



**STANDARD TERMS & CONDITIONS OF SALE FOR THE SUPPLY OF**  
**MARINE PETROLEUM PRODUCTS**

**VERSION 1.2**

**EFFECTIVE 1 AUGUST 2021**

## **1 Introduction**

**1.1** The following terms of sale and supply shall constitute the Standard Terms and Conditions of Sale (the Standard Terms) of [SONAN BUNKERS UK LTD] and any group companies and shall apply to every sale of marine bunker fuel and/or other related products of whatever type or grade (the Products) sold by SONAN BUNKERS UK LTD as seller (the Seller) to the buyer (the Buyer) who agrees to the purchase of such Product.

**1.2** The Seller and the Buyer may be referred to as the "Party" or "Parties". Collectively the Confirmation Note and Standard Terms shall be known as the Agreement and unless confirmed in the Confirmation Note, each delivery of the Product shall constitute a separate Agreement. In the event of any conflict between the Standard Terms and the Confirmation Note, the terms of the Confirmation Note shall prevail.

**1.3** No change, addition or amendment to the Agreement shall be of any force or effect unless and until expressly confirmed in writing by the Seller. If any provision of the Agreement shall to any extent be invalid or unenforceable, the remainder of the Agreement shall not be affected and shall remain in full force and effect.

**1.4** The order for the Product shall be considered firm and binding upon the Buyer's acceptance of the price quoted by the Seller. Confirmation in writing by the Seller may be provided to the Buyer but the absence of such confirmation shall not avoid the agreement of sale.

**1.5** At no time will the Buyers terms and conditions be considered part of the Agreement.

## **2 Headings**

The use of headings and explanatory notes is for convenience only and do not form part of the Agreement.

## **3 Definitions**

Throughout these Standard Terms the following definitions shall be applied:

"Agreement" and "Contract" shall have the same meaning throughout these Standard Terms.

"Bunker Delivery Receipt" means the document in which the Vessel's representative and the party delivering the Product to the Vessel (by barge, pipeline or road tanker) signs and stamps as confirmation of the volumes/quantities of Product received from the Physical Supplier

"Bunker Tanker" means a bunker barge or tanker or tank truck supplying Product to the Vessel

“Buyer” means the Party described in the Confirmation Note together with any agent, principal, associate, manager, partner, servant, parent, subsidiary, owner or shareholder thereof.

“Confirmation Note” means the document stating the agreement made between the Seller and Buyer.

“Contract” means the Confirmation Note, the Physical Suppliers Terms and Conditions and any other documents referred to therein

“Due Date” means the date specified in the Confirmation Note for payment of the Product and any and all other fees, costs and charges.

“Gender” means Singular and Plural and unless the context otherwise requires, all references in the Agreement to one gender shall be deemed to include all others and references to the singular shall be deemed to include the plural and vice versa.

“Physical Supplier” means the person who physically supplies the Product to the Vessel together with that person’s servants, agents, successors, subcontractors and assigns. The Physical Supplier may be the Seller or any other person

“Place of supply” means the port or other readily identifiable geographical area specified in the Confirmation Note which is the Point of Delivery.

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

“Price of the Product” shall be as set forth in the Confirmation Note and subject to Clause 6 of these Standard Terms.

“Product” means a product or products derived from crude oil, delivered or to be delivered to the Vessel.

“Seller” means the Party described in Clause 1 above, the Confirmation Note and the party contracting to sell and deliver the Product

“Vessel” means the vessel, rig or on-shore tank nominated in the Confirmation Note and to where the Product is to be delivered.

#### **4 Supply of Product**

4.1 The Buyer shall be liable for and accept all the risk regarding their choice of Product. The Seller shall not be under any obligation whatsoever to check whether the choice of Product is suitable for the needs of the Buyer.

#### **5 Price of Product**

5.1 The price of the Product supplied shall be in the amount per unit as expressed and stated in the Confirmation Note for each grade of the Product delivered.

Delivery terms are as: stated in the Confirmation Note. Notwithstanding: (i) Should the price of the Product quoted include delivery of the Product then the price of the Product shall include the cost of the transportation to the Place of Delivery. (ii) Any additional local costs, charges, taxes, fees incurred in respect of the delivery of the Product that are normally arranged by an agent will remain outside of the terms of this Contract.

**5.2** In addition to the Price, the Buyer shall pay any additional expenses or costs such as barging, demurrage, wharfage, port dues, taxes, duties, charges or other cost in the country where the delivery takes place for which the Seller is accountable but which are for the Buyers account. Such charges, costs and expenses will be passed on to the Buyer at the rates charged to the Seller as and when they are advised to the Seller and together with the Price shall for all purposes constitute the Price due from the Buyer to the Seller for the Product supplied.

