

TOTAL MARINE FUELS GENERAL TERMS AND CONDITIONS OF SALE GTCs applicable to sale of Marine Fuels from 1st October 2015

It is agreed under the Sale Contract between the Seller and the Buyer that the Seller shall sell and deliver, or arrange for delivery to the nominated Vessel, and the Buyer shall purchase, take delivery of and pay for the Marine Fuel in accordance with the following General Terms and Conditions (the "GTCs").

For each Sale Contract, the terms and conditions of the Sale Contract shall supersede any earlier terms and conditions issued by the Seller and shall override and prevail over any other terms and conditions, including, without limitation, any terms and conditions stipulated, incorporated or referred to by the broker (if any) or by the Buyer whether in the Buyer's Order or with the Buyer's signature, seal or stamp on documentation or anywhere else.

1 – DEFINITIONS AND INTERPRETATION

(a) Headings in these GTCs are for identification purposes only and shall not be deemed to be part of, or taken into consideration in the interpretation or construction of, the GTCs. Unless the Sale Contract expressly require otherwise, any words denoting the singular shall include the plural and vice-versa and the words "include" and "including" are to be construed without limitation.

(b) The following order of priority, from first to last, shall be given to the following documents in the event of any conflict or ambiguity between them:

- (i) Seller's Written Confirmation;
- (ii) these GTCs;
- (iii) Bunker Requisition Form; and
- (iv) Seller's Quotation.

(c) Throughout the Sale Contract, the following definitions shall apply:

"Acceptable Security" means security in respect of the Buyer's obligations under the Sale Contract in a form acceptable to the Seller as requested by the Seller pursuant to clause 15 of these GTCs.

"Affiliate" means in relation to any company, another company that controls, is controlled by, or is under common control with such company.

"Bunker Delivery Note" or **"BDN"** means the document prepared by the Seller or Supplier and signed and stamped by the Master of the Vessel after completion of delivery of Marine Fuel in accordance with clause 10(c).

"Bunker Requisition Form" means the document (i) prepared by the Seller or Supplier and signed and stamped by the Master of the Vessel before commencement of bunkering operations; (ii) requesting delivery of the Marine Fuel, and containing the quantities and the grades of the Marine Fuel requested; and (iii) confirming the name of the Vessel and her IMO number.

"Bunker Tanker Safety Checklist" means the safety checklist signed and stamped by the Master of the Vessel and by the Seller or the Supplier before commencement of bunkering operations in accordance with clause 10(b).

"Business Day" means any day (other than a Saturday or Sunday) on which the banks in the City of London and in Singapore are open for business;

"Buyer" means the purchaser of Marine Fuel specified in the Sale Contract and any of its authorised representatives including the Vessel's master, owners, managers, operators, disponent owners or charterers.

“Buyer’s Order” means the Buyer’s order for Marine Fuel issued pursuant to clause 2 which identifies: (i) the quantity and grade of Marine Fuel required; (ii) the port of delivery; (iii) the name of the Vessel; (iv) the Vessel’s IMO number; and (v) the identity and contact details of the Buyer and the Master.

“Date of Delivery” means the day on which all of the Marine Fuel pursuant to a Sale Contract has been delivered to the Buyer in accordance with clause 8(d).

“ETA” means the estimated date and time of arrival of a Vessel.

“Financial Event” means a significant negative financial event, including a downgrading of a credit rating or being put on a negative watch list by a ratings agency, having a credit alert issued or insolvency.

“Letter of Protest” means a letter from the Buyer or Master handed to the Seller or Supplier on the Date of Delivery pursuant to clause 9.1(b)(ii) disputing the quantity of the Marine Fuel delivered.

“Marine Fuel” means product derived from crude oil to be delivered by the Seller or the Supplier to the Buyer under a Sale Contract.

“Master of the Vessel” or **“Master”** means the individual authorised to represent the Vessel on behalf of the Buyer.

“Off-Specification” means Marine Fuel which does not comply with the grades quoted in the Sale Contract.

“On-Specification” means Marine Fuel which complies with the grades quoted in the Sale Contract.

“Party” means Seller or Buyer, as applicable.

“Quality Claim” means a claim by the Buyer that any Marine Fuel delivered pursuant to a Sale Contract does not comply with clause 4(a).

“Quantity Claim” means a claim by the Buyer that any Marine Fuel delivered pursuant to a Sale Contract does not comply with clause 5.

“Sale Contract” means the contract comprising: (i) these GTCs and the Seller’s Written Confirmation; or (ii) if no Seller’s Written Confirmation has been provided by the Seller, these GTCs, the Seller’s Quotation and the Bunker Requisition Form.

“Seller” means Total Marine Fuels Private Limited or its Affiliate as specified in the Sale Contract.

