

## **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF MARINE FUELS EFFECTIVE AS OF 30<sup>th</sup> October 2019**

### **2019 EDITION (This Edition leaves any previous edition void)**

#### **Preamble**

These General Terms of Sale are not subject to the United Nations Convention on Contracts for international sale of Goods of 1980, nor shall that Convention be applicable to these Terms of Sale. This exclusion is pursuant to article 6 of the said Convention.

These General Terms of Sale govern the Marine Bunker Sale Contracts that are entered into between VILMA OIL, S.L., a Spanish Company located at Edificio Madrid 92, C/ Chile 10, 28290 Las Rozas (Madrid) (hereinafter "**THE SELLER**") and "**THE BUYER**" with regard to everything related to nomination, delivery, price, quality and payment of the Marine Fuel sold. In the event of any discrepancy between the General Terms of Sale and the Specific Terms agreed by the parties, in each case, the latter shall prevail.

These conditions apply to all offers, quotations, orders, agreements, services and all subsequent contracts of whatever nature, except where otherwise is expressly agreed in writing by Vilma Oil.

General trading conditions of another party will not apply, unless expressly accepted **in writing by Vilma Oil.**

These General Terms and Conditions shall apply to all deliveries contracted for unless the Sellers expressly confirm otherwise in the Confirmation Note. Each delivery shall constitute a separate contract.

#### **1. Definitions**

Throughout the General Terms of Sale, except where the context otherwise requires, the following definitions shall be applied:

"Actual Readiness" means the Vessel's readiness in all respects to receive Marine Fuels at the agreed delivery location within the Delivery Period.

"Banking Day" shall mean a day on which banks are open in the places of business of the Sellers and the Buyers and, where a remittance is in US dollars, in New York or, if other than US dollars, in the country of the price currency.

"BDN" means Bunker Delivery Note or Bunker Delivery Receipt.

"Bunker Supply Agreement" A commercial agreement between the bunker seller and the bunker buyer that stipulates the quantity and description of the Marine Fuels.

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

"Buyer" means the party contracting to purchase, take delivery of and pay for the Marine Fuels together with any agent, principal, associate, manager, partner, servant, parent, subsidiary, owner, final receiver or shareholder thereof.

"Confirmation note" means the Sellers' written confirmation of an enquiry/order received from the buyer.

"Contract" means this General Terms and Conditions of Sale and Delivery of Marine Bunker Fuels on the terms hereof as agreed by and between the Parties.

"Day/days" means a calendar day(s), unless otherwise stated.

"Delivery Period" means the Vessel's ETA

"ETA" means the Estimated Time (date) of Arrival of the Buyer's vessel requiring the delivery of Marine Fuels expressed as a single date.

"ETD" means the Estimated Time (date) of Departure of the Buyer's vessel requiring the delivery of Marine Fuels expressed as a single date.

"Marine Fuels" means products as stated in the Confirmation Note delivered or to be delivered by the Seller to the Vessel for own consumption.

"Owner" means the registered Owner, Manager or Bareboat Charterer of the vessel, and its parent companies, branches and/or subsidiaries owning the Vessel or having the final full legal and contractual authority and capacity to buy the Marine Fuels under the contract and to bind the Vessel in rem.

"Party" means Sellers or Buyers.

"Parties" means the Seller and Buyers collectively.

"Sellers" means VILMA OIL, S.L. as well as its servants, agents, assignees, subcontractors and any and all other persons acting under the Seller's instructions in fulfilment, compliance or observance of the contract the context otherwise requires.

"Vessel" means the vessel, ship or craft to which the Marine Fuels are physically delivered; either as end-user or as transfer unit to a third party.

## **2. Specifications/Grades/Quality**

- (a) The Buyers shall have the sole responsibility for the nomination of the specifications and grades of Marine Fuels fit for use by the Vessel. The nomination by the buyer shall be the final and binding confirmation of the aforesaid quality and compatibility.
- (b) The Sellers warrant that the Marine Fuels shall be of a homogeneous and stable nature and shall comply with the specifications and grades nominated by the Buyers. Unless otherwise agreed in the Bunker Confirmation, the Marine Fuels shall in all respects comply with the relevant edition of ISO Standard 8217 as per the date of the Bunker Confirmation.