**5.3** The Seller reserves the right, upon notification to the Buyer, to adjust the Price in order to reflect any unanticipated increase in costs incurred after issuance of the Confirmation Note and whilst the Seller will endeavor to refrain from making any increase the Seller reserves the right to increase the Price at any time before Delivery should the market price of the Product increase.

**5.4** Notice of any Price increase will be provided by the Seller to the Buyer in the form of an Increase Notice during the Seller's normal business hours (i.e. Monday to Friday inclusive, 0800-1800hrs London or New York). An Increase Notice given outside these hours will be deemed to have been given at 0800hrs on the first business day after the Increase Notice was served. If the Buyer wishes to cancel the Agreement without penalty, the Buyer must advise the Seller within one hour of the Increase Notice being received. If the Buyer does not respond within one hour of the Seller advising the Buyer of the increase of the Price, the Buyer shall be deemed to have agreed to the revised Price and the Agreement so revised shall remain in force pursuant to the increase provided for in the Increase Notice.

**5.5** The Buyer or his representative should attend the Point of Delivery and obtain at that time all outstanding information relating to the Point of Delivery, including the exact quantities and precise specification of Product to be delivered. Unless otherwise requested by the Buyer, the Seller shall be under no obligation at any time to produce to the Buyer any evidence of delivery of the Product to the Vessel and it is expressly agreed that the furnishing by the Seller of proof of delivery is not a prerequisite to payment of the Price by the Buyer.

## **6 Binding Agreement**

The order for Product shall be considered firm and binding upon the Buyer's acceptance of the Price quoted by Seller. Confirmation in writing by the Seller may be provided to Buyer but the absence of such confirmation shall not avoid the agreement of sale.

## **7 Quantity of Product**

**7.1** The quantity of Product sold in each case shall be as agreed between the Buyer and Seller as per the Confirmation Note, notwithstanding the acceptance of the Buyer's order, the Sellers obligation to supply such quantities shall be subject to availability of Product from the Seller's source of supply at the time and place delivery is requested by the Buyer.

**7.2** The quantity of Bunker Fuel to be sold and delivered by the Seller shall be subject to an operational tolerance of +/- 5% at Seller's option. The Buyer undertakes to purchase and receive the quantity

specified in the Bunker Confirmation in the manner agreed to between the Parties and in accordance with the terms hereunder.

## **8 Grade and Quality of Product and Warranty Exclusions**

**8.1** The Product to be delivered shall be as specified in the Confirmation Note and, other than as more precisely specified therein, shall be one of the Sellers commercial grades of Product as currently offered at the time and Place of Supply for marine bunkering or lubrication purposes. Except as expressly set forth in the Confirmation Note, no warranties express or implied as to quality or fitness for any particular purpose are given or form part of the agreement, and such warranties are excluded from the agreement. The Buyer acknowledges and warrants it is Buyer's responsibility to test the Product delivered and to ensure that it is proper in all respects prior to use of such Product on Buyer's Vessel.

**8.2** Responsibility for establishing the compatibility of Product delivered with any other product or products and for segregating or co-mingling the same rests solely with the Buyer. In all cases, the Buyer understands that incompatibility of the Product with any existing product on the Vessel is not a ground for rejection of the Product by Buyer. The Seller may discharge its obligation to deliver the Product as specified in the Confirmation Note by supplying in substitution Product of a different grade and/or brand name, provided that such substitute product is of an equivalent or superior specification to that specified in the Confirmation Note.

**8.3** Subject to the availability of the Product and facilities at the Place of Supply and Point of Delivery, the Seller will use its best efforts to ensure that the Product is delivered promptly. However, the Seller shall not be responsible for any loss, expense, direct or indirect damage, incidental or consequential damages and/or any other increased costs whatsoever incurred by the Buyer as a consequence of the Vessel not being supplied promptly or otherwise being delayed or restrained for any reason whatsoever and such consequential and incidental damages are excluded.

**8.4** Any implied conditions and warranties, including the warranties of merchantability, fitness and fitness for a particular purpose are expressly excluded and disclaimed.

## **9 Delivery of Product**

**9.1** Each sale of Bunker Fuel shall be confirmed by a Bunker Confirmation.

**9.2** If the Seller at any time and for any reason believes that there may be a shortage of Product at the Place of Supply, the Seller has the discretion to allocate its available and anticipated supply of Product in such a manner as it may determine. The Seller shall not be required to deliver any Product into any of the Vessel's tanks or other places that are not regularly used for storage of bunkers or lubricants or other products as the case may be and shall not be required to deliver any Product, which requires a Government permit unless the necessary permit and/or clearance has been received.