“Seller’s Quotation” means the Seller’s response to the Buyer’s invitation to tender for the sale and supply of Marine Fuel, which includes the price, or method of calculating the price, for the Marine Fuel requested.

“Seller’s Written Confirmation” means the Seller’s written confirmation of the Buyer’s Order issued pursuant to clause 2.

“Supplier” means a contractor of the Seller engaged to deliver Marine Fuel to the Buyer.

“Vessel” means the vessel to which the Marine Fuel is delivered.

“Vessel Presentation Range” means the day or range of days (or part thereof) specified for delivery in the Seller’s Written Confirmation or established in accordance with the procedures set out, or referred to, in the Seller’s Written Confirmation or if not so specified or established, as notified by the Seller or the Supplier to the Buyer.

2 – QUOTATION AND BINDING AGREEMENT

(a) The Buyer shall send the Buyer’s Order to the Seller and shall ensure that the Buyer’s Order complies with the Seller’s Quotation.

(b) No Sale Contract shall arise until and unless either:

(i) the Seller sends the Seller’s Written Confirmation to the Buyer (directly or via brokers); or

(ii) the Marine Fuel is delivered to the Vessel, whichever takes place first.

In any event, these GTCs shall apply to a Sale Contract.

3 – CANCELLATION

(a) If the Buyer cancels the Buyer’s Order or fails to take full delivery (**“Cancellation”**), the Buyer shall be liable for losses suffered and liabilities incurred by the Seller or the Supplier arising from or in connection with Cancellation, including, as the case may be, but not limited to barge costs, storage, demurrage, pump-back fees, lost profit and hedging costs.

(b) Losses suffered by the Seller or the Supplier arising in the circumstances specified in clause 3 (a) shall be payable by the Buyer to the Seller in the amount of USD 4,000 by way of agreed liquidated damages. If the actual losses suffered by the Seller or the Supplier arising from or in connection with Cancellation exceed USD 4,000, the Buyer shall be liable for and shall indemnify the Seller and the Supplier against any and all losses suffered and liabilities incurred by the Seller or the Supplier in excess of USD 4,000, including costs and lost profit as mentioned in 3(a).

4 - GRADES/QUALITY

(a) Unless otherwise specified in the Seller’s Written Confirmation, the Parties shall use the ISO Standard 8217/2010 when describing the grade of Marine Fuel to be delivered under the Sale Contract. The Buyer shall bear the sole responsibility and liability for the identification of the grades of Marine Fuel suitable for the Vessel, including determination of compatibility with marine fuel already on board the Vessel. The Buyer shall accordingly state the grades required in the Buyer’s Order.

(b) The Seller warrants that the Marine Fuel shall be homogeneous and stable in nature, and On-Specification.

(c) The Seller does not provide any guarantee or warranty, whether express or implied, as to the merchantability, satisfactory quality, fitness or suitability of the Marine Fuel for any particular purpose.

5 – QUANTITIES

The quantity of Marine Fuel to be delivered by the Seller or the Supplier is the quantity stated in the Seller’s Written Confirmation, plus or minus 5% (five per cent) at the Seller’s option unless agreed otherwise. If the Seller does not provide the Seller’s Written Confirmation, the Seller or the Supplier will endeavour to deliver the quantity ordered in the Buyer’s Order but shall not be liable for any short delivery or delivery in excess of the quantity in the Buyer’s Order, and the Buyer shall pay for the quantity delivered as measured in accordance with clause 6 below.

6 – MEASUREMENTS

(a) The Marine Fuel to be delivered under the Sale Contract shall be measured and calculated in accordance with the latest ISO 91 – 1 and ISO 91 – 2 Petroleum measurements tables applicable.

(b) The quantity delivered by the Seller or the Supplier pursuant to clause 8 shall be finally and conclusively determined by the Seller or the Supplier on the basis of the gauge or meter of the Seller's or Supplier's barge, shore-tank, road truck or rail car tank or on the basis of the Seller's or Supplier's oil meters, at the Seller's option.

(c) The Buyer or its representative (including the Buyer's surveyor or inspector) is entitled to witness such measurements.

7 – SAMPLING

(a) Subject to clause 7(f), the Seller or the Supplier shall arrange for four (4) identical representative samples of not less than 400 ml each for each grade of Marine Fuel delivered pursuant to clause 8, to be drawn immediately prior to delivery of the Marine Fuel to the Buyer during the entire bunkering operation in the presence of both the Seller or the Supplier and the Buyer or their respective representatives. Three (3) of these samples are taken for quality purposes (quality samples). The fourth sample is known as the MARPOL sample.

(b) In the presence of the Buyer, the Seller or the Supplier shall securely seal the samples taken in accordance with clause 7(a) and write the seal numbers of each sample on the BDN.

(c) One (1) quality sample and the MARPOL sample shall be retained by the Buyer.

