

# Business Terms

for the sale and delivery of  
marine fuels



**GME**

Global Marine Energy

The following general terms and conditions (**Terms**) apply to all sale and purchases of marine fuels by the Seller:

## 1 DEFINITIONS AND INTERPRETATION

1.1 Unless the context otherwise demands, the following definitions shall apply:

- BDR** means the relevant bunker delivery receipt.
- Buyer** means the Vessel supplied and jointly and severally her master, owners, managers / operators, disponent owners, time charterers, bareboat charterers and charterers or any party requesting offers or quotations for or ordering Marine Fuels and/or services and any party on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made.
- Delivery Port** means the port or place at which the Supplier delivers Marine Fuels against a nomination.
- Marine Fuels** means marine fuel oil, intermediate fuel oil, marine diesel oil, light marine diesel oil and gas oil.
- Seller** means GME Sea Transport Services FZE, a company incorporated in the Jebel Ali Free Zone, Dubai, United Arab Emirates under registration number 229814885, and includes any of its offices or branches from time to time.
- Supplier** means the party instructed by the Seller to supply or deliver Marine Fuels to the Vessel.
- Vessel** means the vessel or ship nominated by the Buyer to receive the Marine Fuels either as end-user or as transfer unit.

1.2 Any reference to a **Clause** is a reference to a clause in these Terms.

## 2 APPLICATION

- 2.1 These Terms shall apply to the sale and delivery of Marine Fuels by the Seller and/or Supplier to the Buyer.
- 2.2 Any offers, quotations, orders, nominations, agreements, services and all subsequent contracts of whatever nature by the parties are made subject only to these Terms, except where otherwise expressly stated in writing by the Seller.
- 2.3 These Terms supersede any prior terms and conditions, representations or negotiations between the parties whether given in writing or orally.
- 2.4 The general trading terms and conditions of another party will not apply, unless expressly accepted in writing by the Seller.
- 2.5 If, for whatever reason, one or more of the clauses of these Terms are invalid, or unenforceable, the other clauses herein shall remain valid, legal, enforceable and be binding upon the parties.
- 2.6 The Seller and Buyer agree that nothing in these Terms shall be construed as conferring any benefit on a person or entity who is not a party to this agreement, except the Supplier as defined.

## 3 NOMINATION & NOTICE REQUIREMENTS

- 3.1 The Buyer shall give the Seller or Supplier directly or through the Buyer's representatives / agents at least ninety-six (96) working hours written notice (holidays excluded) of the Vessel's readiness to receive delivery. The Buyer shall also specify the name of the Vessel, the Vessel's agent, the Delivery Port, the estimated arrival date/time and the exact required quantity and quality of Marine Fuels required so as to enable the Seller or Supplier to make any necessary arrangements for the delivery. By making such a nomination, the Buyer shall be deemed to have accepted and agreed to these Terms.

- 3.2 The Buyer shall give the Seller or Supplier final notice at least seventy-two (72) working hours (holidays excluded) before delivery of Marine Fuels into the Vessel.
- 3.3 The Seller may decline a nomination by notice given to the Buyer at least forty-eight (48) hours before delivery of Marine Fuels into the Vessel without any liability and without prejudice to any of the Seller's rights.
- 3.4 If the Vessel has not arrived at the Delivery Port to take delivery of the Marine Fuels within two (2) calendar days after the estimated date of arrival in accordance with Clause 3.1 above (or any such shorter time that the Seller may advise the Buyer), the nomination shall be deemed to have been cancelled by the Buyer. In such a case, the Seller reserves its and the Supplier's right to claim any expenses incurred, any damages and, in addition, the right to refuse delivery of the Marine Fuels.
- 3.5 The Seller shall nominate a Supplier to the Buyer, and the Buyer shall accept the nomination.