**9.3** Delivery of the Product shall be accomplished in one or more consignments at the Point of Delivery by such means as the Seller shall deem appropriate in the circumstances. Delivery of the Product shall be made day and night including Sundays and holidays at the Point of Delivery, subject always to the

custom of that port or place. The Seller shall not be liable for any inability to delivery on public or dock holidays.

**9.4** The Seller is entitled to arrange deliveries based on the principle of “First Come First Served” but reserves the right to arrange bunkering sequence following the Seller’s logistics, prior engagements, priorities, obligations and deliveries.

**9.5** In the event of delivery by barge, the Buyer shall, at its own expense, provide a clear and safe berth for the barge(s) alongside the Vessel’s receiving lines and shall provide all necessary equipment, facilities, personnel and assistance required to effect delivery. Deliveries of diesel, gas oil and other similar grades of product made at the same time as heavy grade Product, which may necessitate delivery on two or more barges will be subject to separate charges.

**9.6** At the time of delivery the Physical Supplier shall: (a) be in possession of all permits required to comply with all relevant regulations relating to the delivery of the Product at the place of delivery; and (b) Subject to all local laws, render all necessary assistance which may be reasonably required to make all connections and disconnections between the delivery hoses and the Vessel’s bunker manifold.

**9.7** At the time of delivery the Buyer shall:

(a) make connection between the pipelines or delivery hoses and the Vessel’s intake line and shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly each and every consignment of the Delivery;

(b) be in possession of all necessary permits required to comply with all relevant regulations relating to the delivery of the Product at the place of delivery, subject to the customs and regulations of the port or place of delivery.

(c) be responsible for ensuring that the Product is delivered at a safe rate and pressure and that all equipment utilized to complete that process is in a safe and satisfactory condition.

## **10 Vessel Delay**

**10.1** In the event that the Vessel’s arrival at the Point of Delivery is delayed or likely to be delayed, the Buyer must advise the Seller without delay. The Buyer should also ensure that the Vessel’s agent at the Place of Supply is similarly informed and the agent advises the Physical Supplier accordingly.

**10.2** The Seller will use its best efforts to supply the Product to a Vessel which has been delayed Vessel on the terms originally agreed but reserves the right to pass on to the Buyer all additional costs and expenses, including any increase in Price, arising from the Vessel’s delayed arrival.

## **11 Notice and Delivery Requirements**

**11.1** The Buyer must give the Seller and the Physical Supplier not less than 72, 48 and 24 hours’ notice (excluding Sabbaths, holidays and other non-working days at the Place of Supply) of (i) the Vessel’s readiness to receive the Product (Notice of Readiness) and (ii) the location and time at which deliveries are required.

**11.2** Notice of Readiness must be given during the Seller’s normal business hours (Monday to Friday inclusive, 0800-1800hrs London or, New York time). Notice of Readiness given outside these hours will

be deemed to have been given at 0800hrs on the first business day thereafter. Furthermore, it is in all circumstances and on all occasions the responsibility and duty of the Buyer to ascertain and, where appropriate, to comply with:

(a) The precise requirements of the Physical Supplier and any other person, body or authority in respect of the giving Notice of Readiness of the Vessel's time of arrival at the Point of Delivery.

(b) The exact location of the Point of Delivery.

(c) Any particular requirements to enable delivery of the Product to be effected as efficiently as possible, including requirements relating to approvals, permits, equipment and personnel.

**11.3** The Seller will use its best efforts provide any specific information requested by the Buyer with respect to the Point of Delivery. However, any such information provided shall not form any contractual representation and the Seller shall bear no responsibility whatsoever for its accuracy.

## **12 Title**

**12.1** Title to the Product shall pass to Buyer as the Product passes the flange connecting the Physical Supplier's delivery facilities with the receiving facilities provided by the Buyer, regardless of whether the Product is delivered ex-wharf or by barge. Title in the Bunker Fuel shall remain with the Seller until the Buyer has paid for the Bunker Fuel in full. Until that time, the Buyer shall hold the Bunker Fuel as bailee, store it in such a way that it can be identified as the Seller's property and keep it separate from Buyer's own property and the property of any other person. In the event that the Buyer fails to make payment, the Seller has the right to demand immediate return of the Bunker Fuel. The Buyer shall remain liable to the Seller in conversion even if the Bunker Fuel is consumed by a third party.

**12.2** At either location, pumping shall be performed under the direction of Buyer or Buyer's Vessel personnel.

**12.3** The Seller's responsibility for the Product shall cease and the Buyer shall assume all risks and liabilities relating thereto, including loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage of Product and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties as the Product passes the flange connecting the Physical Supplier's delivery facilities with the receiving facilities provided by the Buyer, whether Product is delivered ex-wharf or by barge.

**12.4** If, prior to payment, the Product is commingled with other product onboard the Vessel, title to the Product shall remain with the Seller corresponding to the quantity and value of Product supplied by the Seller.

