Sales:**

1. The Contract shall be firm and binding upon the Buyer’s acceptance of the price quoted by the Seller by way of electronic communication (including, but not limited to email, chat, information, submission, WhatsApp or other instant messenger communication), telephone, registered and reply-paid letter in writing, or verbally. Confirmation in writing by the Seller of the price may be provided to the Buyer, but the absence of such confirmation shall not void the agreement of sale and/or the Contract.
2. Contracts entered into and/or negotiated via brokers, or any other authorised representative on behalf of the Seller, shall only bind the Seller upon the Seller’s broker or other authorised representative sending the Sales Confirmation to the Buyer or the Buyer’s broker, as the case may be.
3. Unless otherwise provided herein or agreed in writing by the Seller, these Terms shall supersede all previous terms and conditions issued by the Seller and shall override any terms stipulated, incorporated or referred to by the Buyer or Seller whether in any quotation or order or in any negotiations except the Sales Confirmation.

**C. Credit to the Vessel:**

1. Bunkers delivered hereunder are sold and delivered to the credit of the Vessel and/or Owner, as well as on the promise of the Buyer to pay.
2. Subject to these Terms, Buyer agrees and warrants that Seller shall have the right to assert a maritime lien, attachment or claim against the Vessel to which Bunkers

are delivered, and her Sister Vessels, for the purchase price, any extra charges incurred in accordance herewith, any taxes billed on the delivery of Bunkers or otherwise, any interest due thereon, including on overdue payments, and all associated recovery costs (including legal costs) should the Buyer fail to pay for Bunkers on time. Such maritime lien shall be in addition to, and not in limitation of, any other remedies available to the Seller whether under law, contract or equity.

3. In particular and without limitation to the foregoing, as the Seller acts in the capacity of a bailee for the Buyer in relation to the transit of the Bunker (post the transfer of title in the Bunker and up to the time of delivery), the Seller shall be entitled to exercise its right of bailee's lien for all costs, losses and/or damages incurred.
4. Buyer warrants that the Bunkers purchased hereunder are for the operation of the receiving Vessel and that Vessel only.
5. The Buyer shall provide the full contact details of the Vessel Interests of the Vessel to which Bunkers are to be supplied before the issuance of a Sales Confirmation by the Seller.
6. The Buyer authorizes the Seller to contact the Vessel Interests at Seller's sole option, in advance of delivery of Bunkers to put the Vessel Interests on notice that the sale and delivery is made on the basis of financial credit to the Vessel as well as the Buyer and on the terms and conditions of the Contract. Even if Seller fails to contact the Vessel Interests, Seller's rights shall not be limited by such failure. Should the Vessel Interests give notice to Seller that financial credit to the Vessel is denied before delivery of Bunkers to the Vessel is made, no credit can be granted to the Buyer and the Bunkers shall be paid for in cash or equivalent by Buyer prior to delivery.
7. If a maritime lien on the Vessel cannot be created because of the existence, in Buyer's charter party of a "Prohibition of Lien" clause or similar clause, or for any other reason, a notice in writing must be given to the Seller by the Buyer in the Nomination. In the event the Buyer provides notice of such restriction, no credit can be granted to the Buyer and the Bunkers shall be paid for in cash or equivalent prior to delivery. In the event such notice is received from the Buyer, Vessel Interests or other person later than in the Nomination but prior to delivery, such notice shall not modify or be deemed to modify the terms of sale (including Seller's right of credit to the Vessel) until the Seller is in receipt of full payment (including

any costs and/or damages suffered) due from the Buyer in cash or equivalent prior to commencement of delivery.

**D. Delivery:**

1. All deliveries shall be made in accordance with instructions given by the Buyer and/or Vessel Interests, subject to the Seller's agreement to such instructions, which agreement shall be reached before the actual delivery of the Bunkers. The Seller is entitled to suspend delivery of the Bunkers under the Contract until such time an agreement is reached and if no agreement is reached by or before the delivery, the Seller shall be entitled to terminate the Contract without prejudice to the Seller's right to claim damages from the Owner and/or Buyer or exercise a maritime lien as above.
2. If there is an existing debt due and owing from the Buyer to the Seller, which does not arise out of the Contract, the Seller shall not be obliged to deliver the Bunkers before the said existing debt is paid in full and regardless of whether there is a dispute on the said existing debt. It shall be the obligation of the Buyer to settle any and all debts due and owing by the Buyer to the Seller before any delivery is made under the Contract regardless of whether the debt is disputed by the Buyer. If there is no full payment of the existing debt owing by the Buyer to the Seller before delivery under the Contract, the Seller shall be entitled to terminate the Contract without prejudice to the Seller's right to claim damages from the Buyer or exercise a maritime lien as above.
3. The Buyer shall give the Seller at least 96 hours' advance notice of Vessel's intended readiness to receive delivery and exact quantity required to enable Seller to make necessary arrangements for delivery of the Bunkers to the Vessel.
4. The Buyer shall give the Seller a final notice of requirement in writing directly, or via the Buyer's agent at least 72 hours (Saturday, Sunday and local holidays excluded) prior to the actual delivery of the Product in order to allow the Seller to make the arrangements for the Bunkers to be loaded in bunker barges or any other accepted method of transportation. Seller is not obliged to make the arrangements for the Bunkers to be loaded in bunker barges or other accepted methods of transportation, if no notices are given by the Buyer or its agent in accordance with these Terms.
5. If there is any subsequent change to the delivery date after the notice is given, the Seller is not obliged to deliver the Bunkers to the Vessel but the Seller may, at its own discretion, deliver the Bunkers to the Vessel. In the event of the said

subsequent change of delivery date, and regardless of whether the Seller delivers the Bunkers to the Vessel, the Buyer shall indemnify the Seller for any and all claims, including but not limited to, storage charges, demurrage, detention or similar made against the Seller attributable to the said subsequent change to the delivery date.