#### **4 SPECIFICATION (QUALITY & QUANTITY)**

- 4.1 The quality and quantity shall be as agreed between the Seller and the Buyer and correspond to the Seller's written confirmation.
- 4.2 The Buyer shall have sole responsibility for nomination of the quality and the quantity of the Marine Fuels, which shall correspond to written confirmation from the Seller.
- 4.3 The Buyer shall alone be responsible for and bear the risk of the grade of Marine Fuels ordered and any resulting consequences to the Vessel, including but not limited to the Vessel's engine or equipment. The Seller shall not be under any obligation to check whether the grade of Marine Fuels is suitable for use in the Vessel's engine or equipment, or compatibility with the bunkers already on board.
- 4.4 Any express or implied representations, promises, conditions, guarantees or warranties, whether by law or statute or otherwise with respect to the description, satisfactory quality, merchantability, fitness or suitability of the Marine Fuels for any purpose or otherwise, that the Seller may be deemed to have made, are hereby excluded and disclaimed.
- 4.5 If the Marine Fuels deviate from specifications, the Buyer shall use all reasonable endeavours to mitigate the consequences hereof.
- 4.6 Where standard specifications are given or referred to, tolerances in accordance with ISO 4259 in respect of reproducibility and repeatability in quality are to be accepted without compensation or other consequences whatsoever.
- 4.7 In respect of the quantity agreed upon, the Seller shall be at liberty to provide, and the Buyer shall accept a variation of five (5) percent from the agreed quantity, with no other consequence than a similar variation to the corresponding invoice from the Seller.

#### **5 MEASUREMENTS**

- 5.1 The quantity of the Marine Fuels delivered hereunder shall be determined by gauging the Seller's or Supplier's shore tanks or barge effecting delivery, or by the Seller's or Supplier's oil meter, at the Seller's or Supplier's option.
- 5.2 There would be an option to survey the Seller's or Supplier's oil meter by a third-party Inspector at the time of the supply. The cost of such inspection shall be compensated solely by the Buyer.
- 5.3 In gauging shore tanks or barge, the chief engineer of the Vessel or his representative, shall jointly with the Seller or Supplier, measure and verify quantities of the Marine Fuels sold and delivered hereunder in tanks or barges from which delivery is made.

- 5.4 Should the chief engineer or his representative fail or decline to verify the quantities, the measurements of quantities made by the Seller shall be final, conclusive and binding as to quantities sold and the Buyer shall be deemed to have waived any and all claims in regard to the variance.
- 5.5 In addition to the Buyer's obligations under Clause 12 below, any claim relating to the quantity of Marine Fuels delivered must be notified by the Buyer, or the master of the Vessel, to the Seller or Supplier immediately after completion of delivery in the form of a letter of protest, followed by a detailed letter of complaint with supporting evidence within seven (7) calendar days thereof. If the Buyer or Vessel master fails to comply with any of these requirements, the Buyer shall be deemed to have waived any such claims against the Seller or Supplier (and shall be absolutely barred for all purposes), and the Seller's or Supplier's measurements and records shall be final, conclusive, and binding for all purposes.
- 5.6 Any change(s) or remark(s) whatsoever made by the Buyer or the Vessel or on their behalf on the BDR (or similar document) shall have no effect or value whatsoever and shall extinguish any claim by the Buyer and the Buyer shall be deemed to have expressly waived any such claim against the Seller and, where applicable, the Supplier, and the Seller's weight measurements shall be conclusive evidence of the quantity of Marine Fuels delivered.

