

# GME BUNKER TERMS

BASED ON BIMCO BUNKER TERMS 2018



# GME General Terms and Conditions<sup>1</sup>

## 1. DEFINITIONS

Throughout these General Terms and Conditions, 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"** means 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 which records, among others, information pertaining to the quantity and quality of the fuel that is supplied.

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

**"Buyers"** means the party stated in the Confirmation Note contracting to purchase, take delivery and pay for the Marine Fuels. All references to the "Buyer" in the Contract shall be deemed to include, jointly and severally, the Vessel and her Master, owners, managers, operators, charterers (including demise, time and voyage charterers), any party ordering the Marine Fuels, any party on whose behalf the Marine Fuels are ordered and / or supplied, and their respective servants and agents (together, the **"Buyer Group"**).

**"Confirmation Note"** means the Sellers' written confirmation.

**"Contract"** means these General Terms and Conditions, as amended and supplemented by the Confirmation Note, and the Election Sheet (if applicable).

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

**"Delivery Period"** means the Vessel's expected time of arrival / delivery window as stated in the Confirmation Note.

**"Election Sheet"** means an election sheet in the format provided in the Annex A (*Election Sheet*) to these General Terms and Conditions.

**"General Terms and Conditions"** means these standard bunker terms and conditions.

**"Marine Fuels"** means products as stated in the Confirmation Note.

**"Parties"** means the Sellers and Buyers collectively and **"Party"** means Sellers or Buyers.

**"Physical Supplier"** means the entity that physically delivers Marine Fuels to the Vessel (including barge, terminal, truck or other delivery provider), whether appointed by the Sellers or otherwise involved in the performance of the Contract.

**"Required Supply Time"** means the time at which the Seller must commence delivery of the Marine Fuels pursuant to Clause 5(c), 5(d) or 5(e) (*Delivery*), as applicable.

**"Sellers"** means the Party stated in the Confirmation Note contracting to sell and arrange delivery of the Marine Fuels.

**"Vessel"** means the vessel nominated by the Buyers to receive Marine Fuels.

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<sup>1</sup> These terms and conditions are intended to apply to all sales and supplies of marine fuels done by, or through, GME Sea Transport Services FZE and its affiliated entities.

## 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.
- (b) 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.
- (c) If the Marine fuels deviate from specifications, the Buyer shall use all reasonable endeavours to mitigate the consequences hereof.
- (d) The Sellers warrant that the Marine Fuels shall be of a homogeneous and stable nature and shall comply with the specifications and grades agreed between the parties and stated in the Confirmation Note. Unless otherwise agreed in the Confirmation Note, the Marine Fuels shall in all respects comply with ISO Standard 8217:2017<sup>2</sup>.

## 3. QUANTITIES/MEASUREMENTS

- (a) Subject to the provisions of Subclause 6(c) (*Documentation*) and Clause 9 (*Claims*) hereunder the quantities of Marine Fuels delivered shall be measured 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 on 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 the Buyers or their representatives shall not prejudice the validity of the measurement of the quantities of Marine Fuels delivered. In the event that local bunkering rules and regulations apply mandatorily, these shall take precedence over the provisions of Subclauses 3(a) and 3(b) (*Quantities/Measurements*).
- (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 representative 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 their respective representatives, closest to the Vessel's bunker manifold and otherwise in accordance with the procedures set out in IMO Resolution MEPC.182(59) Guidelines for the Sampling of Fuel Oil for Determination of Compliance with MARPOL 73/78 Annex VI<sup>3</sup> or any subsequent amendments thereto. Each

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<sup>2</sup> Report-only parameters are informational and non-warranted. ISO compliance applies at the point of delivery and does not constitute a warranty of fitness, compatibility or performance.