6. The Vessel shall be supplied as promptly as circumstances permit. Any date or time of delivery as given by the Seller under the Contract is given as an approximate and is not guaranteed. Time for delivery by the Seller shall not be of the essence. In any event, the Seller shall not be liable for demurrage, detention or for any loss or damage sustained by the Buyer and/or the Vessel and/or the Owner including but not limited to congestion at Supplier's storage or delivery facilities.
7. If there are delays or business interruptions at or to the Supplier's delivery facilities in taking delivery of the Bunkers, attributable to the Buyer's acts and/or omissions, the Buyer shall hold the Seller harmless in respect of any claims made or to be made against the Seller, and shall be liable to indemnify the Seller for any and all losses, damages, costs and expenses resulting therefrom, including but not limited to, any costs and expenses incurred by the Supplier.
8. The Seller shall not be obliged or required to deliver Bunkers into any of the Vessel's tanks which are not normally used for such purposes.
9. It is the Buyer's sole responsibility to ensure that Bunkers tendered for delivery are fit for use by the Vessel and are delivered into the correct tanks.
10. Delivery of Bunkers by the Seller to the Buyer shall be carried out subject to any regulations, requirements and procedures (including any amendments and revisions thereof) as may be prescribed from time to time by any governmental authority at the port at which the Seller accepts delivery nominations. Each party shall be responsible to obtain such permits and / or licenses as may be mandated by the local laws, local authorities, port and flag state from time to time, in reasonable compliance with their respective obligations and interests.
11. The Buyer shall, in any event, be solely responsible for ascertaining, acquainting itself and complying *inter alia* all such regulations, requirements and procedures which are applicable at the delivery port and in complying with all relevant berth restrictions and requirements. In the event of the Buyer's failure to comply, where required by or under any law or regulation or authority, the Seller shall not be required to deliver the Bunkers, and shall also be entitled to recover all costs and/or losses and/or damages and/or expenses as a consequence thereto from the Buyer.

- 12.** The Buyer shall ensure that the Vessel is in possession of all certificates required to comply with all relevant regulations pertaining to delivery of the Product at the port or place of delivery and that the Master of the Vessel shall:

  - i. Advise the Seller in writing, at least three days prior to delivery, of the maximum allowable pumping rate and pressure and agree on communication and shut-down procedures ;
  - ii. Notify the Seller, at least two days prior to delivery, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Bunkers ; and
  - iii. Provide a free side to receive the Bunkers and render all necessary assistance which may reasonably be required to moor or unmoor the Vessel, as applicable.
- 13.** The Buyer shall provide free of cost a clear safe berth, position or anchorage alongside the vessel receiving lines. Seller shall be under no obligation to make delivery when in its sole opinion a clear and safe berth, position or anchorage is not available. The Buyer shall indemnify the Seller against all claims and expenses for any loss, damage, demurrage or delay caused to Seller's delivery equipment, irrespective of whether the circumstance causing the loss, damage, demurrage or delay was within the control of Buyer or his local representative.
- 14.** The Buyer shall make all connections and disconnections between pipelines and/or delivery hoses and the Vessel's intake lines and shall render all other necessary assistance and provide sufficient tankage and equipment to promptly receive all deliveries hereunder. In no case shall the Seller be liable for any damage and/or delay resulting from causes beyond its control or due to lack of diligence on the part of the Buyer or the Vessel.
- 15.** Delivery shall be deemed to have been completed as the Bunkers pass the flange connecting the pipelines and/or delivery hoses with the intake lines of the Vessel, at which point Seller's responsibility shall cease. The Bunkers supplied by other methods shall be considered to be delivered when such Bunkers pass over the Vessel's rail. The Buyer shall assume all risks including loss, damage, deterioration, depreciation, evaporation or shrinkage of the Bunkers so delivered.
- 16.** Upon completion of delivery, the Master and/or Chief Engineer and/or authorized agent of the Vessel and/or Owner and/or Buyer and/or Vessel Interests shall confirm the delivery by signing a BDR/BDN provided by Seller or its Supplier. Seller shall not be deemed to have any constructive knowledge of the authority or lack of authority of any purported representatives of Buyer and shall be under no duty to

verify authority of such purported representative. The acceptance of the aforesaid signed BDR/BDN in good faith by Seller shall bind the Buyer and the Vessel.

17. Without prior approval from the Seller as provided in these Terms, a “no lien” or disclaimer stamp of any type or form on the BDN/BDR is not permissible. The Seller's right to apply and enforce a maritime lien shall not be altered, waived or impaired by any disclaimer stamp on any BDN/BDR issued.
18. Delivery shall be made during normal weather working hours, always within port limits. Unless otherwise agreed, deliveries outside normal working hours shall be subject to additional costs which shall be borne by Buyer.
19. Tolerance for deliveries in bulk shall be  $\pm 10\%$  from the quantity specified in the Sales Confirmation, with no consequence other than a corresponding variation to the invoice from the Seller.
20. If there is a change to the flag and/or registry of the Vessel, Buyer shall inform the Seller immediately and no later than three days before the delivery of the Bunkers, together with relevant supporting documents. Failing such information, the Seller shall not be liable to the Buyer if the Bunkers are not delivered to the Vessel by reason of the change of the flag and/or registry. The Buyer shall be liable for all costs and expenses attributable and/or incidental to its failure to inform the Seller under this clause.
21. Bunkers delivered under the Contract shall be to the account of Buyer, the Vessel, the Owner and the Vessel Interests. The Buyer warrants that the Owners and/or Vessel Interests have given the Buyer authority to purchase the Bunkers.
22. The Buyer further warrants that the Seller has the right to assert and enforce a maritime lien (subject only to the exceptions provided in these Terms) against the Vessel for the amount due and owing under the Contract in respect of the Bunkers sold together with any contractual interest and costs.
23. The Buyer expressly warrants that it has the authority of the Vessel Interests to pledge the Vessel's credit as aforesaid. The Vessel and/or Owner and/or Vessel Interests are ultimately responsible for the amount owing under the Contract.