## **3. Quantities/Measurements**

In its Final Supply Order, the buyer shall state the quantity of Marine Fuel to be supplied and that amount must be stated in metric tons (MT), or in cubic meters (CBM).

- (a) Subject to the provisions of sub-clause 6 (c) and clause 9 (Claims) hereunder the quantities of Marine Fuels delivered shall be determined from the official gauge or manual sounding or meter of the Bunker Tanker effecting delivery, or in case of delivery ex-wharf, of the shore-meter or the like equipment.
- (b) The Sellers shall invite the Buyers or their representatives to witness the opening and closing gauge, or manual sounding or meter reading and the taking of bunker temperature of all bunker tanks of the Bunker Tanker and shall be given sufficient information and access to the official gauge or manual soundings or meter of the Bunker Tanker or shore-meter and relevant documentation to verify the volume delivered. The absence of Buyers or their representatives shall not prejudice the validity of the measurement of the quantities of Marine Fuels delivered.

The measurements taken on board the ship supplied shall not be binding on the Seller, so any claim concerning the amount of Marine Fuel supplied based on measurements taken unilaterally on board the ship shall be completely inadmissible and irrelevant.

In respect of the quantity agreed, both the Buyer and the Seller shall accept a variation of 5% from the agreed quantity, when such variation is due to the operational impossibility to stop the supply at the exact quantity agreed, with no other consequence than a similar variation to the corresponding invoice from "the Seller."

- (c) The Marine Fuels to be delivered under the Contract shall be measured and calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.

#### **4. Sampling**

- (a) The Sellers shall invite the Buyers or their representatives to witness the sampling of Marine Fuels. During bunkering, a primary sample shall be drawn at a point, to be mutually agreed between the Sellers and the Buyers or the Ship's Master, or their respective representatives, at the manifold of the supply barge or at the manifold of the land terminal from which the supply is made, whichever is applicable corresponding to the delivery method.

The absence of the Buyer or the Ship's Master or their respective representatives during the commercial sample taking process shall be considered irrelevant to those ends. Each sample shall be thoroughly mixed and carefully divided into a minimum of four (4) identical samples and one sample of each grade of Marine Fuels shall be retained on board for MARPOL purposes.

For all supplies in tanker truck, the Seller will not take commercial samples, except when expressly asked to do so by the Buyer, in writing and at least forty-eight (48) hours before the supply, and the Buyer shall accept the cost of same.

- (b) The samples referred to in sub-clause 4 (a) shall be securely sealed and provided with labels showing the Vessel's name and IMO, identity of delivery facility, bunker grade, delivery date and place and point of sampling and seal number, authenticated with the Vessel's stamp and signed by the Sellers' representative and the Master of the Vessel or the Master's authorised representative.
- (c) Two (2) samples shall be retained by the Sellers for thirty (30) days after delivery of the Marine Fuels to the Vessel or, on being requested in writing by the Buyers, for as long as the Buyers may reasonably require, and the other two (2) samples shall be retained on board the Vessel (one of which shall be for MARPOL purposes).
- (d) If the quantity is delivered by more than one Bunker Tanker, the sampling procedure shall be repeated as outlined in this clause 4.

#### **5. Delivery**

- (a) Delivery of the Marine Fuels shall be made day and night, Sundays and holidays included, at the port or place of delivery, subject always to the custom of that port or place.
- (b) The Buyers, or their agents at the port or place of delivery, shall give the Sellers or their representatives at the port or place of delivery, seventy-two (72), forty-eight (48), twenty-four (24)

hours approximate and twelve (12) working hours definite notice of the Vessel's arrival and the location and time at which the delivery is required. The Buyer, or their local representatives, shall also notify the Seller or its local representatives of any changes on the arrival of the ship exceeding three (3) hours (one (1) hour in the case of supplies by tanker truck), and will report the exact position of the ship and time at which the supply is required. Any change exceeding those margins will immediately be reported in writing to the Seller.