<sup>3</sup> The MARPOL sample taken pursuant to MEPC.182(59) is intended solely for regulatory compliance with MARPOL Annex VI and shall not be used for contractual quality or quantity disputes unless expressly agreed.

sample shall be thoroughly mixed and carefully divided into a minimum of five (5) identical samples and one sample of each grade of Marine Fuels shall be retained on board the Vessel for MARPOL purposes. The absence of the Buyers or their representatives shall not prejudice the validity of the samples taken. In the event that local bunkering rules and regulations apply mandatorily, these shall take precedence over the provisions of this Subclause 4(a) (*Sampling*).

- (b) The samples referred to in Subclause 4(a) (*Sampling*) shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery 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 the Master's authorised representative.
- (c) Two (2) samples shall be retained by the Sellers for minimum forty-five (45) 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 three (3) 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 (*Sampling*).

## 5. **DELIVERY**

- (a) Within the Delivery Period:
  - (i) the Sellers shall deliver the Marine Fuels; and
  - (ii) the Buyers shall take delivery of the Marine Fuels, day and night, Sundays and holidays included, at the port or place of delivery, subject always to the custom of that port or place.

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. If the Seller or the Physical 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 the Physical Supplier may allocate its available and anticipated supply among its customers in such a manner as it may in its sole discretion determine. 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.

- (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, ninety-six (96), seventy-two (72), forty-eight (48) and twenty-four (24) hours approximate and twelve (12) hours definite notice of the Vessel's arrival and the location and time at which delivery of the Marine Fuels is requested. If the Sellers agree to commence the delivery of the Marine Fuels at the time specified in the Buyers' twelve hours' notice, or the Parties agree to another time, the Sellers shall confirm this in writing to the Buyers (the "**Confirmed Delivery Time**"). The time of delivery will only be binding upon the Seller if the Buyer has complied with its obligations under this Clause 5 and provided, in writing, immediately, all the information necessary for the Seller to comply with its obligations hereunder. The

- (c) Providing that the time of Actual Readiness is within 6 hours of the Confirmed Delivery Time, the Sellers shall commence delivery of the Marine Fuels within 6 hours of the Confirmed Delivery Time. In the event that the Vessel is not able to receive the Marine Fuels within six (6) hours of the Confirmed Delivery Time, the Buyer shall be liable for reasonable demurrage claims to the Seller or the Physical Supplier, as applicable. 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 and time of arrival (or any such shorter time that the Seller may advise the Buyer), the nomination shall be deemed to have been cancelled by the Buyer and the Seller and the Physical Supplier reserve their right to claim any expenses incurred, any damages and, in addition, the right to refuse delivery of the Marine Fuels.
- (d) The Vessel shall be bunkered as promptly as circumstances permit. The Seller or the Physical 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. In addition, the Seller, Physical Supplier or the barging equipment shall not be liable for any damage, loss or delay to the Vessel arising out of or in connection with the delivery of Marine Fuels and bunkering operations. The Buyer agrees to pay and indemnify the Seller and / or the Physical Supplier against all claims and expenses for any loss, damage or delay caused by the Vessel to the barging equipment.
- (e) 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.
- (f) The Buyers shall be responsible for safe manoeuvring, anchoring and mooring / unmooring of the Vessel, 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. In the event of any damage caused by contact, collision, swell and / or other weather or sea related condition or incident, such damage is to be dealt with directly by the respective owners of the involved units, and the Seller or the Physical Supplier cannot be held responsible for any such damages. If any of the involved units choose to pursue the Seller and / or the Physical Supplier, the Buyer shall fully indemnify and hold the Seller and the Physical Supplier harmless in relation thereto.
- (g) 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 or the Master's authorised representative 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;

- (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, failing which no supply shall be made where in the Seller's opinion a clear and safe free side or berth is not available (and any consequent loss or costs and expenses incurred as a result by the Seller and / or the Physical Supplier shall be for the Buyer's account); and
- (iv) ensure that only the tanks of the Vessel which are regularly used for receiving bunkers are used and are in a fit state, and all fuels requested by the Buyer and supplied by the Seller are deemed to be purchased as bunker fuels.