## **13. Payment Terms**

Unless otherwise provided for in the Confirmation Note, each of the following terms shall apply:

(a) Payment of the Price will be made in United States dollars to the bank and account specified by the Seller in full without deduction for any reason whatsoever including claims, counterclaims, or set-off, to ensure the Seller receives full payment in cleared funds on or before the Due Date.

(b) Payment shall be in accordance with the Seller's Invoice which may be sent by facsimile, transmission, email, mail or courier. A copy of BDN shall be provided to Buyer along with the Seller's

Invoice but payment shall not be conditioned upon Buyer's receipt of the original BDN. The Seller's Invoice shall be based on the quantity of Bunker Fuel delivered, as determined in accordance with the terms of this agreement, and shall contain other applicable charges associated with the delivery. The volume stated in BDN is to be considered final in respect of the quantity to be invoiced, except in cases of fraud.

(c) Late payment will incur a financial charge to the Buyer of 2% of the total outstanding amount per calendar month on any outstanding sum calculated on a daily basis from Due Date until receipt of the full payment by the Seller. Accrued financial charges will be added to and become part of the outstanding sum at monthly intervals. In the event the contractually agreed rate of financial charge specified is in excess of that permitted by relevant law, the maximum amount permitted shall substituted.

(d) Payments received by the Seller from or on behalf of the Buyer, will be applied to obligations owing by the Buyer at the sole discretion of the Seller and may be applied to accrued financial and other charges in respect of all other transactions for which the principal sum has been previously paid.

(e) The Seller may at any time, with or without cause and 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 and all sums outstanding shall thereupon fall due for immediate payment.

(f) In the event 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 terminate the Agreement forthwith. In case of bankruptcy, and to the extent permitted by law, the Buyer agrees that Seller possesses priority over all other contract claims against the Buyer, and Buyer and Seller agree that Seller possesses a maritime lien for necessities on the Vessel and that as a lienholder the Seller is a secured creditor with the full benefit of priority of its claim accorded to secured creditors with a maritime lien for necessities.

(g) In addition, all legal and other costs and expenses incurred by the Seller incurred in connection with any cancellation and/or breach by the Buyer of any term of the Agreement including but not limited to actions for debt shall be for the Buyer's account and shall form part of the Price due from the Buyer to the Seller for the Product supplied.

## **14.Sampling**

**14.1** The Sellers shall arrange for a representative sample of each grade of Product to be drawn during the bunkering operation and that sample shall be thoroughly mixed and carefully divided into four (4) identical samples (the Samples). The sampling shall be performed in the presence of both the Sellers and the Buyers or their respective representatives. The absence of the Buyers or their representatives shall not prejudice in any way the validity of the Samples taken.

**14.2** The Samples shall be: (i) drawn at a point, to be mutually agreed between the Sellers and the Buyers or their respective representatives, closest to the receiving Vessel's bunker manifold; (ii) drawn using a mutually accepted sampling device which shall be constructed, secured and sealed in such a way so as to prevent the sampling device and the sample being tampered with throughout the transfer period; and (iii) securely sealed and provided with facility, product name, 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 his authorized representative.



**14.3** Two (2) samples shall be retained by the Physical Supplier for a minimum of sixty (60) days after delivery of the Product 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 by the Vessel.

**14.4** If the quantity is delivered by more than one Bunker Tanker, the sampling procedure shall be repeated as outlined in Clause 14.1 above.

## **15. Force Majeure**

**15.1** The Seller shall not be liable for any failure to fulfil any term or condition of the Agreement should these have been delayed, or prevented by any circumstance howsoever arising which are not within the control of the Seller to the extent such are caused by any act of God, act of third party, fault or failure of vessel, master or crew, act or omission of Buyer, strike, lockout or labor dispute or any reasonable apprehension, government act, public disorder, request or restriction, storage or any limitation restriction or interruption to existing or contemplated sources of supply of Product including changed market conditions or the means of supply including but not limited to failure to deliver the Product by the Physical Supplier.

**15.2** In the event performance is prevented or delayed by Force Majeure, the Seller may cease or reduce deliveries in any manner as it may determine in its sole discretion. Nothing in Clause 15.1 above shall be deemed to excuse the Buyer from its obligation to make payments for the Product delivered.

## **16. Brokers and Agents**

**16.1** Unless the party with whom the Seller is corresponding specifically declares to the Seller prior to issuing the Confirmation Note by the Seller that the party with whom the Seller is corresponding is not the Buyer and at the same time provides to the Seller the full name and address of the Buyer, then the party with whom the Seller is corresponding shall be deemed to be the Buyer.