(d) The two (2) other quality samples are to be retained by the Seller or the Supplier.

(e) The three (3) quality samples shall be kept by the Parties for a period of forty (40) calendar days, from the Date of Delivery unless there is a Quality Claim pursuant to clause 9 in which case the samples shall be kept until after the Quality Claim is resolved. At the end of such period, the samples may be discarded by the Parties.

(f) In case of road truck or rail car delivery, the four (4) samples shall be drawn by the Seller or Supplier at the end of the delivery.

8 - DELIVERY

(a) The Marine Fuel shall be delivered to the Vessel at the port or place of delivery stated in the Seller's Written Confirmation at the Requested Time. If the Seller does not provide a Seller's Written Confirmation, the Marine Fuel shall be delivered to the port or place of delivery stated in the Buyer's Order. The Buyer shall give the Vessel's ETA in the Buyer's Order. If the Buyer has not given an ETA in the Buyer's Order, it shall do so within 24 hours of receipt of the Seller's Written Confirmation.

(b) The Seller or Supplier shall be under no obligation to deliver the Marine Fuel if:

(i) the Buyer does not provide the Seller with the ETA within 24 hours receipt of the Seller's Written Confirmation; or

(ii) the Vessel arrives outside the ETA.

(c) The Buyer shall give the Seller or the Supplier 72, 48 and 24 hours definite written notice of the Vessel's arrival, indicating the exact location at the port or place of delivery, and the exact time at which delivery is required, which shall be within 24 hours of the ETA advised to the Seller by the Buyer in accordance with clause 8(a) ("**Requested Time**"). The Seller or Supplier shall endeavour to deliver the Marine Fuel at the Requested Time but shall, under no circumstance, be liable for any delay in the delivery of the Marine Fuel. The Buyer undertakes to accept delivery of Marine Fuel at any time on the day of the Requested Time and to pay for any extra costs incurred by the Seller or the Supplier if the Vessel cannot take delivery of the Marine Fuel upon presentation of the Marine Fuel for delivery. The Buyer shall reimburse any costs incurred by the Seller or Supplier in delivering outside the Requested Time where the Buyer fails to take delivery of the Marine Fuel at the Requested Time due to an act or omission of the Buyer.

(d) Delivery is to take place during working days and hours at the port or place of delivery. Any delivery outside of these periods, if permitted by the port or place of delivery regulations, may give rise to additional charges which shall be for the Buyer's account.

(e) The Marine Fuel shall be delivered, ex delivery hose, from:

- (i) storage tank;
 - (ii) tank truck(s) or rail car(s); or
 - (iii) bunkering barge(s),
- at the Seller's option.

Delivery is deemed complete when risk in the Marine Fuel passes to the Buyer in accordance with clause 13.

(f) The Seller or Supplier shall have all permits and licences required for delivery of Marine Fuel at the port or place of delivery.

(g) The Buyer shall ensure that the Vessel has all certificates required to comply with all relevant regulations relating to delivery of the Marine Fuel at the port or place of delivery and shall instruct the Master of the Vessel to, free of expense Seller or Supplier:

- (i) advise the Seller or the Supplier in writing, prior to delivery, of the maximum allowable pumping rate and pressure and to provide all emergency contact details and the Vessel's emergency shut-down procedures;
- (ii) notify the Seller or the Supplier in writing prior to delivery, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of, and particular to, the Vessel, and which might affect the delivery of the Marine Fuel; and
- (iii) provide a free side of the Vessel for receiving the Marine Fuel and to provide all necessary assistance which the Seller or the Supplier reasonably requires to moor or unmoor the bunkering barge or to connect or disconnect the delivery hose(s).

(h) If delivery is by barge(s), the Buyer shall provide a clean and safe berth for the barge(s) alongside the Vessel's intake pipe or receiving line(s) (as the case may be).

(i) The Buyer shall moor and unmoor, hoist and lower bunkering hoses whenever required by the Seller or Supplier and shall assist the Seller or Supplier in the delivery operations free of charge.

(j) The Buyer shall make, and be solely responsible for, all connections and disconnections between the delivery hose(s) and the Vessel's intake pipe and shall ensure that the delivery hose(s) are properly secured and connected to the Vessel's manifold prior to the commencement of delivery of Marine Fuel to the Vessel.

(k) The Buyer shall ensure that the Vessel has sufficient segregated tankage to receive the quantity of Marine Fuel to be delivered pursuant to a Sale Contract plus or minus 5% in accordance with clause 5. The Buyer shall pay any cost or expense incurred by the Seller or the Supplier resulting from the Buyer's failure to provide sufficient segregated tankage or failure to take delivery of the quantity to be delivered pursuant to a Sale Contract.