## 6. DOCUMENTATION

- (a) Before commencement of delivery the Sellers shall present for written acknowledgement by the Master of the Vessel or the Master's authorised representative, a bunker pre-delivery form 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 and requested by the Buyers, similar information shall be provided for vanadium, ash content, water content, and pour point. In the event that local bunkering rules and regulations apply mandatorily, these shall take precedence over the provisions of this Subclause 6(a) (Documentation).
- (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> delivery temperature, flash point, sulphur content in % m/m as per ISO 8754 and viscosity.
- (c) In the event the Master of the Vessel or the Master's authorised representative is not satisfied with the sampling, quantity or any other matter concerning the Marine Fuels or their delivery, the Master or the Master's authorised representative shall on completion of delivery issue a separate letter of protest, receipt of which shall be acknowledged in writing by the Sellers' representative. The Parties agree that no remarks are permitted on the BDN by the Buyers, the Master of the Vessel or any of their representatives and any change(s) or remark(s) whatsoever made by the Buyer or the Vessel or on their behalf on the BDN (or similar document) shall have no effect or value whatsoever and the Seller determination shall be *prima facie* evidence of the quantity and quality of the Marine Fuels delivered. Quantities recorded on the BDN shall be final and binding absent manifest error.

## 7. PRICE

- (a) The Sellers' price of the Marine Fuels is valid only 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. If the Sellers agree to arrange delivery of the

Marine Fuels outside the Delivery Period the Sellers shall be entitled to amend the price to take into account prevailing market prices.

(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) mooring charges or port dues; and
- (iii) duties, taxes, charges or other costs in the country where delivery takes place.

## 8. PAYMENT

(a) Payment for the Marine Fuels shall be made by the Buyers within thirty (30) days or, if otherwise agreed, within the number of days stated in the Confirmation Note prior or after the completion of delivery. In the event payment has been made in advance of delivery, 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.

(b) Payment shall be made in full, without set-off, counterclaim, deduction and / or discount, and free of bank charges and the obligation to pay shall not be affected or discharged even by *force majeure* or frustration or otherwise. The Buyers shall pay all invoices strictly in accordance with this Clause 8 notwithstanding any dispute, claim or counterclaim (including under Clause 9 (*Claims*)). The Buyers shall pursue any claim separately, without withholding or delaying payment and under no circumstances shall any claim by the Buyer relieve or enable the Buyer to delay its payment obligations on the due date.

(c) Payment shall be deemed to have been made on the date the payment is credited to the bank account designated by the Sellers.

(d) 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.

(e) Payment for delivery under the Contract shall satisfy sums owed to the Seller in the following order: (1) interest; (2) legal and enforcement costs; and (3) invoices from oldest to newest.

(f) 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. Failure of the Buyer to make any payment or give any security as required shall enable the Seller, in addition to any other remedy, to suspend or terminate its performance under these General Terms and Conditions (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.

(g) Any delay in payment and / or refund shall entitle either Party to interest at the rate of three (3) per cent per month or any part thereof or as otherwise agreed as per the Confirmation Note. In addition to interest applicable under this Subclause, the Sellers may charge

reasonable administration and collection costs (including internal costs) incurred as a result of late payment and / or enforcement against the Buyer or the Vessel.

- (h) In the event of non-payment, the Seller reserves the right to pursue such legal remedies as may be available to them to recover the amount owed. All costs incurred 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 General Terms and Conditions by the Buyer, shall be for the sole account of the Buyer.
- (i) Notwithstanding any agreement to the contrary, payment for any amounts due (whether yet payable or not) under the Contract (or any other contract between the Buyers and the Sellers) will become due immediately and in the event of:
  - (i) actual or possible bankruptcy, liquidation, arrest of assets or suspension of payment (or any of the events stated in Clause 17(a) and (b) (*Termination*)) or comparable situation of the Buyers; or
  - (ii) any other situation, which in the reasonable discretion of the Sellers is deemed to affect adversely the position of the Buyers (financial or otherwise), the Sellers shall have the option to:
    - (A) accelerate any outstanding payments and demand that any dues become immediately payable;
    - (B) demand that the Buyers comply with their obligations under the Contract;
    - (C) demand adequate security;
    - (D) suspend any pending deliveries;
    - (E) withdraw permission to consume the Marine Fuels for the propulsion of the Vessel; and / or
    - (F) terminate the Contract.