(c) The Sellers shall:

(i) be in possession of all permits required to comply with all relevant regulations pertaining to delivery of Marine Fuels at the port or place of delivery, and;

(ii) subject to local laws, render all necessary assistance which may be reasonably required to make connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold.

(d) The Buyers shall be responsible for making all connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold and to ensure that the hose(s) are properly connected to the Vessel's bunker manifold prior to the commencement of delivery.

(e) The Buyers shall ensure that the Vessel is in possession of all certificates required to comply with all relevant regulations pertaining to delivery of the Marine Fuels at the port or place of delivery and that the Master of the Vessel shall:

(i) advise the Sellers in writing, prior to delivery, of the maximum allowable pumping rate and pressure and agree on communication and emergency shut-down procedures;

(ii) notify the Sellers in writing 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 Marine Fuels, and;

(iii) provide a free side to receive the Marine Fuels and render all necessary assistance which may reasonably be required to moor or unmoor the Bunker Tanker, as applicable.

## 6. Documentation

(a) Before commencement of delivery the Sellers shall present for written acknowledgment by the Master of the Vessel or the Master's authorised representative, a Bunker Supply Agreement or similar document, duly signed by the Sellers or their representative, which shall contain the quantities to be delivered and all information required in accordance with ISO 13739 or any subsequent amendments thereof, including, in particular, the values for: viscosity; density; Sulphur content; flash point; and delivery temperature. In addition, and if available, similar information shall be provided for vanadium, ash content, water content and pour point. In the event that local bunkering rules and regulation apply mandatorily, these shall take precedence over the provisions of this sub-clause (a).

(b) Once the delivery is completed and quantities measured, a BDN shall be signed and stamped by the Master of the Vessel or the master's authorised representative, and returned to the Sellers, or their representative, as acknowledgement of the actual volume and the actual delivery temperature only and a duplicate copy shall be retained by the Master of the Vessel. This receipt shall contain the following minimum information which is warranted by the Sellers: delivered quantity in volume units;

density in kg/m<sup>3</sup> at 15°C as per ISO 3675; delivery temperature; flash point; Sulphur content in % m/m as per ISO 8754; and viscosity.

- (c) In the event the Master of the Vessel is not satisfied with the sampling, quantity or any other matter concerning the Marine Fuels or their delivery, the Master shall on completion of delivery, issue a separate letter of protest, receipt of which shall be acknowledged in writing by the Sellers' representative within 24 hours of the supply of the Marine Fuel.

The BDN/BDR will remain "clean" in all cases and shall not include any kind of protests or remarks whatsoever.

The signature of the Master of the Vessel or any other person acting in his name in the BDN/BDR shall imply a ratification of the sale contract on behalf of the Vessel's Owner.

## 7. Price

- (a) The Sellers' price of the Marine Fuels is only valid if the Vessel arrives within the Delivery Period and shall be in the amount expressed per unit and in the currency stated in the Confirmation Note for each grade of Marine Fuels delivered into the Vessel's tanks free delivered/ex-wharf as applicable and stated in the Confirmation Note. In the event the price is quoted in volume units, conversion to standard volume shall be at sixty (60) degrees Fahrenheit or at fifteen (15) degrees Celsius.
- (b) Any and all additional charges, incurred by the Sellers which are for the Buyers' account shall be specified in the Sellers' quotation and in the Confirmation Note and shall include but not be limited to:
- (i) wharfage charges, barging charges or other similar charges;
  - (ii) agency' fees;
  - (iii) mooring charges or port dues, and;
  - (iv) duties, taxes, charges or other costs in the country where delivery takes place.

