

## GENERAL TERMS & CONDITIONS OF SALE

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## 1. DEFINITIONS

THROUGHOUT THESE GENERAL TERMS AND CONDITIONS, UNLESS THE CONTEXT REQUIRES OTHERWISE, THE FOLLOWING DEFINITIONS SHALL APPLY:

"ACTUAL READINESS" REFERS TO THE VESSEL'S COMPLETE READINESS TO RECEIVE MARINE FUELS AT THE AGREED DELIVERY LOCATION WITHIN THE SPECIFIED DELIVERY PERIOD.

"BANKING DAY" MEANS A DAY WHEN BANKS ARE OPEN FOR BUSINESS IN BOTH THE SELLERS' AND BUYERS' LOCATIONS. IF THE PAYMENT IS IN US DOLLARS, BANKS MUST ALSO BE OPEN IN NEW YORK, OR IN THE CASE OF ANOTHER CURRENCY, IN THE RELEVANT COUNTRY OF THAT CURRENCY.

"BDN" STANDS FOR BUNKER DELIVERY NOTE, BUNKER DELIVERY RECEIPT (BDR), OR BILL OF LADING (BL).

"BUNKER TANKER" REFERS TO THE BARGE, TANKER, OR TANK TRUCK DELIVERING MARINE FUELS TO THE VESSEL.

"BUYERS" MEANS THE PARTY SPECIFIED IN THE CONFIRMATION NOTE THAT AGREES TO PURCHASE, RECEIVE, AND PAY FOR THE MARINE FUELS.

"CONFIRMATION NOTE" REFERS TO THE SELLER'S WRITTEN CONFIRMATION OF THE AGREEMENT.

"CONTRACT" REFERS TO THESE GENERAL TERMS AND CONDITIONS, AS AMENDED AND SUPPLEMENTED BY THE CONFIRMATION NOTE.

"DAY/DAYS" REFERS TO CALENDAR DAYS, UNLESS OTHERWISE SPECIFIED.

"DELIVERY PERIOD" REFERS TO THE VESSEL'S ETA/DELIVERY WINDOW AS OUTLINED IN THE CONFIRMATION NOTE.

"GENERAL TERMS AND CONDITIONS" REFERS TO THESE STANDARD BUNKER TERMS AND CONDITIONS.

"MARINE FUELS" REFERS TO THE PRODUCTS AS SPECIFIED IN THE CONFIRMATION NOTE.

"PARTIES" REFERS TO BOTH THE SELLERS AND BUYERS COLLECTIVELY.

"PARTY" REFERS TO EITHER THE SELLERS OR THE BUYERS.

"RELATED COMPANIES" MEANS STATUS ENERGY DMCC OR ANY OTHER AFFILIATED COMPANY OF FLEX COMMODITIES DMCC.

"REQUIRED SUPPLY TIME" REFERS TO THE TIME BY WHICH THE SELLER MUST COMMENCE DELIVERY OF MARINE FUELS, AS SET OUT IN CLAUSE 5(C), 5(D), OR 5(E) (DELIVERY), AS APPLICABLE.

"SELLERS" REFERS TO FLEX COMMODITIES DMCC, STATUS ENERGY DMCC, OR ANY OF THEIR AFFILIATES, AS SPECIFIED IN THE CONFIRMATION NOTE, RESPONSIBLE FOR SELLING AND ARRANGING THE DELIVERY OF THE MARINE FUELS.

"VESSEL" REFERS TO THE VESSEL NOMINATED BY THE BUYERS TO RECEIVE THE MARINE FUELS.

## 2. SPECIFICATIONS / GRADES / QUALITY

- (A) THE BUYERS ARE SOLELY RESPONSIBLE FOR SELECTING THE SPECIFICATIONS AND GRADES OF MARINE FUELS SUITABLE FOR USE BY THE VESSEL.
- (B) THE SELLERS WARRANT THAT THE MARINE FUELS WILL BE HOMOGENEOUS, STABLE, AND IN COMPLIANCE WITH THE SPECIFICATIONS AND GRADES AGREED UPON BY BOTH PARTIES, AS OUTLINED IN THE CONFIRMATION NOTE.

## 3. QUANTITIES/MEASUREMENTS

- (A) SUBJECT TO THE PROVISIONS OF SUBCLAUSE 6(C) (DOCUMENTATION) AND CLAUSE 9 (CLAIMS), THE QUANTITIES OF MARINE FUELS DELIVERED SHALL BE CONCLUSIVELY MEASURED BY THE OFFICIAL GAUGE, MANUAL SOUNDING, OR METER OF THE BUNKER TANKER

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MAKING THE DELIVERY. IN THE CASE OF EX-WHARF DELIVERY, MEASUREMENTS WILL BE TAKEN FROM THE SHORE METER OR SIMILAR EQUIPMENT. FOR CLARITY, QUANTITY MEASUREMENTS OR CLAIMS BASED ON THE BUYERS' VESSEL MEASUREMENTS SHALL NOT BE ACCEPTED.