## 6 **SAMPLING**

- 6.1 The Seller shall arrange for four (4) representative samples of each grade of Marine Fuels to be drawn throughout the entire bunkering operation. The Buyer's representative has sole responsibility to witness that samples are drawn correctly and shall confirm his witnessing thereof and also confirm the proper and correct sealing by signing the labels of the sample bottles.
- 6.2 In case drip sampling is not available on-board the barge, tank truck or shore tank samples shall be taken as a composite of each tank divided with one-third (1/3) from the top, middle, and bottom of the tanks.
- 6.3 The samples shall be securely sealed and labelled showing the Vessel's name, identity of the delivery facility, product name, delivery date and place, and seal number, authenticated with the Vessel's stamp and signed by the Seller's representative and the master of the Vessel or his/the Buyer's representative, but always subject to the Buyer's obligation(s) in Clause 6.1 above. The failure of the Buyer's representative or the Vessel's master to witness the sampling, sign or stamp the labels, or otherwise confirm receipt shall not invalidate the Seller's samples, which shall remain conclusive and binding evidence of the quality of Marine Fuels delivered in accordance with these Terms. The seal numbers shall be inserted into the BDR or similar document and by signing the BDR both parties agree that the samples referred to therein are deemed valid and taken in accordance with the requirements as specified in this Clause.
- 6.4 Two (2) samples shall be retained by the Seller for ninety (90) days after delivery of the Marine Fuels, or if requested by the Buyer in writing, for as long as the Buyer reasonably requires. The other two (2) samples shall be retained by the Vessel.
- 6.5 In the event of a dispute or complaint as to the quality of Marine Fuels delivered, the samples drawn pursuant to Clause 6.1 to Clause 6.4 shall be deemed to be conclusive and final evidence for the quality of Marine Fuels delivered. The Seller or the Supplier shall propose three (3) independent reputable laboratories to the Buyer, and the Buyer shall have the option of selecting any laboratory from the list proposed by the Seller or the Supplier. One of the samples retained by the Seller shall be forwarded to such independent laboratory mutually agreed by both the Seller and the Buyer for final and binding analysis. The seal must be breached only in the presence of both parties unless one/both have declared in writing that they will not be present, and both parties shall have the right to appoint independent person(s) or institute(s) to witness the seal breaking. If any of the seals have been removed or tampered with by an unauthorised person, such sample(s) shall be deemed to have no value as evidence. No samples subsequently taken shall be allowed as evidence. If the Buyer declines to select a laboratory from the list provided or refuses to assist with the investigation of

the sample in accordance with the provisions of this Clause 6 within four (4) days of proposal of the laboratories by the Seller or the Supplier, the claim shall be deemed void and closed.

## **7 DELIVERY**

- 7.1 The time of delivery as given by the Seller is an approximate time.
- 7.2 The time of delivery will only be binding upon the Seller if the Buyer has complied with its obligations under Clauses 3.1 and 3.2 and provided, in writing, immediately, all the information necessary for the Seller to comply with its obligations hereunder. The Seller's rights under Clauses 3.3 and 3.4 shall not be affected, in any case.
- 7.3 The Seller's obligation to make any delivery hereunder is subject to the availability to the Seller or Supplier (as the case may be) at the Delivery Port of the particular grades and quantities of Marine Fuels desired by the Buyer.
- 7.4 If the Seller or Supplier at any time for any reason believes that there may be a shortage of supply at any port that it may be unable to meet the demands of all its customers, the Seller or Supplier may allocate its available and anticipated supply among its customers in such a manner as it may in its sole discretion determine.
- 7.5 If there is a shortage of supply at any port, the Seller or Supplier shall not be liable for any consequent loss and expenses incurred by the Buyer.
- 7.6 Delivery shall be made during normal working hours at the port in question unless required at other times and permitted by port regulations, in which event the Buyer shall pay all overtime and extra expenses incurred.
- 7.7 The Seller shall not be required to deliver Marine Fuels into any of the Vessel's tanks which are not regularly used for bunkers or in a fit state to receive Marine Fuels, and shall not be required to deliver any fuel for the export of which a government permit is required and has not been obtained by the Buyer or its accredited representative. All fuels requested by the Buyer and supplied by the Seller and/or the Supplier are deemed to be purchased as bunker fuels.
- 7.8 Delivery shall be made at wharf or at shore terminals of the Seller or Supplier or by barge where barging facilities are available, at the Seller's option, or a combination of the mentioned supply methods.
- 7.9 The Vessel shall be bunkered as promptly as circumstances permit. The Seller or Supplier shall not be liable to the Buyer for any loss, expense, damage, delay or demurrage due directly or indirectly to weather, port conditions, congestion of the port, prior commitment of available barges or any other contingency.
- 7.10 In the event of delivery by barge(s), the Buyer shall provide, free of any expense, a clear and safe berth for the barge(s) alongside the Vessel's receiving lines. The Buyer shall pay the Seller the amount due to the Seller or Supplier according to its current barging rates at the port concerned. Other charges, including but not limited to mooring and unmooring, to be for the Buyer's account.
- 7.11 The Seller, Supplier, or the barging equipment are in no case whatsoever responsible for any damage, any loss or any delay to the Vessel, arising out of or in connection with the delivery of Marine Fuels and bunkering operations. Furthermore, the Buyer agrees to pay and indemnify the Seller and/or Supplier against all claims and expenses for any loss, damage or delay caused by the Vessel to the barging equipment.
- 7.12 Terminal or barge deliveries need not be made where in the Seller's or Supplier's opinion a clear and safe berth is not available. Any delay or costs and expenses incurred as a result by the Seller or Supplier shall be for the Buyer's account.
- 7.13 The Vessel shall moor, unmoor, hoist and lower bunkering hose(s) from the barge(s) whenever required by the Seller, Seller's representative, or Supplier, free of expenses, and in any way requested to assist the barge