## 9. CLAIMS

- (a) Quantity
  - (i) Any dispute as to the quantity delivered must be noted at the time of delivery by way of a letter of protest, and a claim for such quantity dispute must be presented to the Sellers by the Buyers in writing within seven (7) days from the date of delivery, failing which such claim shall be deemed to be waived and barred. Quantity claims under this Clause 9(i) shall only be valid if (A) the Master or the Master's authorised representative has complied with Clause 6(c) at completion of delivery, and (ii) the Buyers have provided to the Sellers within the applicable time limit all supporting documents reasonably required (including the BDN, tank soundings / ullages, temperature, survey reports if any, and a detailed narrative).
  - (ii) The Sellers shall have the right to charge the Buyers for all additional expenses (including, without limitation, loss of profits and expenses related to the barging facilities) incurred by the Sellers or the Physical Supplier in connection with the

Buyers' failure to take delivery of the full quantity of the Marine Fuels ordered by the Buyers (with an operational tolerance of +/- two (2) per cent).

(iii) The Buyers shall have the right to charge the Sellers for all proven additional expenses incurred by the Buyers in connection with the Sellers' failure to deliver the full quantity of the Marine Fuels agreed as per the Confirmation Note (with an operational tolerance of +/- five (5) per cent), unless the quantity is amended by the Master or the Master's authorised representative 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 fourteen (14) days of the date of delivery, such claim shall be deemed to be waived and barred. Quality claims under this Clause 9(i) shall be invalid if the Marine Fuels have been commingled, substantially consumed, or otherwise cannot be reliably traced to the delivered parcel before samples are tested and the Sellers are given a reasonable opportunity to attend and / or participate in the sampling/testing process.

(ii) The Buyer may not unilaterally test any samples of Marine Fuel using GC-MS, FTR and similar test methods and any request for such testing by the Buyer shall be made in writing to the Seller within seven (7) days of the date of delivery. The Seller may in its reasonable discretion accept or decline any testing that is outside of the ISO 8217 parameters, including any requests by the Buyer under this Subclause 9(b)(ii).

(iii) In the event a claim is raised pursuant to Subclause 9(b)(i) (*Claims*), the Seller shall propose three (3) independent reputable laboratories to the Buyer, and the Buyer shall select any laboratory from the proposed list. 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 or both Parties 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 9(b) within four (4) days of proposal of the laboratories by the Seller, the claim shall be deemed void and closed. The Buyers may request a full analysis of the parameters of the Marine Fuels in accordance with the specification set out in the Confirmation Note and ISO 4259. The Sellers shall provide the laboratory with one of the samples retained by them as per Subclause 4(c) (*Sampling*) and the test methods used by the laboratory shall be in accordance with those set out in ISO 8217. In determining compliance with ISO 8217 and any allegation of off-specification fuel, the Parties shall apply the principles of ISO 4259 (and / or successor standards) on interpretation of test results, including repeatability and reproducibility, and results within applicable test precision shall not constitute non-compliance. Unless otherwise agreed, the cost of the analysis shall be for the account of the Party whose claim / case is found unproven by the analysis.

(c) Delay

In the event of any delay resulting from the Buyers' failure to give proper notices and / or the Vessel's failure to be in Actual Readiness within six (6) hours of the Confirmed Delivery Time and / or the Vessel failing to receive Marine Fuels at the pumping rate and pressure referred to in Subclause 5(g)(i) (*Delivery*), then the Seller or the Physical Supplier shall be entitled to compensation from the Buyer for any loss suffered as a result of that delay.

(d) Time Bar

In each and every case any and all claims, except those under Subclauses 9(a)(i) and (b)(i) (*Claims*), by the Buyers shall be time barred unless arbitration proceedings have been commenced in accordance with Clause 24 (*Dispute Resolution Clause*) within twelve (12) months of the date of delivery of the Marine Fuels or the day that delivery should have commenced as per the Confirmation Note.