**E. Sampling:**

1. The Buyer shall store the Bunkers supplied by the Seller/Supplier separately, without mixing the Bunkers supplied by the Seller/Supplier with bunkers and/or products supplied by third-parties, until a sample is tested in the manner provided herein.

## 2. *Quantity:*

- i. Except where government regulations or local authorities require otherwise, the quantity of Bunkers shall be determined from the official gauge/sounding of the delivering barge, road wagon, truck or rail tank car, delivery note for drum deliveries, or by gauging in the Supplier's shore tank or flow meter, at the Seller's option.
- ii. Adjustment in volume owing to difference in temperature shall be made in accordance with API/ASTM+IP petroleum measurement standards for generalized Products (table 6B, 24B, or 54B depending on port location).
- iii. The Buyer may be present or represented by a properly accredited agent when such measurements are taken. If the Buyer is not present or represented, then the Seller's determination of quantities shall be deemed to be correct and conclusive.
- iv. The quantity stated in the BDN/BDR issued in accordance with the Contract shall be conclusive evidence of the actual quantity of the Product delivered to the Vessel. Any remarks made by Buyer on the BDN/BDR shall not be binding or conclusive evidence of the actual quantity of the Bunkers delivered to the Vessel.

## 3. *Quality:*

- i. It is the duty of the Buyer to instruct the Supplier to take four representative samples.
- ii. The representative samples must be sealed and labelled, and the label signed by a representative of the Supplier and by an authorised officer of the Vessel and/or other senior representative of the Buyer.
- iii. Two samples shall be retained by the Vessel, one of which shall be retained in accordance with the provisions of MARPOL 73/78, Annex VI. This sample may only be used for the purposes of confirming the sulphur content of the marine fuel and such other matters as are specifically set out in MARPOL Annex VI, Regulation 18. The remaining two samples shall be retained by the Supplier. All parties shall retain the samples for a minimum of sixty days after delivery to the Vessel.
- iv. The samples retained as aforesaid shall be tested by an independent laboratory appointed by the Buyer and Seller mutually. Testing shall be limited to analysis of the disputed properties and the results shall be conclusive and binding evidence of the quality of the Bunkers supplied to the Vessel. It shall be



sufficient if tests are conducted in accordance with ISO 4259. If the components are within allowed tolerances in respect of reproducibility or repeatability, the Bunkers shall be deemed to be compliant according to ISO 8217.

**F. Price:**

**1. *Unit price for deliveries in bulk only:***

- i. As the cost of Bunkers is volatile the Seller reserves the right to increase the unit price at any time before delivery.
  - ii. Where possible, prior notice of the increase shall be given during the Seller's normal Working Day, between 0900 and 1730 hours (local time in the Seller's jurisdiction) excluding national and bank holidays (set out in Annexure A). Notice given outside these hours shall be deemed to have been given at 0900 hours on the Seller's first Working Day thereafter.
  - iii. In such an event, the Buyer may forthwith give written notice to the Seller of cancellation of the Contract. If no such notice is received within one hour of the Seller's notice of increase in the unit price, the Buyer shall be deemed to have agreed to the revised unit price and the unit price so revised shall remain in full force and effect
- 2.** The prices quoted are in United States Dollars (unless otherwise expressly stated) and are exclusive of taxes, duties, fees, wharfage dues and other costs or changes, including but not limited to, pipeline charges, and charges imposed by government port, and local authorities, barging and delivery charges, all of which shall be separately included in the Invoice to the Buyer's account.
- 3. *Taxes & duties:*** If the Buyer is entitled to purchase any Bunkers free of taxes, duties or charges pursuant to local law, the Buyer shall promptly, but in any event not later than five Working Days following the completion of delivery, provide the Seller with a valid exemption certificate for such purchase.

**G. Payment:** 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:

- 1.** Timely payment is of essence of the Contract.
- 2.** Payment of the price shall be made in United States Dollars (unless otherwise expressly stated) in full without set off, counterclaim, discount and/or deduction for

any reason whatsoever so as to ensure that the Seller receives full value for the payment in cleared funds on or before the due date stated in the Invoice.