**16.2** In the event that the party with whom the Seller is corresponding is an agent of the Buyer then the party with whom the Seller is corresponding shall be jointly and severally liable with the Buyer to perform all the Buyer's obligations under the Agreement, notwithstanding that the party with whom the Seller is corresponding purports to contract as a mere agent.

## **17.1 Assignment**

**17.1** The Buyer shall not assign its interest in the Agreement without the prior written approval of the Seller. The Seller may assign the Agreement and if so will notify the Buyer in writing of its intention to do so.

## **18. Safety and the Environment**

**18.1** It will be the sole responsibility of the Buyer to comply and advise its personnel, agents and/or customers to comply, both jointly and after delivery, with all the health and safety requirements applicable to the Product and to ensure so far as possible of any user of such Product avoids without limitation any frequent or prolonged skin contact with the Product. The Seller accepts no responsibility

for any consequences arising from failure to comply with such health and safety requirements or arising from such contact. The Buyer shall protect, indemnify and hold the Seller harmless against any damages, expense, claims or liability incurred as a result of the Buyer, or any user of the products, or its customers failing to comply with the relevant health and safety requirements, even if it is alleged or proven that such damages, expense, claims or liability were caused in whole or in part by negligence, strict liability, or other conduct of the Seller.

**18.2** In the event of a spill or discharge occurring before, during or after bunkering, the Buyer shall immediately notify the appropriate governmental authorities and take whatever action is necessary and pay all costs to effect a clean-up. Failing prompt action, the Buyer authorizes the Seller and Supplier to conduct such clean-up on behalf of the Buyer at the Buyer's risk and expense. The Buyer shall indemnify and hold the Seller and Supplier harmless against any damages, expense, claims or liability arising out of any such spill or clean-up including damages, expense, claims or liability alleged or proven to be caused by Seller's negligence, unless such spill or clean-ups have been proven to be wholly caused by the Seller's negligence.

**18.3** The Buyer warrants that the Vessel is in compliance with all governmental training and policing requirements. The Vessel will not be moored in a wharf alongside other marine loading facilities of the Seller or Physical Supplier unless free of all conditions, deficiencies or defects which might impose hazards in connection with the mooring, unmooring or bunkering of the Vessel receiving the Product.

### **19.1 Notice Provisions**

**19.1** Any requirement for written communication, including the giving of any notice, may be fulfilled by the use of courier, facsimile transmission, or e mail. The communication shall be deemed to have been given and received upon completion of transmission for any electrical or electronic medium, within two working days of dispatch for first class inland letter post, within five working days of dispatch for second class inland letter post and airmail and on the expiry of the declared or guaranteed time for delivery of any courier or monitored service.

### **20. Cancellation and Breach**

**20.1** Without prejudice to any other rights of the Seller under the Agreement, if at any time subsequent to the Seller's Confirmation Note, the Buyer cancels or reduces the quantity of the Product ordered or if the Buyer fails to take delivery of part or all of the quantity of the Product by the delivery date specified in the Confirmation Note, the Seller shall be entitled to recover from the Buyer automatically, (a) its direct or indirect damages, including but not limited to, transportation costs, storage costs, return of the Product, taxes, custom duties, insurance costs, loss of market, loss of reputation, etc. caused by such Buyer's actions and (b) if the Product cannot be resold by the Seller to a third party within a reasonable timeframe, the Price of such Product as quoted in the Confirmation Note. The payment of any amount which become due by the Buyer shall be paid by the Buyer within 15 (fifteen) days from the date of the Seller's demand.

**20.2** The Seller may treat any other breach by the Buyer of any express term of the Agreement as a breach of a condition and it may, at its discretion, continue to perform under this Agreement or treat the Agreement as repudiated or terminated and seek such remedies, as it considers appropriate.

### **21. Liens and Arrest**

**21.1** Where the Product is supplied to a Vessel, in addition to any other security, the Agreement is entered into and Product is supplied upon the faith and credit of the Vessel. It is agreed and acknowledged a maritime lien against the Vessel arises in favor of the Seller for the all amounts owed by Buyer to the Seller for supplying the Product to the Vessel and such maritime lien may be enforce

in any court of competent jurisdiction. It is further acknowledged and agreed that the Seller's supply of Product constitutes providing necessities to the Vessel, and the Seller has a maritime lien of the Vessel for supply of necessities. The Buyer represents and warrants that it is the Vessel's Owner, or Charterer, or a person authorized or appointed by the Vessel's Owner or Charterer to order the Product and to procure necessities to the Vessel. The Buyer, if not the Owner of the Vessel, hereby expressly warrants that the Buyer has the authority of the owner to procure necessities for the Vessel and to pledge the Vessel's credit and he has given notice of the provisions of this Clause to the Owner.