equipment to a smooth supply. In case the Vessel is not able to receive promptly and smoothly, the Buyer is to be responsible for and to pay reasonable demurrage claims to the barging facilities.

- 7.14 The Buyer shall make and be responsible for all connections and disconnections between the delivery hose(s) and the Vessel's bunker intake manifold or pipe and ensure that the hose(s) are properly secured to the Vessel's manifold or pipe prior to commencement of delivery. During bunkering the Vessel's scuppers must be safely blocked by the Vessel's own crew. Furthermore, the Vessel must ensure that all pipes, manifolds and receiving tanks are completely checked and ready to receive the Marine Fuels, including but not limited to ensuring proper opening/closing of relevant valves, without any risk for spillages, etc., during delivery and bunkering operations.
- 7.15 Additional local requirements for receiving Marine Fuels must be followed strictly by the Vessel, whether advised or not by the Seller or the Seller's representative, and the Vessel and the Buyer will remain responsible for awareness of such additional requirements.
- 7.16 If the Buyer cancels, terminates or otherwise fails to take delivery, in whole or in part, of the quantities nominated, the Buyer shall be responsible for any costs resulting from such failure, including without limitation lost profits, expenses to barging facilities and any costs and expenses incurred by the Seller and/or Supplier.
- 7.17 In the event delivery is made by vessel or barge as a ship-to-ship transfer, 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 directly by the owners of the involved units, and Seller/Supplier cannot be held responsible for any such damages. If, however, any of the involved units choose to pursue the Seller and/or Supplier, the Buyer will fully indemnify and hold the Seller/Supplier harmless in relation thereto.

## **8 TITLE AND RISK**

- 8.1 The Seller's responsibility for the Marine Fuels shall cease and the Buyer shall assume all risks and liabilities relating thereto, including but not limited to loss and damage caused by spill, pollution etc., or in any manner to third parties, at the time the Marine Fuels pass the flange connecting the Vessel to the delivery vessel. The Buyer warrants that representatives from the Vessel shall be responsible for ensuring that the Marine Fuel is received in a safe way.
- 8.2 Title in and to the Marine Fuels shall remain vested in the Seller until full payment has been received by the Seller of all amounts due herein. Until then, the Buyer shall not be entitled to use the Marine Fuels, nor mix, blend, sell, or pledge the Marine Fuels to any third-party or other vessel.
- 8.3 The Seller shall have a security interest in and a maritime lien on all Marine Fuels or part thereof for which payment has not been received, and the Seller shall be entitled to repossess the Marine Fuels for which full payment has not been made without prior judicial intervention, all without prejudice to all other rights or remedies available to the Seller.
- 8.4 Any notice, remarks or any stamp (including a 'no lien' stamp or remark) on the BDR or similar document cannot waive the Seller's maritime lien on the Vessel, sister or associated vessel.