3. In respect of all sums which are overdue the Buyer shall be liable to pay to the Seller, interest calculated at 2% per calendar month pro rata and compounded on a daily basis from the due date stated in the Sales Confirmation and/or Invoice until credit into the Seller's account. Accrued interest, costs and/or expenses incurred by the Seller in requesting payment of outstanding amounts will be added at monthly intervals to and become part of the outstanding sum.
4. Payment shall be made by way of post-dated cheques, telegraphic, telex, SWIFT or rapid electronic transfer to the bank account specified in the Seller's invoice, or as mutually agreed in writing by the parties. All bank and other charges, if any, incurred in effecting remittance will be to the Buyer's account. Advice of remittance including identifying references should always be given to the Seller. If payment is not received as a result of the Buyer not complying with the payment instructions, then the Buyer will pay immediately, upon written request, all sums due including interest and all other charges. For the avoidance of doubt, payment shall be deemed to be made only once the funds are credited free of any charges to the Seller's bank account.
5. The Buyer shall ensure that all payment mandates including post-dated cheques, telegraphic, telex, SWIFT or other rapid electronic transfer to the bank account, if any, are honoured at all times and such mandates are not altered or amended without prior permission of the Seller and/or Supplier. The Buyer agrees that it shall indemnify and hold harmless the Seller and/or Supplier, to the fullest extent permitted by law, for all losses and liabilities (including due to claims by a third party), incurred by the Seller and/or Supplier as a result of any breach by it of any payment instruments. In case of post-dated cheques, the Buyer agrees that the Seller and/or Supplier may initiate appropriate proceedings under law for dishonour of the post-dated cheques.
6. Part payments received by the Seller from or on behalf of the Buyer notwithstanding any specific request to the contrary will be applied in the following order in diminution or extinction of:
  - i. accrued interest and costs and/or expenses (including legal fees and enforcement costs) in respect of transactions for which the principal sum has been previously paid.

- ii. accrued interest and costs and/or expenses (including legal fees and enforcement costs) arising from all other transactions.
  - iii. any principal sum due and outstanding commencing with the oldest and proceeding chronologically thereafter to the most recent.
  - iv. any principal sum which the Seller knows or reasonably expects will fall due at a future date.
7. The Seller may in good faith vary, amend, withdraw, substitute or add to the terms relating to payment at any time in the course of a transaction in such manner as it shall in its absolute discretion consider necessary to protect its interests
8. If at any time the reputation, standing, creditworthiness, liquidity or solvency of the Buyer or any subsidiary, parent, associate or affiliate thereof should give the Seller reasonable cause for concern, the Seller may, without prejudice to all other rights and remedies which it may have, give notice to the Buyer that credit facilities from the Seller to the Buyer are withdrawn or suspended, as the case may be, and all sums outstanding and/or due for payment at a future date shall thereupon fall due for immediate payment.
9. 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 terminate the Contract. In any event, all credit facilities shall stand withdrawn and all invoices, claims, damages and costs shall be payable forthwith.
10. The full legal and other costs and expenses incurred by the Company 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 Contract, including but not limited to, actions for debt shall be to the Buyer's account and shall for all purposes form part of the price due from the Buyer to the Seller for Bunkers supplied.
11. Buyer acknowledges that failure to pay the invoice in full, as required by the Contract, in no way obligates the Seller to in turn make payment to the physical Supplier (if the Seller is not the physical Supplier), and further that such failure to pay the invoice in full may give rise to the physical Supplier seeking to assert its security rights including that of seeking an arrest of the Vessel, which in no way will be indemnified by the Seller.
12. The failure by any party to the Contract 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 Contract. In particular, the granting by the Seller of any additional time to make payment or the waiving or reducing of any interest or other charge shall not prevent the Seller at any time thereafter from relying upon its strict contractual rights.

#### **H. Claims:**

1. A written notice of claim must be given to the Seller within the time limit specified herein, failing which it shall be deemed to have been waived and absolutely barred and the Seller shall be discharged of all liability whatsoever and howsoever arising. It is the Buyer's responsibility to ensure that notice of claim is received by the Seller whose confirmation of receipt of claim should always be sought.
2. Buyer's submission of any claim does not relieve it from its responsibility to make full payments as required by the Contract. The Buyer shall not be entitled to set off any claim from payment.
3. *Sufficiency of information:* The notice of claim must contain complete and comprehensive information including necessary supporting documents to enable the Seller to identify the relevant transaction, the nature of the complaint and the loss or damage alleged. Any notice of claim which does not give such sufficient information will not be valid or deemed to be valid for the purpose of compliance with the relevant time limit.
4. The Seller may, upon review of the claim submitted by the Buyer, be entitled to raise reasonable questions, queries, enquiries or requests or seek further documentation from the Buyer. The Buyer must provide a full and complete response to any and all reasonable questions, enquiries and requests, including providing legible copies of supporting documentation requested by the Seller concerning the claim and matters relating thereto. Should a full and complete response not be provided by the Buyer within 15 days of such request, the Buyer shall bear all consequences of failing to evidence their claim in a timely fashion, including paying damages, costs, expenses to the Seller together with any losses suffered by the Seller owing to its inability to advance any indemnity action.
5. *Quantity claims:* If there is a claim on the quantity delivered, the Buyer and/or Owner and/or Vessel and/or Vessel Interests shall immediately notify the claim at the time of delivery by way of a letter of protest addressed and delivered to the Seller, and in any event prior to the signing of the BDN / BDR. Any failure to issue a letter of protest as provided above shall result in Buyer waiving any right to dispute the quantity of the Bunkers at a later time.

6. *Quality claims:*

- i. Any claim as to the quality of the Bunkers must be notified in writing to the Sellers immediately after the circumstances giving rise to such a claim have arisen and in any event, within seven days from the date of delivery of the Bunkers. Failure to do so shall result in the claim being barred or deemed to be waived.
- ii. Each claim shall be supported *inter alia* with the following information:
  1. Details (including, but not limited to, the Contract, BDN, manifold survey reports, etc) of the alleged defective Bunkers supplied to the Seller
  2. The Vessel's position, destination and ETA
  3. The quantities and locations of all bunkers on board the Vessel/stored in the Vessel at the time of supply and at the time of claim
  4. Copies of the Vessel's logs from the date of supply till the date of the claim
  5. The rate and quantity of consumption since delivery
  6. Details of the three preceding deliveries to the Vessel including but not limited to the quantity, quality and specification of product supplied, the place and date of supply and the name of the supplier
  7. Whereabouts of the Buyer's samples
- iii. The Buyer shall be obligated to take all reasonable steps to mitigate the consequences of having been supplied with alleged defective or incorrect Bunkers.
- iv. Both parties agree that the sample retained by the Supplier as per these terms shall be the basis for determining any quality dispute. The said sample shall be tested in an internationally reputable laboratory for density, flash point, pour point, KV at 50 degrees centigrade, water content, sulphur content, total sediment, ash content and calorific value. If the Buyer wishes any specification parameter other than what is listed beforehand to be tested, then Buyer must advise at least twenty-four hours prior to delivery commencing, failing which such request shall be void. The Buyer hereby acknowledges that the sealed samples retained by the Supplier are representative of the Bunkers delivered and that the Seller has no duty to consider any other independently produced samples. The results of the analysis shall be final, binding and conclusive on all parties.