**21.2** The Buyer agrees and warrants that the Seller shall have and may assert a maritime lien against the Vessel and may take such other action or procedure against the Vessel and any other vessel or asset beneficially owned or controlled by the Buyer, as security for the amount due for the Product. The Seller is entitled to rely on any provisions of law of the flag state of the Vessel, the place of delivery or where the Vessel is found and shall, amongst other things, enjoy the full benefit of local rules granting the Seller a maritime lien on the Vessel and/or providing for the right to arrest the Vessel. Nothing in this Bunker Contract shall be construed to limit the rights or legal remedies that the Seller may enjoy against the Vessel or Buyer in any jurisdiction.

**21.3** Any notice by Buyer that a maritime lien on the Vessel may not be created because of the existence in the Buyer's charter of a Prohibition of Lien Clause, or for any other reason, must be given to the Seller at the time the initial order for the Product is placed, in which case no credit can be granted to Buyer and the Product shall be paid in cash or equivalent prior to delivery.

**21.4** The Seller shall not be bound by any attempt by any person 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 in the initial order for Product and before the Seller sends its Confirmation Note to the Buyer. Any notice of such restriction given by Buyer, its agents, ship's personnel or other person later than in the initial order shall not effect a modification of the terms and conditions of sale except that any granting of credit by the Seller is rescinded on receipt of the notice, with full payment then due.

## **22. Claims and Disputes**

**22.1** The quantity of Product delivered shall be determined in accordance with Clause 7. Any claim regarding the quality of the Product delivered shall be notified verbally as well as in writing by the Buyer to the Seller as soon as practicable at the conclusion of the delivery of the Bunker Fuels while the delivery hoses are still connected. If written notice is not made within 96 hours of delivery, any such claim shall be deemed to be waived and barred. A notification provided to the Physical Supplier shall not qualify as notice under this clause.

(a) For bulk deliveries, delivery barges, wagons and vehicles must be checked by the Buyer by tank dipping to measure the contents and ensure full turnout.

(b) Flow meters must be checked by the Buyer for seals, correct settings and calibration, and general condition. All of these checks must be carried out by the Buyer before and after delivery of Product and each barge, wagon or vehicle tank load.

(c) The delivery of the Product must be supervised by the Buyer at all times and care must be taken in ensuring that all documentation is complete and accurate before signing for the delivery. Any discrepancies must be recorded on the Physical Supplier's delivery receipt.

(d) The Seller will not accept a claim for short delivery based upon figures obtained by measuring Product in the Vessel's tanks.

**22.2** It is the Buyer's responsibility to ensure that such written notice is received by the Seller and confirmation of receipt is required. Regardless of whether a claim or dispute has arisen or is anticipated, the Buyer must always give prompt notice to the Seller of any discrepancy, error or omission present in any form or document tendered, submitted or produced by the Physical Supplier and of any unusual occurrence relating to the Delivery.

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

**22.4** It is the Buyer's responsibility to ensure the Products tendered for Delivery are those which are required by the Vessel and that the Products are delivered into the correct tank and the must check that all documentation is in order and to note discrepancies on the Physical Supplier's delivery receipt before signing and stamping.

**22.5** In the event of the Buyer having grounds to believe that the Product supplied does not accord with the relevant description in the Confirmation Note or is defective, the Buyer shall immediately:

(i) Take all reasonable steps to mitigate the consequences of having been supplied with possibly defective or incorrect Product.

(ii) Give notice with full details of the possibly defective or incorrect Product to the Seller together with the Vessel's position, destination and ETA; the quantities and locations of all bunkers on board the vessel, the rate and quantity of consumption since delivery and the location immediately prior to consumption of bunkers consumed; for each of the three preceding deliveries to the vessel, the quantity, quality and specification of Product supplied, the place and date of supply, and the name of the supplier.

(iii) Inform the Seller of the whereabouts of the Buyer's Set of Samples. In the event of a claim lodged by Buyer the Seller shall have the Physical Supplier's samples analysed by a reputable independent testing laboratory and the results of such analysis shall be binding upon the Parties.

**22.6** If it is alleged that any equipment or machinery has been damaged by defective Product, full details must be given to the Seller at the earliest opportunity and the item must be preserved and made available for inspection on demand, at any reasonable time or times, to the Seller or its representative. The foregoing shall not be considered an undertaking of any liability by the Seller or a waiver of the Seller's rights.

**22.7** The time limit for receipt by the Seller of notice of a quality claim is seven (7) days from the date of Delivery or such shorter period as is specified in the Confirmation Note.

**22.8** Notice of all other claims, specifically excluding any and all claims relating to or associated with those relating to matters of quantity or quality which are subject to the time limits set out above, should be given to the Seller as soon as reasonably possible and in any event no later than twenty-eight (28) days from the date of delivery of the Product, or such shorter period as is specified in the Confirmation Note.