## **9 PAYMENT**

- 9.1 The Buyer has a strict obligation to make payments as they fall due and this obligation shall not be affected or discharged, even by force majeure or frustration or otherwise.
- 9.2 Under no circumstances whatsoever shall any claim by the Buyer relieve the Buyer of its obligations to make full payment on the due date.
- 9.3 Payments by the Buyer shall be made in full, without set-off, counterclaim, deduction and/or discount, free of bank charges; to the bank account and by the due date indicated by the Seller on the respective invoice(s).

- 9.4 Payment shall be deemed to have been made on the date on which the Seller has received full payment and such is available to the Seller. If payment falls due on a non-business day, then payment shall be made on or before the business day nearest to the due date. If the preceding and the succeeding business days are equally near to the due date, then payment shall be made on or before the preceding business day.
- 9.5 Notwithstanding any agreement to the contrary, payment will become due immediately in case of bankruptcy, liquidation or suspension of payment or comparable situation of the Buyer, or arrest of assets and/or claims of the Buyer, or in case of any other situation which in the sole discretion of the Seller is deemed to adversely affect the financial position of the Buyer.
- 9.6 Any delay in payment shall entitle the Seller to interest at the rate of three (3) percent per month (or any part thereof) or, if lower, the maximum rate permitted by applicable law, without prejudice to any rights or remedies available to the Seller, and furthermore, the Seller is entitled to charge an administrative fee of one (1) United States dollar (**USD**) per metric ton supplied, or the equivalent in the local currency, with a minimum administration fee of two-hundred and fifty (250) USD for each delivery made.
- 9.7 Payments made by the Buyer shall at all times be credited in the following order: (1) costs; (2) interest and administrative fees; and (3) invoices in ascending date order including those invoices not yet due.
- 9.8 All costs borne by the Seller in connection with the collection of overdue payments and fees, whether made in or out of court, and in general all costs in connection with breach of these Terms by the Buyer, shall be for the sole account of the Buyer.

## 10 **SECURITY**

- 10.1 The Seller shall at all times be entitled to require the Buyer to grant the Seller what the Seller deems to be proper security for the agreement. Failure to provide such security immediately upon request shall entitle the Seller to stop any further execution of any agreement(s) between the parties until such time as the Buyer has provided the required security.
- 10.2 The Seller may at any time demand that payment be made before the due date whether before or after delivery of the Marine Fuels or may demand the giving of such security as it may specify.
- 10.3 If at any time the Buyer fails to make any payment or give any security as required, the Seller shall, in addition to any other remedy, be entitled to suspend or terminate its performance under these Terms (including current and future deliveries), without any obligation to notify the Buyer of the suspension or termination, and to assert all its rights against the Vessel. In the event of such suspension or termination the Buyer shall have no recourse whatsoever against the Seller.
- 10.4 The Buyer shall indemnify the Seller against any loss which is caused by adverse currency fluctuations between the invoice or security currency and the value of USD from the latest due date until the date on which payment is made.

## 11 **DOCUMENTS**

On completion of the delivery of Marine Fuel to the Vessel, the master of the Vessel or the Buyer's accredited representative shall give the Supplier a signed receipt thereof in a form required by the Supplier. This is subject to Clause 5.5.

## 12 **CLAIMS**

- 12.1 Without prejudice to Clauses 5 and 6, any other claim by the Buyer of whatever nature arising under or in connection with these Terms, including but not limited to quality or performance, shall be notified to the Seller in writing within seven (7) calendar days after completion of delivery of the Marine Fuels, together with all supporting information and evidence available at that time.

12.2 Time shall be of the essence in respect of the notification period in Clause 12.1, and the Buyer hereby expressly agrees to waive any and all claims or rights of action, whether in contract, tort, statute, or otherwise, upon the expiry of this seven (7) day period, and shall thereafter be absolutely barred from any recourse against the Seller or the Supplier.