## 8. Invoicing and Payment

- (a) All the invoices shall be issued in Euros or U.S. Dollars (or the currency adopted by mutual agreement by the parties).
- (b) Payment for the Marine Fuels shall be made by the Buyers within the number of days stated in the Confirmation Note after the completion of delivery. In the event payment has been made in advance, such payment shall be adjusted on the basis of the actual quantities of Marine Fuels delivered and additional payment and/or refund shall be made within seven (7) days after the completion of delivery.
- (c) Payment shall be made in full, without set-off, counterclaim, deduction of any kind and/or discount, free of bank charges.
- (d) Payment shall be deemed to have been made on the date the payment is credit to the bank account designated by the Sellers.
- (e) If payment falls due on a non-Banking Day, then payment shall be made on or before the last Banking Day before the due date.

- (f) Any delay in payment and/or refund shall entitle either Party to charge interest at the rate of two (2) per cent per month or the maximum rate permitted by applicable law, unless otherwise agreed as per the Confirmation Note.

All amounts more than 15 days past due shall incur an additional 5% administrative fee. All payments received from the Buyer after an invoice is overdue shall first be applied to interest, legal collection costs and administrative fees incurred before they will be applied to the principal amounts on a subsequent delivery. The Buyer may not designate application of funds to a newer invoice so long as there are any unpaid charges, interests, collection costs or administrative fees on a previous one. This shall not be construed, however, as preventing the Seller's option to choose application of funds in instances where subsection (g) shall apply. Any waiver by the Seller of interest charges or administrative fees on a particular invoice shall not be construed as a waiver by the Seller of its rights to impose such charges on subsequent deliveries.

- (g) In the event that more than one invoice is past due at the same time, the Seller shall be entitled, at its sole discretion, to specify the particular invoice to which any subsequent payments shall be applied.

- (h) Any invoice being unpaid 7 (seven) days after its due date, the Seller may:

- (i) Refrain from providing new supplies pending delivery, annual accounts new sales to the Buyer as well as to third parties on its behalf.

- (ii) Reclaim upon the Buyer all the expenses of recovery (including judicial expenses and lawyer's fees) of any of the sums aforementioned that will be borne by the Buyer.

- (i) Partial payment of an invoice is not equivalent, in any case, not even in the case of claims by the Buyer pending resolution, to effective payment and the Seller shall effectively be entitled to full collection of the sums it is owed and the debit balance shall attract interest at the rate mentioned in section (F) above.

- (j) The bunkered vessel, the Buyer, the Ship Owner Company, the Management Company, the Charterer and any Parent company or Majority shareholder, if any, shall be joint and severally liable for payment of the price of the Marine Fuel supplied.

The Buyer must inform the Seller about any change on bunkered ships ownership or management as soon as the Buyer knows that any change could take place.

The Seller may enforce his credit, in the manner and within the legal limits foreseen on the ship bunkered and on the chartered goods accrued thereon.

- (k) The sum owed by the Buyer for payment of the price of the Marine Fuel supplied, plus the interest and expenses accrued, may be compensated with other debts that the Seller has to the Buyer, arising from other commercial transactions with the Buyer, prior express consent from the Seller to said compensation.

- (l) All judicial and extrajudicial costs and expenses, including pre-action costs, fees, expenses and disbursements of the Seller's lawyers/attorneys-at-law, incurred in connection with non-payment or delayed payment or by any other breach by the Buyer of these conditions, shall be for the Buyer's account, immediately payable by the latter to the Seller. In case of litigation, the Buyers shall also pay all the relevant expenses to the Seller, including but without limitation all his reasonable attorneys/lawyers' fees, costs and disbursements.



- (m) It is mutually agreed that the Bunkers provided by the Seller to the Buyer under the terms of this Agreement have been ordered by the Buyer in the ordinary course of business between Seller and Buyer. All payments from Buyer to Seller for Bunkers supplied under this Agreement are deemed to have been made in the ordinary course of business between Seller and Buyer, according to these ordinary business terms agreed between them.
- (n) In the event of non-payment or non-refund, the Seller reserves the right to pursue such legal remedies as may be available to them to recover the amount owed.