(l) If any delay in the delivery of the Marine Fuel is attributable to the Buyer, the Buyer shall indemnify the Seller and the Supplier in respect of all liabilities, costs, losses and expenses arising out of such delay including any liability for demurrage on barges, trucks, or rail cars (if any) and storage costs.

(m) If the Buyer fails to take delivery, in whole or in part, of the quantity to be delivered pursuant to a Sale Contract, the Buyer shall pay in full, the Sale Contract price for the quantity set out in the relevant Sale Contract and the Buyer shall indemnify the Seller and the Supplier and hold the Seller and the Supplier harmless against any and all losses suffered and liabilities incurred as a result of the Buyer's failure.

(n) The Seller and the Supplier shall have no obligations to deliver Marine Fuel to the Buyer pursuant to this clause 8 during any period in which the Buyer fails to comply with clause 15.

9 – CLAIMS

- 9.1 Quantity Claims:

(a) The Buyer shall not be entitled to make any Quantity Claims against the Seller or the Supplier unless the conditions in clause 9.1(b) are met and the Quantity Claim is either:

- (i) that Marine Fuel delivered was not measured in accordance with clause 6(a); or
- (ii) a claim of fraud or material inaccuracy by the Seller or the Supplier as to the quantity of Marine Fuel delivered.

(b) The Buyer or Master shall:

- (i) dispute the quantity of Marine Fuel measured as delivered and specified in the BDN on the Date of Delivery, if the claim is a claim pursuant to clause 9.1(a)(i);
- (ii) issue a Letter of Protest and hand the Letter of Protest to the Seller or the Supplier on the Date of Delivery with respect to claims pursuant to clause 9.1(a)(i) and 9.1(a)(ii); and
- (iii) formally notify the Seller of its claim, in writing, within fourteen (14) calendar days of the Date of Delivery, together with sufficient evidence to support its claim.

- 9.2 Quality Claims:

(a) It is the Buyer's responsibility to satisfy itself, through an independent laboratory analysis, that the Marine Fuel delivered is On-Specification before burning such Marine Fuel having regard to the timing requirement set out in clause 9.2(c).

(b) If Off-Specification Marine Fuel is delivered, the Buyer shall not burn such Marine Fuel and shall take all necessary steps to minimise all damage and losses arising from delivery of Off-Specification Marine Fuel.

(c) Any Quality Claim must be notified in writing by the Buyer to the Seller with all supporting evidence as soon as possible and, in any event, within fourteen (14) calendar days of the Date of Delivery, failing which, such claim shall be waived by the Buyer and absolutely barred.

(d) In the event of a Quality Claim, the Parties shall have the quality of the Marine Fuel analysed by a mutually agreed, qualified and independent laboratory. If the Parties cannot agree on a laboratory within ten (10) calendar days of the Seller receiving the Quality Claim, the Seller may select a laboratory. The Seller shall provide this laboratory with one of the samples retained by the Seller pursuant to clause 7(d).

(e) The analysis pursuant to clauses 9.2(d) shall be carried out using tests that comply with ISO 8217/2010 and ISO 4259 or any other applicable standard specified in Seller's Written Confirmation.

(f) The result of the quality inspection by the Buyer and the Seller pursuant to clause 9.2(d) shall be final and binding on the Parties as evidence of the quality of the Marine Fuel delivered, except in cases of manifest error or fraud by the laboratory. The cost of a quality inspection shall be borne by the Buyer if the Marine Fuel is found to be On-Specification and by the Seller if the Marine Fuel is found to be Off-Specification.

(g) The Seller's and the Supplier's liability (if any) arising out of delivery of Off-Specification Marine Fuel, shall be limited to:

- (i) the Buyer's costs of discharging the Off-Specification Marine Fuel delivered; and
- (ii) the price set out in the Sale Contract for such Off-Specification Marine Fuel.

(h) The Seller and Supplier shall have no liability whatsoever for any other loss or damage arising out of or in connection with delivery of Off-Specification Marine Fuel, including any claims for delay, loss of hire, damage to the Vessel, her machinery or injury to her crew, loss of profit, loss of charter or loss of contract or loss of opportunity.

(i) The Buyer's submission of a Quality Claim does not relieve it of its obligation to pay the Sale Contract price in full, without set-off, deduction or counterclaim, in accordance with an invoice issued by the Seller pursuant to clauses 11 and 12.

(j) If any of the Marine Fuel delivered by the Seller to the Buyer is mixed with any other fuel or substance on a Vessel, the Seller shall not have any liability in relation to such mixed fuel.

10 – DOCUMENTATION

(a) Before commencement of delivery, the Master of the Vessel shall sign a Bunker Requisition Form in the form presented by the Seller or the Supplier specifying the quantities and grades of Marine Fuel to be delivered and other information required pursuant to a Sale Contract.