- v. It is a pre-condition to the Seller's liability for any quality claim that at the time a notice of claim is given, the set of samples retained by the Supplier are available for analysis by a reputable laboratory, approved by the Seller, in accordance with established procedures and the analysis is carried out in the presence of a representative of the Seller.
  - vi. If it is alleged that any equipment or machinery has been damaged by incorrect or defective Bunkers, full details must be given to the Seller within the time period provided herein for making claims and the item allegedly damaged must be preserved and made available for inspection on demand at any reasonable time or times by the Seller and/or its representative.
  - vii. On making a claim, the Buyer shall give the Seller's representative a reasonable opportunity to inspect the Vessel, including, without limitation, her engines, fuel tanks, equipment, logs, records and copies of communications including communications between the Buyer and the Vessel. Buyer shall ensure that Vessel's crew assist the Seller's representative in their enquiries and shall respond to requests promptly in time.
  - viii. The Buyer shall, in addition to observing and complying with the terms hereinabove, generally abide by accepted good operating practices and procedures in compliance with local rules and regulations. In particular, a comprehensive fuel management program in line with the requirements and recommendations of ISO/PAS 23263 shall be adhered to.
  - ix. It is a condition of any claim regarding the quality of the Bunkers that the Buyer shall be obliged to demonstrate, upon request of the Seller, that the Vessel had in place adequate and sufficient fuel and lubrication management programs and procedures, in compliance with OEM guidelines, industry standards and in line with the requirements and recommendations of ISO/PAS 23263.
  - x. In the event the Bunkers supplied are off specification and cannot be consumed by the Vessel, Buyer's remedies shall be limited exclusively and solely to the replacement of the non-conforming Bunkers. If the Buyer removes the Bunkers without the express written consent of the Seller, then all such removal and related costs shall be solely borne by the Buyer.
7. Without prejudice to the above, the Seller shall be discharged of all liability whatsoever and howsoever arising in respect of any Bunkers delivered to the Buyer or which the Seller has undertaken to supply and/or provide unless an arbitration is

commenced by the Buyer within six months from the date of delivery and/or date of the Seller's undertaking.

**I. Maritime Lien:**

1. Without prejudice to any other right and remedies which the Seller may have, the Bunkers supplied to the Vessel are sold and delivered on the faith and to the credit of the Vessel and on the order of the Owners and/or Vessel Interests, and it is agreed and acknowledged that the said supply creates a maritime lien over the Vessel in favour of the Seller, subject only to the exceptions provided in these Terms, in accordance with article 46 US Code §31342 of the United States Federal Maritime Lien Act. The Buyer agrees and warrants that a lien of the Vessel is thereby created for the price of the Bunkers.
2. Nothing shall prejudice the Seller's right of the maritime lien under any applicable law, whether at the place of delivery, or the flag of the Vessel, or the place or jurisdiction of arrest of the Vessel whatsoever. This clause shall supersede any markings, annotations, stamps, and/or clauses on the BDN/BDR and/or any other delivery documentation.
3. The Seller and/or Supplier 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 and/or Supplier before it sends its confirmation to the Buyer.
4. The Buyer shall have no lien whatsoever on the Seller's and/or Supplier's delivery vessels and/or barges.

**J. Risk and title:**

1. Risk in the Bunkers shall pass to the Buyer once the Bunkers passes the flange connection between the delivery hose and the Vessel's intake manifold or upon the Bunkers passing over the Vessel's rails, as the case may be.
2. Title in the Bunkers shall pass to the Buyer only upon payment by the Buyer of the Bunkers in full. Until such time as the price is received by the Seller, the Buyer and/or Vessel and/or Vessel Interests shall hold the Product as a mere bailee and shall hold the Bunkers on behalf of the Seller and to the Seller's order in such a way that it can be identified as the Seller's property or agents, successors, sub-contractors and assigns, and shall keep it separate from the Buyer's and/or Vessel's and/or Vessel Interests' own property and the property of any other person.

3. In the event that the Buyer fails to make payment, the Seller has the right to demand immediate return of the Bunkers and any permission to consume the Bunkers ceases and is withdrawn. For the avoidance of doubt, where a mortgagee bank enforces any rights against the Vessel and becomes a mortgagee in possession of the Bunkers as bailee, and the mortgagee bank shall be liable to the Seller.
4. If the Bunkers are commingled with any other products, marine fuel and/or additives after delivery has been completed, title to the Bunkers shall remain with the Seller corresponding to the quantity of the Bunkers delivered. If the Bunkers are commingled with any other products, marine fuel and/or additives and the total commingled fuels are reduced through use to an amount less than the amount delivered under the Contract, title in the unused Bunkers will remain with the Seller on a pro rata basis calculated using the amounts as they were when first commingled.
5. Where, notwithstanding these conditions, title in and to the Bunkers delivered has passed to the Buyer and/or any third party before full payment has been made to the Seller, the Buyer shall grant a pledge over such Bunkers to the Seller. The Buyer shall furthermore be deemed to have granted a pledge (or any other security right) over any other Bunkers present in the Vessel, including any mixtures of the delivered Bunkers and other bunkers. Such pledge will be deemed to have been given for any and all claims, of whatever origin and of whatever nature that the Seller may have against the Buyer.