### 13 EXCEPTIONS

13.1 Neither the Seller nor the Supplier shall be responsible for any failure to fulfil their obligations hereunder if fulfilment has been suspended, delayed, hindered, interfered with, curtailed, or prevented by:

- (a) any circumstances whatsoever, whether or not foreseen, which are not within the immediate control of the Seller or the Supplier; or
- (b) any unavailability, interruption, curtailment, failure or cessation of supplies (including but not limited to any facility of production, manufacture, storage, transportation, distribution or delivery) of Marine Fuels or the petroleum from which such Marine Fuels are derived, or of any of the Seller's or the Supplier's sources of supply (whether in fact sources of supply for the Marine Fuels to be delivered against a nomination or not); or
- (c) compliance with any order, demand or request of any international, national or local port, transportation or other authority or agency or of any body or person purporting to be or to act for such authority or agency; or
- (d) damage to, breakdown of or accident to vessels, plants, machinery, equipment or facilities, etc.; or
- (e) perils of the sea or port conditions; or
- (f) adverse weather conditions or natural disasters or any act of God; or
- (g) any fire or explosion; or
- (h) war (declared or undeclared), military operations, hostilities, terrorism, piracy, sabotage, revolution, civil disturbance, local or national emergency; or
- (i) blockade, government intervention, expropriation, confiscation, trade restrictions or prohibitions on import/export; or
- (j) any strike, lock-out or labour dispute (whether or not the Seller or the Supplier is the party thereto or would be able to influence or procure the settlement thereof); or
- (k) the threat or apprehension of any of the foregoing events.

13.2 The Seller or Supplier shall not be required to remove any such cause as set out in Clause 13.1 above or replace any effected source of supply or facility if doing so shall involve expense or a departure from the Seller's or Supplier's practices. The Seller or Supplier shall not be required to make up any deliveries omitted in accordance with Clause 13.1.

13.3 The Seller and Supplier shall have no obligation to procure alternative performance, nor shall anything in this Clause 13 excuse the Buyer from its payment obligations in accordance with Clause 9.

### 14 ASSIGNMENT

The Seller may assign all or any part of its rights and obligations hereunder. The Buyer shall not assign any of its rights and obligations in whole or in part without the Seller's written consent, otherwise any assignment shall be void and unenforceable.

## 15 LIABILITY AND INDEMNITY

- 15.1 The Seller and/or Supplier shall not be liable for any damages of whatever nature, including physical injury, nor for any delay of delivery of Marine Fuels, no matter whether such damages or delays have been caused by fault or negligence or omission by the Seller or Supplier.
- 15.2 In no event shall the Seller and/or Supplier be liable to the Buyer for any indirect, consequential loss or damage and/or liquidated damages (including but not limited to loss of time, loss of cargo, missed chartering cancelling dates, loss of income, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever and howsoever caused.
- 15.3 The total liability of the Seller and/or Supplier (if any), whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, or otherwise, arising out of or in connection with performance or contemplated performance of these Terms, shall be limited to (and in no circumstances exceed) the invoice value of the relevant Marine Fuels supplied to the Buyer, and this limitation shall apply in the aggregate, irrespective of the number of incidents, claims, or causes of action giving rise thereto.
- 15.4 The Buyer will hold harmless and indemnify the Seller and Supplier without limit against any claims, losses, damages, liabilities, fines, penalties, costs (including legal costs), interests, fees, and expenses incurred or sustained arising out of or in connection with:
- (a) the delivery of Marine Fuels; and/ or
  - (b) any breach by the Buyer of these Terms; and/ or
  - (c) any fault, negligent act or omission of the Buyer, its agents, servants, (sub) contractors, representatives, employees, officers, crew and other people whether or not on board the Vessel.
- 15.5 In addition, the Buyer shall hold harmless and indemnify the Seller and Supplier against:
- (a) all charges for delivery by barge(s) including any barging charges, and similar charges for bulk lorry, rail tank wagon and drum deliveries; and
  - (b) any mooring or unmooring charges or port dues which may be incurred by the Supplier in connection with the Vessel to which Marine Fuels are delivered hereunder.
- 15.6 The Buyer furthermore undertakes to defend, indemnify and hold the Seller harmless from all third-party claims of whatever nature against the Seller and/or Supplier, whether directly or indirectly related to the sale, delivery of Marine Fuels to the Buyer or bunkering operations.