(b) Before commencement of delivery operations, the Seller or the Supplier shall also present to the Master of the Vessel, a Bunker Tanker Safety Checklist or similar document, which shall be signed by the Seller or the Supplier and by the Master of the Vessel, which shall enable the Buyer to check that all the safety requirements have been met. Signature of this document by the Seller or the Supplier does not relieve the Buyer from its primary obligation and sole responsibility to ensure safety on board its Vessel. The Bunker Tanker Safety Checklist should assist the Master in adhering to the relevant safety procedures of a bunkering operation and should be supplemented by continuous vigilance by the Buyer throughout the whole bunkering operation.

(c) Once the delivery is completed and the quantity of Marine Fuel has been measured in accordance with clause 6, the Buyer shall procure that a Bunker Delivery Note shall be signed and stamped by the Master of the Vessel and by the Seller or the Supplier, and the Buyer shall procure that the Bunker Delivery Note is returned to the Seller or the Supplier, as acknowledgement of the delivery. The Buyer shall procure that a copy of the BDN be retained by the Master of the Vessel and kept on board the Vessel for a minimum of three (3) years from the Date of Delivery. In addition to the information in the Bunker Requisition Form, the BDN shall contain the following information:

- Vessel's name and her IMO number
- Seal numbers of samples taken during delivery
- Viscosity
- Delivered quantity in volume units
- Density in kg/m³ at 15°C or at ambient in conformity with local port regulation
- Delivered quantity in metric tons
- Measured temperature before delivery
- Flash point
- Sulphur content.

(d) The Buyer shall ensure that each Vessel taking delivery of Marine Fuel from the Seller or Supplier has full and valid insurances with reputable insurances to cover all customary risks, including third party property damage, personal injury and damage to the environment.

11 – PRICE

(a) The price of the Marine Fuel to be delivered under a Sale Contract shall be that stated in the Seller's Written Confirmation. That price shall be either a fixed price per unit of Marine Fuel delivered or a price calculated on the basis of a formula as stated in the Seller's Written Confirmation.

(b) The price shall be valid for the delivery date or delivery period (the "price validity time range") identified in the Seller's Written Confirmation.

The Seller or the Supplier shall be under no obligation to deliver if the Vessel arrives outside of the price validity time range. If the Vessel does not arrive within the price validity time range, the Seller is entitled to terminate the Sale Contract immediately and to claim damages as if there was a Cancellation of the Buyer in accordance with clause 3. The Seller is also entitled, at its sole discretion, to elect to deliver the Marine Fuel on new terms to be agreed between the Buyer and the Seller and without prejudice to the Seller's right to claim damages as if there was a Cancellation by the Buyer in accordance with clause 3.

(c) Unless otherwise agreed between the Parties, the price stated in the Sale Contract excludes all taxes, charges or dues which are levied against the Seller or Supplier whatsoever whether by the country where delivery takes place or by any governmental, regional or local authorities in connection with the Sale Contract and includes:

- (i) wharfage charges, barging charges or other similar charges;
 - (ii) mooring charges or port duties incurred by the Seller; and
 - (iii) duties, taxes, charges, freights or other costs in the country where delivery takes place.
- The Buyer shall bear the cost of any such taxes, charges or dues.

(d) The Seller may invoice the Buyer for any charges, taxes or dues, including any that the Supplier demands from the Seller after the Seller has issued the Seller's Written Confirmation.

12 – PAYMENT

(a) The Seller shall provide to the Buyer an invoice or invoices for:

- (i) the amount of the Marine Fuel delivered pursuant to clause 5 and determined in accordance with clause 11;
- (ii) any additional applicable taxes, charges and dues in accordance with clauses 11(c) and 11(d); and
- (iii) any costs for Cancellation pursuant to clause 3.

(b) The Buyer shall pay the amount invoiced to it by the Seller in accordance with clause 12(a) in full, without set-off, deduction or discount, free of bank charges and in the manner and at the place indicated on the invoice or invoices, unless otherwise agreed in writing between the Parties (electronic or telegraphic invoice is acceptable, at the option of the Seller). Unless otherwise agreed between the Seller and the Buyer in the Sale Contract, all payments shall be due thirty (30) calendar days from the Date of Delivery.

(c) Payment shall be deemed to have been made on the date the payment is credited to the account of the bank designated by the Seller. If the due date falls on a non-Business Day, the Buyer shall pay on or before the Business Day nearest to the due date. If the preceding and succeeding Business Days are equally near to the due date, then payment shall be made on or before the preceding Business Day.

(d) For all sums not paid on the due date and without any reminder being required, late payment interest shall apply, due from the day following the due date appearing on the invoice, calculated as per the USD rate for ONE (1) year of BRITISH BANKERS ASSOCIATION LIBOR RATES (**BBALR**) as published on the due date on Reuters page "LIBORO1" and on www.bba.org.uk/public/libor (or successor thereto), plus TWO (2) percentage points, such interest being in no circumstances to be construed as an agreement by Seller to provide extended credit, and is in addition to any other rights of the Seller arising out of such delay.