## 9. Claims

### (a) Quantity

- (i) Should the Master of the Vessel supplied not agree with the quantity or any other circumstances related to the Marine Fuel or its supply, he must state these circumstances in a Letter of Protest, which must be delivered to the Seller within twenty-four (24) consecutive hours following the supply of the Marine Fuel
- (ii) The Sellers shall have the right to charge the Buyers for all proven additional expenses incurred by the Sellers in connection with the Buyers' failure to take delivery of the full quantity of the Marine Fuels ordered by the Buyers.
- (iii) The Buyers shall have the right to charge the Sellers for all proven additional expenses incurred by the Buyers in accordance with the Sellers' failure to deliver the full quantity of the Marine Fuels agreed as per the Confirmation Note, unless the quantity is amended by the Master in writing.

### (b) Quality/Specification

- (i) Any claim as to the quality or specification of the Marine Fuels must be notified in writing promptly after the circumstances giving rise to such claim have been discovered. If the Buyers do not notify the Sellers of any such claim within thirty (30) days of the date of delivery, such claim shall be deemed to be waived and barred.
- (ii) In the event a claim is raised pursuant to sub-clause 9(b)(i), the Parties hereto shall have the quality of the Marine Fuels analysed by a mutually agreed, qualified and independent laboratory. The Buyers have the option to request a full ISO 8217 analysis. The Sellers shall provide the laboratory with one of the samples retained by them as per sub-clause 4(c). Unless otherwise agreed, the expenses of the analysis shall be for the account of the Party whose claim is found wrong by the analysis.

### (c) Time Bar

In each and every case any and all claims, except those under sub-clauses 9(a)(i) and 9(b)(i), by the Buyers shall be time barred unless arbitration proceedings have been commenced in accordance with Clause 22 (Dispute Resolution) hereof within one (1) year from the date of delivery of the bunkers or the day that delivery should have commenced as per the Confirmation Note.

## 10. Risk/Title

- (a) Risk in the Marine Fuels shall pass to the Buyers once the Marine Fuels have passed the Sellers' flange connected to the Vessel's bunker manifold. Buyer shall be responsible for such flange connection, and pumping shall be performed under the direction and responsibility of Buyer. At that moment, the Seller shall cease to be responsible for the damage suffered and caused by the Marine Fuel Supplied. Pumping shall be performed under the direction and responsibility of the Buyer.
- (b) Title to the Marine Fuels shall pass to the Buyers upon full payment for the value of the Marine Fuels delivered, pursuant to the terms of Clause 8 (Payment) hereof. Until such time as payment is made, on behalf of themselves and the Vessel, the Buyers agree that they are in possession of the Marine Fuels solely as bailee for the Sellers. If, prior to payment, the Sellers' Marine Fuels are commingled with other marine fuels on board the Vessel, title to the Marine Fuels shall remain with the Sellers corresponding to the quantity of the Marine Fuels delivered. The above is without prejudice to such other rights as the Sellers may have under the Spanish law against the Buyers, Vessel or any other third party who is in possession of the Marine Fuels in the event of non-payment.
- (c) "No-Lien" stamps or the use of any wording similar in nature and/or meaning on any document including but not limited to bunker delivery receipt(s) whether used by the Buyer or any third party shall be invalid and have no legal effect and shall in no way prejudice any right of lien the Seller may have against the buyer over the Marine Fuels.
- (d) Products and Services delivered under this Contract shall be made not only on the account of the Buyer but also on the account of the supplied Vessel. When the Buyer is not the Owner of the Vessel, it represents and warrants to the Seller that the Owner of the Vessel has given the Buyer, Master or representative, as applicable, express authority to purchase the Products.

## **11. Compliance with Laws and Regulations**

The Parties will not do or permit to be done anything which might any breach or infringement of the laws and regulations of the Flag State, or of the place where the Vessel trades or takes bunkers.