**22.9** After providing notice of a claim, the Buyer shall, within thirty (30) days from date from the submission of the claim, furnish to the Seller all documentation supporting the Buyer's claim, including, but not limited to, all analyses performed on the Product. The Buyer shall immediately give the Seller reasonable opportunity to inspect the Vessel, including, without limitation, its engines, fuel tanks, equipment, logs, records and copies of communications, including communications between the Vessel and the Buyer (and/or between Vessel and owner, operator or technical manager), as well as communications to and from fuel testing organizations consulted by the Buyer or Vessel interests.

**22.10** If Notice of a Claim is not provided within the respective periods as set out above, the Buyer shall be time-barred from making a claim. The Parties also agree that any such claim is timebarred, if litigation is not commenced within six (6) months of the Delivery date. A Claim of any nature by Buyer does not relieve Buyer of the responsibility and obligation to make full and timely payment of all amounts billed by the Seller.

### **23. Limitation of Liability**

**23.1** Save for claims in respect of death and personal injury, the Sellers liability to the Buyer or any person claiming rights under this Agreement against the Seller, for any claims whatsoever arising from quality, quantity, accident, delay, spill, pollution or any cause whatsoever, shall in no event exceed the price of the Product to be delivered.

**23.2** The Seller shall not at any stage be liable for consequential damages or losses including lost profits, damage to the Buyers Vessel caused by defective Product, hire claims, damage claim or claims involving any delay in delivery, failure to make delivery, detention, demurrage, charter hire, crew wages, towage, pilotage, lost profits, barge delivery charges or any increased costs or expenses in obtaining replacement Product.

### **24. Indemnity**

**24.1** The Buyer shall be liable towards the Seller and undertakes to indemnify the Seller for any and all damages and/or costs) suffered or otherwise incurred due to fault or neglect of the Buyers, its agents, servants, subcontractors, representatives, employees and the officers, crews and/or other people whether or not on board the respective Vessel(s) and undertakes to hold the Seller harmless in case any third party institutes any claim against the Seller, regardless of whether such claim alleges or proves harm caused by negligence in whole or in part of the Seller, with direct or indirect relation to any agreement regulated by these Standard Terms.

**24.2** No servant or agent of the Seller (including independent sub-contractors from time to time employed by the Seller shall be liable to the Buyer for loss, damage or delay, while acting in the course of or in connection with its employment and/or agency for the Seller. Without prejudice to the above every exemption, limitation, condition, and liberty contained herein and every right, exemption from liability, defence or immunity shall of whatever nature applicable to the Seller to which it is entitled shall also be available to and shall extend to protect every such servant, representative or agent of the Seller at the total discretion of the Seller only.

**24.3** The Buyer shall also indemnify and hold harmless the Seller, the Physical Supplier, the fuel barge contractor and their agents and employees 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 Product under this Agreement, including claims, damages, losses, fines, penalties or expenses arising under any environmental, air, water quality or hazardous substances or waste law statute, regulation or ordinance, hereinafter referred to as "pollution claims", regardless of whether or not such claim, damage, loss, or expense is alleged or proven to be caused in whole or in part by the negligence, strict liability, breach of contract, or other fault or conduct of the Seller, the Physical Supplier or the fuel barge contractor, their agents or employees, provided that any such loss is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, or to pollution claims, and is caused in whole or in part by any negligent or intentional act or omission of the Buyers, the Vessel or Vessel interests, their agents or employees or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not such claim, damage, loss, or expense is also caused in part by the Seller, the fuel barge contractor, their agents or employees.

## **25. General Savings Clause**

Notwithstanding anything to the contrary herein, nothing in this Agreement is intended, and nothing herein should be interpreted or construed, to induce or require either Party hereto to act in any manner (including failing to take any actions in connection with a transaction) which is inconsistent with, penalized or prohibited under any laws of the United States of America which relate to foreign trade controls, export controls, embargoes or international boycotts of any type.

## **26. Credit**

Credit granted to the Seller shall at all times be subject to the following terms:

**26.1** Credit including for the 30 days payment period or any period otherwise agreed will only be granted on the basis that it is secured by a maritime lien on the Vessel in accordance with Clause 21.

**26.2** Any notice by the Buyer that a maritime lien on the Vessel may not be created for any reason must be given to Seller in the initial order for Bunker Fuel, in writing and longer than twenty-four (24) hours notice before supply is to commence. Where such measures are taken, no credit can be granted to Buyer and the Buyer shall, at the option of the Seller, make payment in accordance with Clause 13 or any other payment terms determined by the Seller. Any notice of such restriction given by Buyer, its agents, ship's personnel or other person later than in the initial order shall not effect a modification of the terms of sale of Bunker Fuel, except that any granting of credit by the Seller shall be rescinded on receipt of the notice, with full payment due forthwith. Any cancellation thereafter shall make the Buyer liable for cancellation charge hereunder. For avoidance of doubt, any notice or any stamp in the BDN or similar document cannot adversely affect the Seller's maritime lien on the Vessel.