## 16 MITIGATION

- 16.1 If any escape, spillage or discharge of oil (hereinafter referred to as a **Spill**) occurs before, during the course of or after bunkering operations or while transfer or delivery of Marine Fuel is being made to or on behalf of the Buyer, the Buyer should promptly take such action as is required by any local, national or international authority or as may be reasonably necessary to remove the oil and mitigate the effects of such Spill.
- 16.2 In case of such Spill, the Seller or the Supplier is hereby authorised, at its option upon notice to the Buyer or the Buyer's operator or agent for the Vessel, to take such measures, either in co-operation with the Buyer or exclusively as the sole party, and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonably necessary in the judgment of the Seller or the Supplier, to remove the oil and mitigate the effects of such Spill.
- 16.3 If the Seller has exercised its option to remove the oil and mitigate the effects of such Spill, the Buyer agrees to co-operate and render such assistance as is required by the Seller in the course of such action and to pay the Seller any expenses (including those incurred to third parties), damages, costs, fines and penalties arising from the escape, spillage, etc.

16.4 The Buyer also agrees to give or cause to be given to the Seller all documents and other information concerning any spill, or any program for the prevention thereof, which are requested by the Seller or required by laws or regulations applicable at the time and place where the Seller or the Supplier delivers Marine Fuel to the Buyer.

## 17 **WAIVER**

The failure of either of the parties to enforce any of their respective rights herein at any time shall not be construed as a waiver unless specifically so notified by that party in writing expressly stating it is a waiver. Any waiver shall not prejudice their respective rights to enforce the same strictly and in full on any subsequent occasion. In particular, the granting by the Seller of any additional time for the Buyer to make payment or the waiving or reducing of any financial or other charge shall not prevent the Seller at any time thereafter from relying upon its strict contractual rights.

## 18 **BREACH, TERMINATION, AND CANCELLATION**

18.1 The Seller may, at its option and without liability, terminate any agreement with the Buyer in whole or in part, in its full discretion, upon the breach of any clauses of these Terms by the Buyer.

18.2 The Seller shall have the option to cancel any agreement with the Buyer, or to store or produce the storage of the Marine Fuels, in each case whether in whole or in part (in its full discretion), for the account and risk of the Buyer, and to charge the Buyer the expenses thereby incurred, or to hold the Buyer fully to the agreement, or take any other measures which the Seller deems appropriate, without prejudice to any of its rights of indemnification, and without any liability on the side of the Seller, in any of (but not limited to) the following cases:

- (a) when the Buyer, for whatever reason, fails to accept the Marine Fuels in full or in part at the place and time designated for delivery;
- (b) when the Buyer fails in full or in part to comply with its obligations to pay any amount due to the Seller and/or provide security as set out herein;
- (c) 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 for the Seller;
- (d) when in the event of force majeure or frustration, the Seller is of the opinion that the execution of the agreement shall be cancelled. This does not affect the Buyer's obligation under Clause 9.1; or
- (e) when the Buyer breaches any of the clauses of these Terms.

## 19 **AGENTS**

If the nomination is made by an agent acting for or on behalf of the Buyer, whether such agency is disclosed or undisclosed, apparent or ostensible, then such agent shall be liable, as well as the Buyer, not only as agent but also as principal for the performance of all the obligations of the Buyer herein.

## 20 **NOTICES**

20.1 Notices to be given hereunder shall be addressed to the addresses specified from time to time by the party to whom the notice is addressed.

20.2 Where a nomination is made by any agent acting for the Buyer, then notice may be given either to the agent or to the Buyer at the option of the party giving the notice.