(e) The Seller is entitled to suspend any pending deliveries under any Sale Contracts with the Buyer or to require the Buyer to provide pre-payment for any such pending deliveries as long as any invoiced amount remains overdue, regardless of the cause of the delay in payment.

(f) In addition to any other rights of the Seller, all expenses incurred by the Seller, including reasonable legal fees, court costs and collection agency fees, caused by delayed payment or non-payment by the Buyer of the full amount of Seller's invoice shall be for the account of the Buyer and payable upon demand with supporting documentation.

13 - RISK AND TITLE

(a) Risk in the Marine Fuel shall pass to the Buyer once the Marine Fuel has passed the flange connection between:

- (i) the Vessel's bunker manifold; and
- (ii) the delivery facilities provided by the Seller or the Supplier.

(b) Title to the Marine Fuel shall pass to the Buyer upon **full** payment for the value of the Marine Fuel delivered, pursuant to the terms of clause 12. Until such **full** payment has been made, the Seller shall have a lien over the Vessel and her bunkers for the value of the Marine Fuel delivered. If the Marine Fuel has been commingled with other bunkers on board of the Vessel, the Seller shall have a lien over the Vessel and such part of the commingled bunkers as corresponds with the value of the quantity of Marine Fuel delivered.

14 – TERMINATION

(a) The Seller shall be entitled to terminate the Sale Contract if any of the following circumstances arise:

- (i) breach of the Sale Contract by the Buyer;
- (ii) any application being made or any proceedings being commenced, or any order or judgement being given by any court, for the winding up, bankruptcy, insolvency, dissolution, administration or re-organisation or similar of the Buyer;
- (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Buyer or the Buyer's credit support provider, or all or substantially all of the Buyer's or the Buyer's credit support provider's assets or analogous procedure or step taken in any jurisdiction with respect to the Buyer or the Buyer's credit support provider.
- (iv) any suspension of payment, cessation to carry on business or compounding or making any special arrangement with its creditors by the Buyer;
- (v) any act being done or event occurring which, under the applicable law, has a substantially similar effect to any of those acts or events in paragraph (iii);
- (vi) non-payment by the Buyer pursuant to clause 12;
- (vii) failure by the Buyer to provide or maintain Acceptable Security required under clause 15; or
- (viii) failure of the Buyer's credit support provider to respond to a claim by the Seller on any Acceptable Security.

(b) On termination of the Sale Contract pursuant to clause 14(a), the Seller may:

- (i) direct the Buyer to pay on demand all outstanding monies owed to the Seller pursuant to the Sale Contract, and any actual costs incurred by the Seller arising out of the termination; and
- (ii) apply any security provided by the Buyer towards payment of such monies.

(c) Termination by the Seller under this clause 14 shall not affect any other rights or remedies of the Seller.

(d) Clauses of the Sale Contract survive termination, which by their nature, are intended to survive, including any clauses dealing with termination, payment, indemnities and dispute resolution.

15 – SECURITY

(a) The Buyer shall provide to the Seller such Acceptable Security requested by the Seller in any Sale Contract in the form, on the terms and at the time specified by the Seller in such Sale Contract.

(b) The Seller shall not be required to deliver Marine Fuel pursuant to a Sale Contract until the Buyer has provided the Acceptable Security required under clause 15(a).

(c) If, in the Seller's opinion acting in good faith, there is a Financial Event in the Buyer's financial condition or business or in the consolidated financial condition or business of the Buyer's group taken as a whole (if the Buyer is part of a group of companies), the Seller may, by written notice to the Buyer:

- (i) require the Buyer to provide Acceptable Security with respect to its obligations under any Sale Contracts in the form, in the terms and at the time required by the Seller;
- (ii) cancel or suspend any credit arrangements the Seller has with the Buyer;
- (iii) suspend delivery of Marine Fuel to the Buyer under any Sale Contract between the Seller and the Buyer or any Affiliate of the Buyer until such time as the Acceptable Security requested pursuant to clause 15(c)(i) has been provided;

- (iv) require the Buyer to pay immediately on demand all sums due in respect of Marine Fuel delivered to the Seller or to the Seller's Affiliates under the Sale Contract between the Seller and the Buyer or the Buyer's Affiliates; or
- (v) set-off against any amounts due to the Buyer or its Affiliates by the Seller or its Affiliates.

(d) Deliveries of Marine Fuel are made not only on the credit of the Buyer but also on the faith and credit of the Vessel and the Seller shall have and may assert, in addition to any other security, a lien against the Vessel and her bunkers and against all assets, vessels and bunkers, in the same ownership, management, operation or control of the Buyer for all sums due and owing, including interests and costs in connection with the Sale Contract.