**26.3** If credit is granted to the Buyer, the Seller may withdraw such credit at any time, for any reason, and require full payment upon delivery or at any time after delivery. If credit is withdrawn and payment is not made upon demand, interest shall be payable from date of delivery at the rate set forth in in this agreement.

## **27. Miscellaneous**

**27.1 Insurance** - The Buyer is responsible for purchasing its own insurance which will fully protect the Buyer, the Seller and all third parties from all risks, and perils arising out of this Agreement or Delivery of the Product.

**27.2 Licenses, Permits and Approvals** - The Buyer is responsible for obtaining all licenses, and approvals required to enable both Parties to execute all obligations under the Agreement.

**27.3 Operating Practice and Procedure** Notwithstanding strict compliance with the terms of the Agreement, the Buyer shall, abide by generally accepted good operating practice, procedure and compliance with local rules and regulations.

**27.4 Jurisdiction and Choice of Law** This Agreement is subject to, governed by, and to be construed in accordance with United States of America (the U.S.A) general maritime law and U.S.A. maritime statutes, including without limitation the US Federal Maritime Lien Act, without regard to and excluding any choice of law rules that would apply the laws of any other jurisdiction. Each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the federal courts of the United States of America and waives any objections to such forum based upon forum non convenience or venue. To the extent U.S.A maritime law does not provide an applicable rule of decision, New York law applies to fill such gaps. Notwithstanding the foregoing, the Parties agree that Seller retains the right to enforce its maritime lien or attachment rights against the Vessel or other property to safeguard and secure its rights in any court or tribunal of any state or country and that the maritime laws and statutes of the United States shall apply to and govern any determination of the existence and priority of a maritime lien, regardless of the country in which the Seller takes such action.

**27.5 Compliance with the Laws.** Except as otherwise expressly provided herein, no director, employee or agent of Buyer, its subcontractors or vendors, shall give or receive from any director, employee or agent of Seller or any affiliate, any commission, fee, rebate, gift or entertainment of significant cost or value in connection with these Standard Terms, the Confirmation Note, or the Agreement or Contract. In addition, no director, employee, or agent of Buyer, its subcontractors or vendors, shall enter into any business arrangement with any director, employee, or agent of Seller or any affiliate who is not acting as a representative of Seller or its affiliate without prior written notification thereof. Buyer shall not pay or agree to pay, or offer to pay, directly or indirectly, any gift funds or anything of value to any government official or public official or official of a national or international organization for the purpose of obtaining or retaining business or of influencing such person's official acts or decisions in violation of the applicable laws of the U.S.A, United Kingdom ("UK") or the laws of the jurisdiction in which the delivery of Marine Fuels was made. The Seller abides by international trade sanctions regulations, including those of the U.S.A, UK and European Union and expressly reserves the right at any time, without liability, to terminate the Contract and/or not to fuel or deliver to Vessels or persons or entities which are subject to or are registered under flags of any country(s) subject to U.S.A, UK or international trade sanctions, restrictions or embargoes.

**27.6 Bankruptcy** In the event of a conflict between, admiralty and bankruptcy jurisdiction, the Parties expressly agree that admiralty jurisdiction pre-empts bankruptcy jurisdiction with respect to the rights and obligations of the parties under this contract, and with respect to enforcing maritime lien or attachment rights. The Parties agree that in the event of bankruptcy the Seller is a secured creditor with a maritime lien on the Vessel for necessaries, regardless of whether the Vessel has been arrested to execute or enforce the lien, and that admiralty jurisdiction and U.S.A maritime law will govern any questions about the existence and priority of Seller's maritime lien and Seller's claims against the Vessel and against Buyer.

**27.7 Attorneys' Fees** - The Seller is entitled to recover from the Buyer its attorney's fees and expenses incurred to recover any debt or amount due to the Seller under the Contract including recovery of Seller's attorney's fees and expenses in the event of prosecution of any claim for Buyer's breach of contract, to recover liquidated damages, or to pursue recovery of payment for Product supplied and to enforce any rights Seller under the Contract.

**27.8** These governing terms and conditions shall be deemed paramount in all cases, except where the Seller has agreed to accept a different governing set of conditions that it agrees in writing to subrogate these, at the Buyer's request. The Seller is under no obligation to accept these and shall only be deemed to have done so once agreement is made between both parties in writing in good time at the time of fixing and not shorter than twenty-four (24) hours prior to commencement of supply.