**K. Indemnity and limitation of liability**

1. The Buyer shall indemnify and hold the Seller harmless against any claim, liability, loss, damage, costs, fines, penalty, and expenses whatsoever and howsoever incurred or sustained out of or in connection with the act, omissions, neglect or default of the Buyer, its representatives, servants, agents, contractors, the Vessel, the Vessel's crew and agent in the purchase, delivery, receipt, use, storage, handling or transport of the Bunkers.
2. In no event shall the Seller be liable to the Buyer for any indirect or consequential loss or damage of whatsoever including but not limited to loss of profits or business, increased cost or expenses for obtaining replacement fuel, or loss by reason of shutdown or non-operation.
3. In no event shall the Seller be liable for punitive damages.



4. Any loss of, or damage to, the Bunkers, or to any property of the Seller or the Supplier or to any other person, during or after delivery caused by the Buyer its representatives, servants, agents, contractors, the Vessel, the Vessel's crew and agent shall be borne by the Buyer and the Buyer shall, to such extent, indemnify or reimburse the Seller.
5. In the event that the Bunkers delivery is made by bunker tanker or barge, any damage caused by contact and/or collision and/or swell and/or other weather or sea related condition or incident, such damage is to be dealt with by the Owner and/or Vessel and/or Vessel Interest, and the Seller shall not be held responsible for such damage. If, however, any persons interested in the involved vessels choose to bring any claim against the Seller as a result of any such damage, the Buyer will fully indemnify and hold the Seller harmless in relation thereto.
6. The Buyer hereby indemnifies the Seller against any claim for injury and/or death occurring to any person and/or all damage and/or damage to any property and against all actions, suits, claims, demands, costs, charges or expenses arising in connection therewith to the extent that the same shall have been occasioned by the negligence or default of the Buyer, his servants, representative, or agents or any third party in the course of performance of or arising out of or in connection with the Contract.
7. The Buyer shall indemnify and hold harmless the Seller and/or the Supplier, from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of services or the providing of Bunkers under this Contract, including claims, damages, losses, penalties or expenses arising under any air, water quality or hazardous waste statute, regulation or ordinance to the extent that such claims have been caused or contributed to by the Buyer or failure of or defect in the Buyer's equipment, their agents or employees.
8. All costs borne by the Seller in connection with the collection of overdue payments, whether made in or out of court and in general all costs in connection with breach of this agreement by the Buyer, shall be for the sole account of the Buyer.
9. The Vessel shall be covered under an appropriately worded "Tovalop" and have P&I insurance from a P&I Club which is a member of the International Group, and shall have on board the certificate of insurance in respect of liability for oil pollution.

- 10.** The Seller and the Supplier shall have no liabilities whatsoever, including but not limited to, any expenses, losses, damages, or demurrage whatsoever which may be suffered by the Buyer or any other party as a result of or in connection with:
- i. Any disputes as to the quantity or the quality of the Bunkers but for as provided herein;
  - ii. Any delay, demurrage, detention or non-delivery due to any other circumstances whatsoever outside the direct and immediate control of the Seller including but not limited to congestion affecting the delivery, any prior commitment of delivery facilities, public holidays or practices at the port of delivery; or
  - iii. Any inspection or survey conducted by or on behalf or at the request of the Buyer, independently or pursuant to these Terms.
- 11.** Notwithstanding the foregoing, the Seller's liability herein for any claim or dispute arising out of or in connection with the Contract and/or delivery of the Bunkers shall be limited to:
- i. The Seller, at its sole discretion, requesting the Vessel to debunker the delivered Bunkers and refuel the Vessel to the extent of the delivered Bunkers; or
  - ii. The Seller at its sole discretion requiring the Vessel to debunker the delivered Bunkers and refund all payments made by the Buyer to the Seller in respect of the debunkered Bunkers; or
  - iii. The Seller at its sole discretion making lump sum compensation equivalent to the price of the Bunkers as set out in the Seller's invoice;
- Provided always that the Seller's extent of liability to the Buyer shall in no event exceed the price of the Bunkers as set out in the Sales Confirmation.

**L. Force majeure:**

- 1.** Without prejudice to any other exclusion or limitation provided herein or by law, no failure or omission by the Seller to carry out or observe the Contract shall give rise to any claim against the Seller of whatsoever nature and howsoever arising, or be deemed to be a breach of the Contract, if the same shall rise out of a cause not within the control of the Seller, whether foreseen or not, including but not limited to, causes such as labour disputes, lockouts, strikes, industrial actions, governmental intervention (including but not limited to any form of price control, rationing, allocation, or emergency measures), the Seller's response to the

insistence or request of any governmental body or person purporting to act therefor, war, invasion, act of foreign enemy, hostilities, (whether war has been declared or not), civil war, military action, revolution, insurrection, civil commotion, any breakdown in machinery or power failure, fire, flood, accident, storm or any act of God, statutes, rules, acts, restrictions, regulations, bylaws, orders, requisitions, prohibitions or measures of any kind on the part of any governmental or duly constituted authority, import or export regulations, or embargoes and the Seller shall be relieved of all liabilities incurred under the Contract wherever and to the extent to which the fulfilment of such obligation is prevented, frustrated or impeded as a consequence of any such event or events as aforesaid or any other cause (whether or not of like nature) beyond the Seller's control.