16 – INDEMNITY AND EXCLUSION OF LIABILITY

(a) The Buyer indemnifies, defends and holds harmless the Seller and the Supplier from and against any claims, demands, proceedings, damages and liabilities for loss of, or damage to, property or for death of or injury to any person and against all associated costs (including reasonable attorney's fees), losses and expenses arising out of or in connection with a Sale Contract except to the extent caused by the gross negligence or the wilful misconduct of the Seller or the Supplier.

(b) Except as expressly stated in a Sale Contract, the Seller and the Supplier shall have no liability to the Buyer under or in connection with a Sale Contract for any loss or damage of any kind, whether direct or indirect, special, incidental or consequential, nor for loss of profit sustained by the Buyer whether arising under a Sale Contract, in tort, negligence or generally at law. The Seller and the Supplier's liability under a Sale Contract is limited to the purchase price of the Marine Fuel purchased by the Buyer under that Sale Contract.

(c) Each indemnity in a Sale Contract is a continuing obligation separate and independent from the other obligations of the Parties. It is not necessary for the Seller to incur expense or to make any payment before enforcing a right of indemnity conferred by a Sale Contract. The Buyer must pay to the Seller on demand any amount in respect of which it gives an indemnity in a Sale Contract.

17 – SUBSTITUTION

The Seller reserves its right to substitute for itself a third party for the performance of all or part of its obligations under the Sale Contract. The Seller shall remain responsible to the Buyer for the performance of the Sale Contract.

18 – ASSIGNMENT AND TRANSFER

Neither Party shall assign or transfer any benefit or obligation under a Sale Contract, in whole or in part, without the prior written consent of the other Party provided, except that the Seller may assign or transfer any benefit or obligation under a Sale Contract to any of its Affiliates without obtaining the prior written consent of the Buyer.

If such written consent is given and wherever the assignment or transfer is made, subject to the Parties agreeing otherwise in writing, the Party assigning or transferring such benefit or obligation shall remain jointly and severally liable with the party to which such benefit or obligation are assigned or transferred to ("**New Party**") for the full performance of the New Party's obligations under the relevant Sale Contract.

Notwithstanding the above, the Parties agree that the Seller shall be free to assign its right to receive and collect payment under a Sale Contract without the completion of any prior formality of any type.

19 - FORCE MAJEURE

Neither the Seller nor the Supplier shall not be responsible for any loss, damage, delay or failure resulting from:

(a) an act of God, any act of war, invasion, armed conflict, act of a foreign enemy, blockade, embargo, revolution, riot, sabotage, terrorism, any national strike, lock-out, or any other industrial action or dispute or the port of delivery being affected by war, commotion, riot, quarantine, strike, stoppage, lock-out, arrest, restraint of princes, rulers and people;

(b) any other event whatsoever which:

(i) the Seller or the Supplier could not have prevented by exercising its reasonable care and skill; and
(ii) was beyond the Seller or the Supplier's reasonable control; or

(c) a restriction on or failure of the Seller's or the Supplier's intended source of supply of Marine Fuel caused by an event described in clauses 19(a) or 19(b).

20 - SAFETY AND ENVIRONMENT

In the event of any spillage (which for the purpose of this clause 20 shall mean any leakage, escape, or overflow of the Marine Fuel) causing or likely to cause pollution occurring at any stage of the bunkering operation, the Buyer and the Seller or the Supplier shall jointly, and regardless as to whether the Buyer, the Seller or the Supplier is responsible, immediately take such action as is necessary to clean up, which shall always be conducted in accordance with such local laws and regulations that may apply.

If the pollution is caused by an act or omission of the Buyer, its servant or agents the Buyer shall indemnify the Seller and the Supplier for the cost incurred by the Seller and the Supplier in connection with it.

21 - MATERIAL SAFETY DATA SHEETS (MSDS) AND REACH REGULATION

The MSDS are transmitted to the Buyer and may be consulted over the Internet (www.quickfds.com). The delivered products subject to Regulation EC No. 1907/2006 of 18 December 2006 (REACH Regulation) comply with the REACH Regulation in force on the date of their delivery, for those uses and under those conditions stated in the MSDS and/or in the Seller's specifications. The Seller makes no representation or warranty and shall bear no liability for any other use, even if notified by the Buyer, or any use not provided for in the MSDS and/or in the Seller's specifications, or which does not comply with the provisions of the MSDS. In addition, no indemnity may be charged to the Seller or the Supplier due to the implementation of the REACH Regulation, in particular in the event of late delivery or interruption in supplies of products.