(e) Limitation of Liability

the Seller and the Physical Supplier shall not be responsible for any failure to perform their obligations if performance has been suspended, delayed, hindered, interfered with, curtailed or prevented by:

- (i) any circumstances whatsoever, whether or not foreseen, which are not within the immediate control of the Seller or the Physical Supplier;
- (ii) 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 Physical Supplier's sources of supply (whether in fact it relates to the sources of supply for the Marine Fuels to be delivered against a nomination or not) and including any damage to, breakdown of or accident to vessels, plants, machinery, equipment or facilities, etc.;
- (iii) 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;
- (iv) perils of the sea or port conditions, adverse weather conditions or natural disasters or any act of God, any fire or explosion;
- (v) war (declared or undeclared), military operations, hostilities, terrorism, piracy, sabotage, revolution, civil disturbance, local or national emergency;
- (vi) blockade, government intervention, expropriation, confiscation, trade restrictions or prohibitions on import/export;
- (vii) 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
- (viii) the threat or apprehension of any of the foregoing events.

## 10. RISK/TITLE

- (a) Risk<sup>4</sup> 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. Title to the Marine Fuels shall pass to the Buyers upon payment of all sums due to the Sellers under the Contract. 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 laws of the governing jurisdiction against the Buyers or the Vessel in the event of non-payment, and the Buyers shall not pledge or sell the Marine Fuels to any third party.
- (b) The Buyers have the Sellers' permission to consume the Marine Fuels for propulsion of the Vessel.
- (c) In addition to any rights under this Clause 10, the Sellers and / or the Physical Supplier shall have and may assert a maritime lien and / or other security interest over the Vessel and her appurtenances for the price of the Marine Fuels and all other sums due under the Contract. Unless agreed otherwise in writing in the Confirmation Note, any notice on the BDN or elsewhere purporting to disclaim or prohibit liens (including "no lien" stamps) shall be null and void as against the Sellers and / or the Physical Supplier and shall not prejudice their rights. The Buyers warrant that they have authority to bind the Vessel and the Buyer Group in respect of the supply of Marine Fuels. The Master or the Master's authorised representative signing documents in connection with the delivery (including the BDN) warrants that they have authority to do so on behalf of the Vessel and the Buyer Group.

## 11. COMPLIANCE WITH LAWS AND REGULATIONS

The Parties will not do or permit to be done anything which might cause any breach or infringement of the laws and regulations of the Flag State of the Bunker Tanker, the Vessel or the country of incorporation of the Sellers, or of the places where the Bunker Tanker, the Vessel or the Sellers trade or take Marine Fuels under the Contract.

## 12. SANCTIONS COMPLIANCE CLAUSE

- (a) "**Sanctions Laws**" means any sanction, prohibition or restriction imposed by the United Nations, the United Arab Emirates, the European Union, the United Kingdom or the United States of America, including but not limited to the US Department of the Treasury Office of Foreign Asset Control ("**OFAC**") including the OFAC Specially Designated Nationals or Blocked Persons List (SDN) and the US Department of State.
- (b) The Buyers warrant that at the date of entering into the Contract and continuing until delivery of the Marine Fuels and payment by the Buyers to the Sellers in full:
  - (i) it is not subject to any of the Sanctions Laws referred to in Subclause 12(a) (*Sanctions Compliance Clause*) which prohibit or render unlawful any performance under the Contract;

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<sup>4</sup> Risk includes, but is not limited to, risk of spillages or pollution.

- (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 Subclause 12(a) (*Sanctions Compliance Clause*); and
- (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 Subclause 12(a) (*Sanctions Compliance Clause*) above.

(c) If at any time during the performance of the Contract the Seller becomes aware that the Buyer is in breach of warranty as aforesaid, the Seller 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 Seller may terminate the Contract forthwith.