2. This provision however does not relieve the Buyer from its obligations to make payment of all amounts due to the Seller under the Contract.
3. If, as a result of any of the events, matters or things referred to above, or any other events (including but not limited to contractual changes relating to the delivery of crude oil or petroleum products from which marine fuel of the grade to be sold to the Buyer is derived or use of its available supplies of such marine fuel to meet its own requirements and those of its related and affiliated companies and other customers including the Buyer), supplies of the Bunkers are in the Seller's sole opinion curtailed, the Seller shall not be required to increase supplies from other sources or to purchase Bunkers to replace supplies so curtailed. The Seller shall not be responsible to the Buyer for any loss or liability incurred by the Buyer as a result of such shortage of delivery. In the event of an actual or anticipated shortage of supply that directly or indirectly prevents the Seller from fulfilling its own requirements as well as those of its customers (including the Buyer), the Seller may allocate available quantities of Bunkers to it, the Buyer, and its other customers in its absolute discretion.
4. Without prejudice to any other term in the Contract, in the event that at any time and from time to time, prior to any delivery under the Contract, any laws, and/or regulations applicable to the Seller and/or the subject-matter of the Contract are changed, or new laws and/or regulations become effective, and the effect of such changed or new laws and/or regulations (a) is not covered by any other provision of these Terms; and/or (b) has a material adverse economic effect upon the Seller, then the Seller shall have the option to request renegotiation of the prices or other terms by written notice to the Buyer. In the event the Buyer does not agree to such

renegotiation or if the parties are unable to agree upon new prices or terms, as the case may be, within 14 days after such written notice from the Seller, the Seller shall have the right to terminate the Contract without any liability whatsoever.

**M. Sanctions compliance:**

1. The Buyer warrants to the Seller that the Vessel that receives the Bunkers is not:
  - i. Designated in any sanctions list issued by the United Nations, the United States of America, and/or European Union; and/or
  - ii. Owned or controlled by any person or entity registered in or operating from the Islamic Republic of Iran or the Syrian Arab Republic or the Democratic People's Republic of Korea or designated in any sanctions list issued by the United Nations, the United States of America, and/or European Union.
2. Buyer further warrants that the Vessel that receives the Product is not destined for the Islamic Republic of Iran or the Syrian Arab Republic or the Democratic People's Republic of Korea, and that the Bunkers are not destined for the governments of the Islamic Republic of Iran or the Syrian Arab Republic or the Democratic People's Republic of Korea, a financial institution in the Islamic Republic of Iran or the Democratic People's Republic of Korea, or any other person whose property or interests in property are blocked pursuant to Title 31 §560.211 of the US Code of Federal Regulations.
3. The Buyer agrees to indemnify and hold the Seller harmless for any sanctions and/or penalties and/or fines made against the Seller arising out or in connection with any violation of this clause.

**N. Events of Default:** There shall be an Event of Default if any one or more of the following events occur:

1. When the Buyer, for whatever reason, fails to accept or take delivery of the Bunkers, in part or in full at the place and time designated for delivery;
2. The Vessel fails to present herself for the bunker tanker or barge, or at the shore terminal or wharf to effect delivery for more than 24 hours from the nominated date and time of delivery;
3. When the Buyer fails in part or in full to comply with its obligations to pay any amount due to the Seller;
4. When the Buyer fails to comply with any of its obligations under the Contract;

5. When, before the date of delivery, it is apparent in the opinion of the Seller that the financial position of the Buyer entails a risk to the Seller;
6. When the Buyer becomes insolvent or enters into any arrangement or composition with its creditors; or
7. Any application is made or any proceedings are commenced against the Buyer, or any order or judgment is given by any court for:
  - i. The liquidation, winding up, bankruptcy, insolvency, dissolution, scheme of arrangement, protection under Chapter 7 or Chapter 11 of Title 11 of the United States Code, administration or re-organisation or similar of the Buyer; or
  - ii. The appointment of a receiver, liquidator, trustee, administrator, judicial manager, scheme manager, or similar functionary of the Buyer of all or a substantial part of the Buyer's assets (other than for the purpose of a merger or an amalgamation); or
  - iii. A stay of proceedings against the Buyer as a result of any application referred to in these Terms; or
  - iv. Any act being done or event occurring which, under the applicable law thereof, has a substantially similar or analogous effect to any of the said acts or events described above.
8. In the event of a failure by the Buyer to make payment on the due date of any sums due under the Contract or any other contract between the Buyer and the Seller, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
  - i. Terminate the Contract or suspend any further deliveries to the Buyer;
  - ii. Appropriate any part payment by the Buyer to such of the Bunkers (or Bunkers supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
  - iii. Board the Vessel, take possession of and remove in such manner and for such use as the Seller sees fit, or for sale to any party as the Seller may in its sole discretion decide, the Bunkers. The Buyer shall render full assistance to the Seller to facilitate the said entry and removal of the Bunkers. The Seller shall not be responsible for any loss or damage, including any loss arising out of or in connection with the said entry or removal of the Bunkers; and/or

iv. In derogation of any agreement governing payment or credit, demand and receive immediate payment under the Contract.