22 – SECURITY FOR COSTS

Notwithstanding anything to the contrary in a Sale Contract or in any terms and conditions incorporated in the same, any claim against the Seller or the Supplier shall be deemed to be irrevocably abandoned if, within fourteen (14) calendar days of commencement of proceedings or arbitration, the Buyer has not arranged security for costs in favour of the Seller and in an amount at least equal to the quantum of the Buyer's claim by way of a First Class European bank Letter of Guarantee. This is without prejudice to the Seller's right to demand security for any claim/counterclaim against the Buyer.

23 - LAW AND JURISDICTION

(a) The Sale Contract (including the arbitration agreement in this clause 23) and any non-contractual obligations arising out of or in connection with a Sale Contract shall be governed by English law, without giving effect to any conflict of laws principles that may require the application of laws of another jurisdiction.

(b) If any dispute arises out of or in connection with a Sale Contract, including any question as to the existence, validity or termination of a Sale Contract or this clause 23 (a "**Dispute**"), the Parties shall attempt, in good faith, to promptly resolve the Dispute within thirty (30) days from the date of either Party giving notice of the Dispute to the other Party.

(c) Subject to clause 23(a) and 23(b), any Dispute shall be resolved by arbitration in accordance with the ICC Rules of Arbitration which are deemed to be incorporated by reference into this clause.

(d) The arbitral tribunal shall be composed of three (3) arbitrators pursuant to the ICC Rules of Arbitration.

(e) Each Party shall appoint one arbitrator and the two party-appointed arbitrators shall appoint the Chairman. If a Party has not appointed an arbitrator within thirty (30) days of having respectively requested or received notice of the arbitration, such arbitrator will be appointed by the ICC. If the party-appointed arbitrators cannot agree on the Chairman within fourteen (14) days of the date of nomination of the later of the two party-nominated arbitrators, the Chairman shall be appointed by the ICC.

(f) The seat of arbitration shall be London, the hearings of the arbitration may be held in Singapore (for convenience only, and at the sole discretion of, Total) and the language of the arbitration shall be English.

(g) In addition to ICC Rules of Arbitration, the Parties agree that the arbitration shall be conducted in accordance with the IBA Rules on the Taking of Evidence in International Arbitration.

(h) The parties to the arbitration and their employees and agents shall hold the fact, substance and results of any arbitration proceedings under this clause 23 in strict confidence, except to the limited extent necessary to comply with a court order, to enforce a final settlement agreement, to obtain and secure enforcement of, or a judgment on, the arbitral tribunal's decisions and award, or as otherwise required by law. All information and documents disclosed by any party to the arbitration shall remain private and confidential to the disclosing party, and may not be disclosed by any other party to the arbitration unless required by law.

(i) The Parties irrevocably submit to the non-exclusive jurisdiction of the English courts to support and assist the arbitration process pursuant to clause 23, including if necessary the grant of interlocutory relief pending the outcome of that process.

(j) Notwithstanding the other provisions of this clause 23, the Seller may commence proceedings for interim or conservatory relief against the Buyer in any court in any jurisdiction and the commencement and pursuit of such proceedings in any one court or jurisdiction shall not preclude the Seller from commencing proceedings for interim or conservatory relief in any other court or jurisdiction (whether concurrent or not) if and to the extent permitted by applicable law.

(k) Notwithstanding the dispute resolution mechanism of this clause 23, the Seller also reserves its right to commence judicial proceedings for the limited purpose of collection of monies against Buyer in any court with jurisdiction, as well as, to secure or obtain remedies of attachment, garnishment, seizure or any others to secure the effectiveness of a court judgment on a claim for the payment of monies against the Buyer.

(l) Each Party must continue to perform its obligations under a Sale Contract, notwithstanding the existence of a Dispute.

(m) The United Nations Convention on Contracts for the International Sale of Goods 1980 shall not apply to any Sale Contracts.

24 – GENERAL

(a) No failure to exercise, nor any delay in exercising, any right, power or remedy under a Sale Contract or by law shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy.

(b) The Seller's Affiliates may enforce and rely on clauses 1, 3, 5, 6, 7, 8, 9, 10, 11, 13, 16, 19, 20, 22, 23 and 24 under a Sale Contract to the same extent as if it were a party to the relevant Sale Contract and are intended to be enforceable by such parties pursuant to *The Contracts (Rights of Third Parties) Act 1999*. No other term or condition shall be enforceable pursuant to that Act by any person who is

not a party to the relevant Sale Contract. Unless otherwise agreed in writing, the Sale Contract may be amended or terminated without the consent of the Seller's Affiliates.

(c) Words shall bear their natural meaning. The Parties have had the opportunity of obtaining legal advice and accordingly, no clause shall be construed *contra proferentum*.

(d) Part or all of any clause of a Sale Contract that is illegal or unenforceable may be severed from the Sale Contract however the remaining clauses of the Sale Contract will continue in full force and effect.

(e) Except as expressly stated otherwise in a Sale Contract, the rights of a party under a Sale Contract are cumulative and in addition to any of the other rights of that party.