(d) Notwithstanding anything to the contrary in this Clause, the Sellers shall not be required to do anything which constitutes a violation of the laws and regulations of any State to which it is subject.

(e) The Buyers shall be liable to indemnify the Sellers against any and all claims, including return of any payment, losses, damage, costs and fines whatsoever suffered by the Sellers resulting from any breach of warranty as aforesaid and in accordance with the Contract.

### 13. ANTI-CORRUPTION CLAUSE

- (a) The Buyers agree that in connection with the performance of any Contract they shall:
  - (i) comply at all times with all applicable anti-corruption legislation and have procedures in place that are, to the best of its knowledge and belief, designed to prevent the commission of any offence under such legislation by any member of its organisation or by any person providing services for it or on its behalf; and
  - (ii) make and keep books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions in connection with any Contract.
- (b) If a demand for payment, goods or any other thing of value ("**Demand**") is made to the Seller by any official, any contractor or sub-contractor engaged by or acting on behalf of the Buyer or any other person not employed by the Buyer and it appears that meeting such Demand would breach any applicable anti-corruption legislation, then the Seller shall notify the Buyer as soon as practicable and the Parties shall cooperate in taking reasonable steps to resist the Demand.
- (c) If the Buyer fails to comply with any applicable anti-corruption legislation it shall defend and indemnify the Seller against any fine, penalty, liability, loss or damage and for any related costs (including, without limitation, court costs and legal fees) arising from such breach.
- (d) Without prejudice to any of its other rights under any Contract, the Seller may terminate a Contract without incurring any liability to the Buyer if:
  - (i) at any time the Buyer or any member of its organisation has committed a breach of any applicable anti-corruption legislation in connection with any Contract; and

- (ii) such breach causes the Seller to be in breach of any applicable anti-corruption legislation.

Any such right to terminate must be exercised without undue delay.

- (e) The Buyer represents and warrants that in connection with the negotiation of any Contract neither it nor any member of its organisation has committed any breach of applicable anti-corruption legislation. Breach of this Subclause 13(e) (*Anti-Corruption Clause*) shall entitle the Sellers to terminate a Contract without incurring any liability to the Buyers.

#### 14. INDEMNITY

- (a) Without prejudice to any other claims arising hereunder or in connection herewith and notwithstanding the provisions of Subclause 9(d) (*Claims*), if loss is suffered or a liability is incurred by the Seller as a result of (i) the delivery of the Marine Fuels to the Vessel, (ii) breach by the Buyers of these General Terms and Conditions, (iii) fault, negligence or omission by the Buyer or its agents, servants, contractors, representatives, employees, officers, crew or other people whether or not onboard the Vessel, (iv) compliance with directions given by the Buyer, during or for the purposes of the Sellers' obligations hereunder, then the Sellers are to be indemnified by the Buyers in respect of such loss or liability. The Buyer shall also defend, indemnify and hold the Seller harmless from all third party claims of whatever nature against the Seller and / or the Physical Supplier, whether directly or indirectly related to the sale or delivery of Marine Fuels to the Buyer or the bunkering operations.
- (b) Where claims arise under Subclause 9(c) (*Claims*) and Subclause 14(a) (*Indemnity*), compensation payable in accordance with Subclause 9(c) (*Claims*) shall be taken into account in assessing sums payable under Subclause 14(a) (*Indemnity*).
- (c) The indemnities in this Clause 14 shall extend to the Physical Supplier and any subcontractor involved in the performance of the Contract, and shall include, without limitation, reasonable legal costs and expenses incurred on a full indemnity basis.

#### 15. LIABILITY

- (a) The Sellers shall not be liable to the Buyers for:
  - (i) any loss of profit or loss of production whatsoever, whether arising directly or indirectly from the performance or non-performance of the Contract, and whether or not such loss is due to negligence or any other fault on the part of the Sellers, their servants or agents, and
  - (ii) any indirect or consequential loss arising out of or in connection with the performance or non-performance of the Contract, whether or not such loss is due to any breach of contract, negligence or any other fault on the part of the Sellers, their servants or agents.
- (b) Notwithstanding any other provision in these General Terms and Conditions, the liability of the Sellers<sup>5</sup>, whatsoever or howsoever caused, shall (exclusive of interest and legal and

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<sup>5</sup> This includes any liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise.

enforcement costs) not exceed the invoice value of the Marine Fuels or USD 500,000, whichever is the lower figure.