## **12. Sanctions Compliance Clause**

- (a) In this Contract the following provisions shall apply where any sanction, prohibition or restriction is imposed on any specified persons, entities or bodies including the designation of any specified vessels or fleets under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union, The United Kingdom or the United States of America.
- (b) The Buyers and the Sellers each warrant that at the date of entering into this Contract and continuing until delivery of the Marine Fuels and Payment by the Buyers to the Sellers in full:
  - (i) neither Party is subject to any sanctions, prohibitions, restrictions or designation referred to in sub-clause (a) which prohibit or render unlawful any performance under this Contract;
  - (ii) the Sellers are selling and the Buyers are purchasing the Marine Fuels as principals and not as agent, trustee or nominee of any person with whom transactions are prohibited or restricted under sub-clause (a);



- (iii) the Buyers further warrant that the Vessel is not a designated vessel and is not and will not be chartered to any entity or transport any cargo contrary to the restrictions or prohibitions in sub-clause (a) above.
- (iv) the Sellers further warrant that the Marine Fuels are not of an origin or have been exported as a product from a place that is subject to any of the sanctions, prohibitions, restrictions or designation referred to in sub-clause (a) above.
- (v) The Buyer further warrant that the Vessel is not heading to any destination contrary to the restrictions or prohibitions in sub-clause (a) above.
- (c) If at any time during the performance of this Contract either Party becomes aware that the other Party is in breach of warranty as aforesaid, the Party not in breach shall comply with the laws and regulations of any Government to which that Party or the Vessel is subject and follow any orders or directions which may be given by any regulatory or administrative body, acting with powers to compel compliance. In the absence of any such orders, directions, laws or regulations, the Party not in breach may terminate this Contract forthwith.
- (d) Notwithstanding anything to the contrary in this clause, Buyers and Sellers shall not be required to do anything which constitutes a violation of the laws and regulations of any State to which either of them is subject.
- (e) The Buyers and the Sellers shall be liable to indemnify the other Party against any and all claims, including return of any payment, losses, damage, costs and fines whatsoever suffered by the other Party resulting from any breach of warranty as aforesaid and in accordance with this Contract.

### **13. Seller's and Buyer's Liabilities and Consequential Loss**

The liability for breach of any condition or conditions whatsoever shall be limited to the payment of damages.

- (a) The Buyer shall indemnify the Seller and save it harmless in respect of any losses inclusive of interests and costs arising from any delay resulting from Buyer's failure to give proper notices and/or to comply with Clause 5 and/or Buyer's vessel failing to receive Marine Fuels at less than 200 m3/h.
- (b) Should "THE BUYER" request the cancellation of the supply, BUYER shall pay to SELLER the difference between the Platts CIF MED Quotation published on the fixing date and the Platts CIF MED published on the cancellation date. If the difference works out to be less than 4,000 US\$, the fixed minimum cancellation fee will remain at this amount.
- (c) The Buyer shall not assign the contract or any of its rights and obligations under it without the express consent in writing of the Seller.
- (d) Any addition to or deletion from the Bunker Receipt made by the Buyer or its representative and/or any documents presented by the Buyer or its representative at the time and place of delivery which purport to alter the terms of the contract shall have no validity.
- (e) The Seller shall not have any liability, howsoever arising and whether as a result of a breach of the contract, negligence or otherwise, for any loss of profit, or anticipated profit, loss of time or hire, cost of overheads thrown away, demurrage or loss of schedule, cost of substitute vessel(s), loss related to loss of operational use of vessel, physical loss or damage to cargo, or loss of contract(s), in each instance whether such losses are direct, consequential or otherwise nor, without prejudice to the

foregoing, shall the Seller be liable for any consequential, indirect or special losses or special damages suffered by the Buyer.

- (f) The exclusions of liability set out in the contract shall only apply to the extent permitted by law and shall not apply in respect of fraud by the party seeking to rely on the exclusion.