## 21 MISCELLANEOUS

- 21.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by this Clause.
- 21.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Terms. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause;
  - (b) as may be required by law, arbitral tribunal, a court of competent jurisdiction, or any governmental or regulatory authority; and
  - (c) to prospective purchasers, financiers, or insurers of the Vessel, the Seller, or any of their respective assets, provided such recipients are bound by confidentiality obligations no less restrictive than those set out herein.
- 21.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Terms.
- 21.4 If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Terms. If any provision or part-provision of this agreement is deemed deleted under this Clause the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 21.5 These Terms may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## 22 GOVERNING LAW

The construction, validity and performance of these Terms and any contract incorporating the terms of these Terms (whether directly or indirectly) and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Maritime Law of the United States, Title 9 of the United States Code, and the Uniform Commercial Code as applied in New York.

## 23 ARBITRATION

- 23.1 Any dispute between: (1) the Seller; and (2) any of disponent owners, time charterers, bareboat charterers and charterers, arising out of or in connection with these Terms or any contract incorporating them (whether directly or indirectly) shall be referred to arbitration before three persons in London, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the London Maritime Arbitrators Association. The arbitrators shall be commercially minded and/or familiar with shipping matters.
- 23.2 This agreement to arbitrate is without prejudice to Seller's right to use any and all legal process to obtain security for its claims in the United Arab Emirates and/or anywhere in the world pending resolution of the merits of its claim in arbitration.

- 23.3 This agreement to arbitrate shall not limit the right of the Seller to commence any proceedings against the Buyer in any other jurisdiction, hereunder to commence proceedings on the merits in the jurisdiction pending an arrest of the Vessels and/or other property.
- 23.4 The parties hereby agree that any arbitration award issued by the London Maritime Arbitrators Association shall be confidential and may not be published by the London Maritime Arbitrators Association or disclosed in any way unless expressly agreed and authorised by the parties in a signed writing.

## 24 **OPTION TO LITIGATE**

- 24.1 Notwithstanding Clause 23, the Seller or Supplier shall have the option of bringing court proceedings in accordance with the terms of this Clause and may within ninety (90) days of service of a request for arbitration by notice in writing to the Buyer require that all disputes or a specific dispute be heard by a court of law (a **Litigation Notice**).
- 24.2 If a Litigation Notice is given by the Seller or the Supplier to the Buyer, the parties agree that:
- (a) the dispute to which the Litigation Notice refers will be determined in accordance with this Clause 24; and
  - (b) the parties cannot commence arbitration proceedings in respect of the dispute(s) which are the subject of litigation and any arbitration proceedings initiated by the Buyer will be terminated.
- 24.3 To the extent that this Clause 24 is exercised, the parties agree that the courts of Dubai International Financial Centre shall have non-exclusive jurisdiction to settle any dispute. The parties agree that the courts of Dubai International Financial Centre are the most appropriate and convenient courts to settle disputes and accordingly waive objection to the Dubai International Financial Centre courts on grounds of inconvenient forum. Nothing in these Terms shall prevent the Seller or the Supplier from initiating proceedings against the Buyer in any court other than the Dubai International Financial Centre.
- 24.4 To the extent that this Clause 24 is exercised, the Buyer submits to the jurisdiction of the courts of Dubai International Financial Centre, or such other court in which proceedings may be initiated by the Seller or the Supplier.
- 24.5 This Clause 24 is for the benefit of the Seller and Supplier only. As a result, the Seller or Supplier shall not be prevented from taking proceedings relating to a dispute in any other courts with jurisdiction. To the extent allowed by law, the Seller and the Supplier may take concurrent proceedings in any number of jurisdictions.
- 24.6 The parties agree that upon delivery of Marine Fuels to the Vessel, the Seller shall have a maritime lien on the Vessel, sister, associated vessel, or any other assets for any amounts owed to the Seller and nothing shall affect or prejudice the right of the Seller to take any action and/or commence proceedings to enforce its right of lien or to otherwise obtain security by seizure, attachment or arrest of the Vessel, sister or associated vessel, or any other assets or any monies owed by the Buyer.



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