(c) Where the Sellers arrange delivery by a third party Physical Supplier and do not themselves physically deliver the Marine Fuels, the Sellers' liability (if any) in respect of quantity and / or quality shall, to the maximum extent permitted by law, be limited to the extent (if any) that the Sellers recover from the Physical Supplier / terminal in respect of the same claim, and the Buyers agree that the Sellers shall have no liability beyond such recovery save in the case of the Sellers' proven fraud or wilful misconduct.

## 16. FORCE MAJEURE

(a) Neither the Seller nor the Physical Supplier shall be liable for any loss, damage or delay due to any of the following *force majeure* events and / or conditions at the port of delivery which could or could not reasonably be foreseen at the time of entering into the Contract or guarded against to the extent that the Seller is prevented or hindered from performing any or all of their obligations under the 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, 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) unavailability<sup>6</sup>, 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; or (j) any other similar cause beyond the reasonable control of either Party.

(b) The Seller or the Physical Supplier shall not be required to remedy any of the events of *force majeure* noted above or replace any effected source of supply or facility if doing so shall involve expense or a departure from the Seller's or the Physical Supplier's practices. The Seller and the Physical Supplier shall not be required to make up any deliveries omitted in accordance with this Clause and nothing in this Clause shall relieve the Buyer from its payment obligations.

## 17. TERMINATION

Without prejudice to accrued rights hereunder, the Sellers shall be entitled to terminate the 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 the Buyers (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver or administrator

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<sup>6</sup> Unavailability shall cover damage to, breakdown of or accident to vessels, plants, machinery, equipment or facilities, etc.

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 Buyers of all or a substantial part of its assets (otherwise than for the purpose of a reconstruction or amalgamation);
- (b) any act being done or event occurring which, under the applicable law thereof, has a substantially similar effect to any of the said acts or events described above;
- (c) either Party is in breach of the provisions of Clause 12 (*Sanctions Compliance Clause*) (if applicable);
- (d) either Party is in breach of any material provision under the Contract; or
- (e) if a *force majeure* event as defined in Clause 16 (*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.

## 18. POLLUTION

- (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) 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.
- (c) The Buyers guarantee payment of and / or agree to indemnify and hold the Sellers harmless for any claims, losses, damages, expenses, penalties or other liabilities incurred (including but not limited to those incurred under any state, national or international oil pollution legislation), as a result of any spillage arising out of or in connection with the performance of the Contract where such spillage is caused or contributed to by the Buyers. To the extent that such spillage is caused or contributed to by any fault on the part of both Parties, the Buyers shall indemnify the Sellers for its respective degree of fault.
- (d) Save for any supply of Marine Fuels undertaken by third party Physical Suppliers (where the Sellers are not acting as the physical Suppliers themselves), the Sellers shall use their best endeavours to ensure that the owners of the Bunker Tanker are fully insured for oil spill liabilities as required by statutory rules or regulations.

## 19. DRUGS AND ALCOHOL POLICY

- (a) Each Party shall enforce a company drug and alcohol policy on board the Vessel and the Bunker Tanker and, in the case of the Sellers, also in their facilities.

- (b) Such company drug and alcohol policies shall meet or exceed the standards in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended.
- (c) The Buyers' personnel shall comply with the Sellers' policy in the Seller's facilities or on board the Bunker Tanker, and the Sellers' personnel shall comply with the Buyers' policy when on board the Vessel.
- (d) Both Parties acknowledge and agree that the selling, possession, distribution, use or being under the influence of alcohol or any controlled substance or dangerous drugs other than those medically prescribed is prohibited.