#### **14. Force Majeure**

Neither Party seller shall be liable for any loss, damage or delay to any of the following force majeure events and/or conditions at the port of delivery to the extent the Party invoking force majeure is prevented or hindered from performing any or all of their obligations under this Contract, provided they have made all reasonable efforts to avoid, minimize or prevent the effect of such events and/or conditions:

- (a) acts of God;
- (b) any Government requisition, control, intervention, requirement or interference;
- (c) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;
- (d) riots, civil commotion, blockades or embargoes;
- (e) epidemics;
- (f) earthquakes, landslides, floods or other extraordinary weather conditions;
- (g) strikes, lockouts or other industrial action, including agents, subcontractors unless limited to the employees of the Party seeking to invoke force majeure;
- (h) fire, accident, explosion except where caused by negligence of the Party seeking to invoke force majeure;
- (i) any other similar cause beyond the reasonable control of either Party.

The party seeking to invoke force majeure shall notify the other Party in writing within two (2) days of the occurrence of any such event/condition.

Nothing in this provision shall be deemed to excuse Buyer from its obligation to make payments for Products already received.

#### **15. Termination**

Without prejudice to accrued rights hereunder, either Party hereto shall be entitled to terminate this Contract in the event of:

- (a) any application being made or any proceedings being commenced, or any order or judgment being given by any court, for
  - (i) the winding up, dissolution, liquidation or bankruptcy of either Party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver or administrator is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors; or
  - (ii) the appointment of a receiver, liquidator, trustee, administrator, administrative receiver or similar functionary of the other Party of all or a substantial part of its assets (otherwise than for the purpose of a reconstruction or amalgamation); or

- (b) any act being done or event occurring which, under the applicable law thereof, has a substantially similar effect to any of the said act or events described above; or
- (c) either Party is in breach of the provisions of clause 12 (Sanctions Compliance Clause); or
- (d) if a force majeure event as defined in clause 14 (Force Majeure) prevents or hinders the performance of the Contract for a period exceeding ten (10) consecutive days from the time at which the impediment begins to prevent performance if notice is given without delay or, if notice is not given without delay, from the time at which notice thereof reaches the other Party.
- (e) 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", unless the sale is done on a cash in advance, irrevocable letter of credit basis, or other form of credit support agreed and acceptable by the buyer.

## **16. Health, Safety and Protection of the Environment**

- (a) In the event of any spillage (which for the purpose of this clause shall mean any leakage, escape, spillage or overflow of the Marine Fuels) causing or likely to cause pollution occurring at any stage of the bunkering operation, the Buyers and the Sellers shall jointly, and regardless as to whether the Buyers or the Sellers are responsible, immediately take such actions as are reasonably necessary to effect clean up and which shall always be conducted in accordance with such local laws and regulations which may compulsorily apply.
- (b) In the event of a spill or discharge occurring before, during or after bunkering, Buyer shall immediately notify the appropriate Authorities and take whatever action is necessary and pay all costs to effect the clean-up. Failing prompt action, Buyer authorizes Seller and Supplier, if any, to conduct such clean-up on behalf of Buyer at Buyer's risk and expenses, and Buyer shall indemnify and hold Seller and Supplier, if any, harmless against any damages, expenses, claims or liability arising out of any such spill or clean-up unless such spill or clean-up shall be proven to be wholly and solely caused by Seller's gross negligence.
- (c) Where it is a compulsory requirement of the law of the port or place of delivery of the Marine Fuels that the Sellers shall have in place their own oil spill contingency plans, the Sellers shall ensure that they have in place valid oil spill contingency plans.
- (d) Buyer warrants that the Receiving Vessel is in compliance with all governmental, port/terminal and pollution rules and regulations. The Receiving Vessel will not be moored at a wharf or alongside other marine loading facilities of Seller or Supplier unless free of all conditions, deficiencies or defects which might impose hazards in connection with the mooring, unmooring or bunkering of the Receiving Vessel.