**9.** Notwithstanding any of the provisions in these Terms and where:

- i. an Event of Default takes place; or
- ii. the Buyer makes any voluntarily arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or being a company goes into liquidation; or,
- iii. an encumbrancer takes possession, or a receiver is appointed, of any property or assets of the Buyer; or,
- iv. the Buyer ceases, or threatens to cease, to carry on business; or,
- v. liquidation, bankruptcy or any other changed financial or legal position of the parent company, sister companies or affiliated companies to the Buyer which in the sole discretion of the Seller is deemed to adversely affect the financial position of the Buyer; or,
- vi. the Seller reasonably apprehends that any of the events mentioned above is about to occur or that the Buyer is unlikely to perform any of its obligations under the Contract; or,
- vii. in the case of any other situation, which in the sole discretion of the Seller is deemed to adversely affect the financial position of the Buyer;

the Seller may in its sole discretion and without prejudice to any other available right or remedy, cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Bunkers has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, or may alter any of these Terms relating to the Buyer's obligation to pay or may demand the Buyer to effect payment in advance of delivery of request the Buyer to provide security satisfactory to the Seller.

**10.** In the event that the Buyer (whether by way of express written cancellation or otherwise) fails to nominate the Vessel and/or fails to take delivery of the quantity of Bunkers ordered under the Nomination, the Seller may, without prejudice to its other available rights and remedies, sell such Bunkers at the prevailing market price and the Buyer shall be liable for all losses, costs (including the costs of all services rendered and labour and materials used), damage, charges and expenses incurred by the Seller as a result of the default. In addition to the foregoing, the Seller shall

be entitled, at its sole option, to be paid liquidated damages, without any proof of loss, comprising:

- i. USD 12.50 per metric ton; and
- ii. The difference between the price agreed by the parties and the prevailing market price on the date of the Buyer's cancellation or default; or
- iii. The difference between the market price on date of fixture and the prevailing market price on the date of the Buyer's cancellation or default x 1.5 times, whichever is higher. If the above calculation amounts to less than USD 5,000, then the liquidated damages will be determined to be USD 5,000.

**O. General shortage:**

1. If, in Seller's opinion, there is a shortage or there are shortages of supply of Bunkers, whether or not of the quality or grade designated by Buyer, at any of its present or future sources of supply, or at any of those of its Supplier or Suppliers, with the result that Seller is unable to meet its requirements for sale to customers of all kinds, Seller may allocate, on any reasonable basis according to its own discretion, its available Bunkers among its customers both under this Contract and, at Seller's option, regular customers not then under contract.
2. Notwithstanding the preceding sub-clause, Buyer shall not be relieved of any of its obligations under these Terms to pay for the Bunkers actually delivered hereunder.
3. In the event Seller's capacity to perform becomes impracticable for any reason, including but not limited to, a request or suggestion by any official body relating to supplies from Indian refineries, priorities, rationing or allocations of any Bunkers, Seller may reduce or stop deliveries in such a manner as it may in its sole discretion determine and shall be relieved of its obligation to perform hereunder.

**P. Jurisdiction:**

1. Any controversy or claim between the Buyer and the Seller relating solely to the quality or quantity of Bunkers delivered or to be delivered hereunder or to the sums payable for such fuel shall be submitted to binding arbitration as provided in these Terms.
2. The above shall be without prejudice to the Seller's recourse to file *in rem* proceedings in any jurisdiction to recover the unpaid Bunkers' price along with the accrued interest, costs and expenses.

**Q. General provisions:**

1. If any part of the Contract is declared invalid for any reason, such invalidity shall not affect the validity of the rest of the Contract or any part thereof.
2. The Buyer may request modification of the terms of these Terms no later than the Nomination; however, at Seller's discretion the prices offered by Seller may be raised in consideration of such modifications, including any increase in Seller's liabilities thereby.
3. The Buyer may not assign its rights or obligations hereunder without the prior written consent of Seller, such consent not to be unreasonably withheld or delayed.
4. Modifications or amendments to these Terms shall be valid only when expressly agreed upon in writing and signed by the Seller and the Buyer. The waiver or failure to require the performance of any covenant or obligation contained herein shall not be deemed to constitute a waiver of a later breach of the term or condition.
5. Where sales are concluded through a broker or an agent, commissions may be paid by Seller to such broker or agent. Any brokers' commissions payable by Seller shall not be considered as making that agent or broker as the Seller's agent or broker and shall only be paid after confirmation of receipt of full outstanding invoice amounts without set off from the Buyer.
6. The headings used herein are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting the Contract.

**R. Environmental protection:**

1. In the event of a spill during bunkering, the Buyer and/or the Owner and/or the Vessel Interests and/or the Vessel shall, at their own expense, immediately take whatever action is necessary to give prompt notice to the relevant authorities and to effect clean up. Failing prompt action, the Buyer and/or the Owner and/or the Vessel Interests authorize Seller and/or the Supplier to conduct such clean up at the Buyer's/Owner's/ Vessel's expense.
2. It is the responsibility of the Master of the Vessel to notify the Seller in writing before commencement of supply, of any conditions, difficulties, peculiarities, deficiencies or defects with respect to engines, boilers, fuel tanks, piping, navigation equipment, mooring lines, tackle, gear, and any other types of equipment of the Vessel and/or calibration chart, pipelines and/or any other equipment, defect, conditions, deficiencies, peculiarities of Bunkers delivering



resources used by the Seller and/or Supplier, which might jeopardize or impose hazards or problems in connection with handling, mooring, unmooring or bunkering of the vessel.

3. The Buyer warrants that the Vessel to be bunkered is in compliance with all national, state and local statutes, regulations and ordinances, including those requiring proof of financial ability in regard to spills of oil and hazardous materials. Buyer shall hold Seller harmless as to any delays, claims, losses, expenses or penalties arising from breach by Buyer of this warranty, including attorneys' fees.

**S. Governing law and dispute resolution:**

1. The Contract shall be governed by the laws of Singapore.
2. Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of arbitration shall be Singapore. The Tribunal shall consist of one arbitrator. The language of the arbitration shall be English.