## 20. **CONFIDENTIALITY**

- (a) Neither Party shall disclose to third parties any confidential information relating to pre-contractual discussions and / or the terms and conditions of the 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 unauthorised disclosure of confidential information 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 confidential information, the disclosing Party will, where permitted, 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, becomes publicly available other than as a result of a breach of the Contract by one of the Parties or is lawfully received from a third party.
- (f) This Clause shall survive termination of the Contract.

## 21. **THIRD PARTY RIGHTS**

No third parties may enforce any term of the Contract. Notwithstanding this Clause 21 (*Third Party Rights*), the Physical Supplier and any subcontractor engaged by the Sellers shall be entitled to rely upon, benefit from and enforce the provisions of Clauses 4 (*Sampling*), 6 (*Documentation*), 8 (*Payment*), 9 (*Claims*), 10 (*Risk/Title*), 14 (*Indemnity*), 15 (*Liability*), 18 (*Pollution*), 19 (*Drugs and Alcohol Policy*), 24 (*Dispute Resolution Clause*) and any other clause intended to protect the Sellers and / or the Physical Supplier, as if such party were a Party to the Contract.

## 22. **ASSIGNMENT**

The Buyer shall not assign any of their rights under the Contract without the prior written consent of the Seller. The Sellers may at any time assign, transfer, pledge or otherwise dispose of any receivable and / or any right to payment arising under the Contract (including by way of factoring or security) without the Buyers' prior written consent.

## 23. PARTIAL VALIDITY

If any provision of the 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 the 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.

## 24. DISPUTE RESOLUTION CLAUSE

- (a) The Contract shall be governed by US maritime law, Title 9 of the United States Code, and the Uniform Commercial Code as applied in New York or, if the Contract is not a maritime contract under US law, by the laws of the State of New York.
- (b) The parties agree that the courts of Dubai International Financial Centre (the "DIFC") shall have non-exclusive jurisdiction to settle any dispute. The parties agree that the courts of the DIFC are the most appropriate and convenient courts to settle disputes and accordingly waive objection to the DIFC courts on grounds of inconvenient forum. Nothing in these General Terms and Conditions shall prevent the Seller or the Physical Supplier from initiating proceedings against the Buyer or the Vessel or any other related party in any court other than the DIFC courts. This Clause is for the benefit of the Seller and the Physical Supplier only and the Seller or the Physical Supplier shall not be prevented from taking proceedings relating to a dispute in any other courts with jurisdiction and to the extent allowed by law, the Seller and the Physical Supplier may take concurrent proceedings in any number of jurisdictions.
- (c) Nothing in Clause 24 shall prevent the Sellers and / or the Physical Supplier from exercising any right to arrest, attach or otherwise detain the Vessel or other property, or to seek interim or conservatory measures, or to commence proceedings in any jurisdiction for the purpose of obtaining security for, or enforcing, any claim arising under the Contract. The parties agree that upon delivery of Marine Fuels to the Vessel, the Seller and / or the Physical Supplier shall have a maritime lien on the Vessel, sister, associated vessel, or any other assets for any amounts owed to the Seller and / or the Physical Supplier and nothing shall affect or prejudice the right of the Seller or the Physical Supplier to take any action and / or commence proceedings to enforce their 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.

## 25. NOTICES

Any Party giving notice under the 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.

## 26. ENTIRE AGREEMENT AND PRIORITY OF TERMS

- (a) The written terms of the 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. No amendments to a Contract may be made unless agreed by both Parties in writing.

- (b) Each of the Parties acknowledges that in entering into the 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 the Contract.
- (c) Any terms implied into the 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 by any Party to the Contract.
- (d) In the event of a conflict between any of the provisions of these General Terms and Conditions and the Confirmation Note respectively, the provisions of the Confirmation Note shall prevail over these General Terms and Conditions to the extent of such conflict, but no further.
- (e) Any failure by the Seller or the Physical Supplier to enforce any of their rights at any time shall not be construed as a waiver. Any waiver shall be in writing and 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.
- (f) 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.