## **17. Confidentiality & Data Protection**

- (a) Neither Party shall disclose to third parties any information marked as Confidential relating to pre-contractual discussions and/or the terms and conditions of this Contract, except with the prior written consent of the other Party, or to the extent required by law, or by a request of a government or its agency thereof.

- (b) The Parties shall take reasonable precautions to ensure that no unauthorized disclosure of information marked as takes place.
- (c) If a Party is uncertain as to whether information is confidential, the Sellers or the Buyers (as the case may be) shall consult with the other Party.
- (d) Should either Party be required by law to disclose information marked as Confidential, the disclosing Party will notify the other party and shall disclose only the minimum confidential information required to satisfy legal requirements.
- (e) Information is not confidential for the purposes of this clause if it was in the possession of the Party prior to receipt from the other Party and was not marked as Confidential; becomes publicly available other than as a result of a breach of this Contract by one of the Parties; or is lawfully received from a third party.

This Clause shall survive 5 years (five-years) after termination of this Contract.

Pursuant to the current Spanish Personal Data Protection regulations, The Seller undertakes strictly to comply with the provision of prevailing data protection legislation.

### **18. Third Party Rights**

No third parties may enforce any term of this Contract.

### **19. Assignment**

Neither Party shall assign any of their rights under this Contract without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

### **20. Partial Validity**

If any provision of this Contract is or becomes or is held to be illegal, invalid or unenforceable in any respect under any law or jurisdiction, the provision shall be deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if such amendment is not possible, the provision shall be deemed to be deleted from this Contract to the extent of such illegality, invalidity or unenforceability, and the remaining provisions shall continue in full force and effect and shall not in any way be affected or impaired thereby.

### **21. Law and Jurisdiction**

This Contract shall be governed by and construed in accordance with the laws of Spain. All clauses shall be interpreted and complemented, where appropriate, by the precepts and principles of Spanish law that are of application, without reference to any conflict of laws rules which may result in the application of the laws of another jurisdiction

Any dispute arising out of or in connection with this Contract, including any matter regarding its existence, validity or termination, shall be referred either to arbitration at the Madrid Chamber of Commerce and Industry or to the Commercial Courts of Madrid, at Seller's discretion.

Each of the parties hereby irrevocably submits to the jurisdiction of any such court, and irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum or its foreign equivalent to the maintenance of any action in any such court. Seller shall be entitled to assert its rights of lien or attachment or other rights, whether in law, in equity or otherwise, in any country where it finds the vessel.

Arbitration agreement: Any dispute arising out of or relating to this contract, including any matter regarding its existence, validity or termination, shall be definitively settled by arbitration in law, administered by the Court of Arbitration of the Madrid Chamber of Commerce and Industry, in accordance with its Arbitration Rules in force at the time the request for arbitration is filed. The arbitral tribunal appointed for such purpose will be formed by one arbitrator. The language to be used in the arbitration will be Spanish. The place of arbitration will be Madrid, Spain.

The arbitration finding handed down will be final and binding upon both parties.

In all matters requiring judicial formalization of the arbitration, execution of the arbitration finding or injunctive measures that are not the direct competence of the Arbitration Court, the parties agree the jurisdiction and competence of the Courts of Madrid.

## **22. Notices**

Any Party giving notice under this Contract shall ensure that it is effectively given, and such notice shall be treated as received during the recipients' office hours. If such notice is sent outside the recipients' office hours, it shall be treated as received during the recipients' next working day.

## **23. Entire Agreement**

(a) The written terms of this Contract comprise the entire agreement between the Buyers and the Sellers in relation to the sale and purchase of the Marine Fuels and supersede all previous agreements whether oral or written between the Parties in relation thereto.

(b) Each of the Parties acknowledges that in entering into this Contract it has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether or not made negligently) other than as is expressly set out in this Contract.

(c) Any terms implied into this Contract by any applicable statute or law are hereby excluded to the extent that such exclusion can legally be made. Nothing in this Clause shall limit or exclude any liability for fraud.