- (B) THE SELLERS SHALL INVITE THE BUYERS OR THEIR REPRESENTATIVES TO WITNESS THE OPENING AND CLOSING GAUGE READINGS, MANUAL SOUNDINGS, OR METER READINGS, AS WELL AS THE MEASUREMENT OF THE BUNKER TEMPERATURE FOR ALL BUNKER TANKS ON THE BUNKER TANKER. THE BUYERS OR THEIR REPRESENTATIVES SHALL BE GIVEN ADEQUATE INFORMATION AND ACCESS TO THE OFFICIAL GAUGE, MANUAL SOUNDINGS, OR METER READINGS OF THE BUNKER TANKER OR SHORE METER TO VERIFY THE DELIVERED VOLUME.
- (C) THE ABSENCE OF THE BUYERS OR THEIR REPRESENTATIVES DURING THE MEASUREMENT PROCESS SHALL NOT AFFECT THE VALIDITY OF THE QUANTITIES OF MARINE FUELS DELIVERED. IN THE EVENT LOCAL BUNKERING RULES AND REGULATIONS APPLY, THEY WILL TAKE PRECEDENCE OVER THE PROVISIONS OF SUBCLAUSES 3(A) AND 3(B) (QUANTITIES/MEASUREMENTS).
- (D) THE BUYERS MUST APPOINT REPRESENTATIVES AND/OR INSPECTORS BEFORE THE DELIVERY BEGINS, NOT AFTER THE FACT. ANY REQUEST TO MEASURE OR INSPECT THE TANKS AFTER THE DELIVERY IS COMPLETED WILL NOT BE ENTERTAINED.
- (E) THE MARINE FUELS SUPPLIED UNDER THIS CONTRACT SHALL BE MEASURED AND CALCULATED IN ACCORDANCE WITH THE ISO, ASTM, API, AND IP PETROLEUM MEASUREMENT TABLES.

#### 4. SAMPLING

- (A) THE SELLERS SHALL INVITE THE BUYERS OR THEIR REPRESENTATIVES TO WITNESS THE SAMPLING OF MARINE FUELS. DURING BUNKERING, A PRIMARY SAMPLE WILL BE TAKEN AT A POINT CLOSEST TO THE BUNKER TANKER'S MANIFOLD, FOLLOWING THE PROCEDURES OUTLINED IN IMO RESOLUTION MEPC.182(59) GUIDELINES FOR THE SAMPLING OF FUEL OIL FOR DETERMINATION OF COMPLIANCE WITH MARPOL 73/78 ANNEX VI OR ANY SUBSEQUENT AMENDMENTS. THIS PRIMARY SAMPLE WILL BE THOROUGHLY MIXED AND CAREFULLY DIVIDED INTO IDENTICAL SAMPLES, WITH THE QUANTITY DETERMINED BY THE SELLERS. THE ABSENCE OF THE BUYERS OR THEIR REPRESENTATIVES WILL NOT AFFECT THE VALIDITY OF THE SAMPLES TAKEN. IN THE EVENT LOCAL BUNKERING RULES AND REGULATIONS APPLY, THEY WILL TAKE PRECEDENCE OVER THIS SUBCLAUSE 4(A) (SAMPLING).
- (B) THE SAMPLES REFERENCED IN SUBCLAUSE 4(A) (SAMPLING) SHALL BE SECURELY SEALED AND LABELED WITH THE VESSEL'S NAME, DELIVERY FACILITY IDENTITY, PRODUCT NAME, DELIVERY DATE AND PLACE, SAMPLING POINT, AND SEAL NUMBER. THE LABELS WILL BE AUTHENTICATED WITH THE VESSEL'S STAMP AND SIGNED BY THE SELLERS' REPRESENTATIVE AND THE VESSEL'S MASTER OR THE MASTER'S AUTHORIZED REPRESENTATIVE.
- (C) THE SELLER WILL RETAIN SOME OF THE SAMPLES FOR A REASONABLE PERIOD, AS DETERMINED BY THE SELLERS, WHILE ANY SAMPLES NOT RETAINED BY THE SELLERS SHALL BE KEPT ON BOARD THE VESSEL (ONE OF WHICH IS FOR MARPOL COMPLIANCE PURPOSES).
- (D) SAMPLES TAKEN AT THE VESSEL'S MANIFOLD OR FROM ITS TANK(S) SHALL NOT BE CONSIDERED VALID FOR DETERMINING THE QUALITY OF THE MARINE FUELS SUPPLIED.

#### 5. DELIVERY

- (A) DURING THE DELIVERY PERIOD:
  - (I) THE SELLERS SHALL DELIVER THE MARINE FUELS; AND
  - (II) THE BUYERS SHALL ACCEPT DELIVERY OF THE MARINE FUELS.
- (B) DELIVERY SHALL BE MADE DAY AND NIGHT, INCLUDING SUNDAYS AND HOLIDAYS, AT THE AGREED PORT OR DELIVERY LOCATION, SUBJECT TO THE LOCAL CUSTOMS OF THAT PORT OR LOCATION. IF THE SELLERS APPOINT A PORT AGENT AT THE DELIVERY PORT FOR THE BUYERS AND/OR THEIR VESSEL, THE AGENT WILL BE CONSIDERED APPOINTED ON BEHALF OF THE BUYERS AND AT THEIR EXPENSE. THE SELLERS SHALL NOT BE RESPONSIBLE FOR ANY PAYMENTS TO SUCH AGENTS, NOR WILL THEY HAVE ANY LIABILITY FOR THE APPOINTMENT OR ACTIONS/OMISSIONS OF THE PORT AGENT.

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- (C) THE BUYERS, OR THEIR AGENTS AT THE PORT OF DELIVERY, MUST PROVIDE THE SELLERS OR THEIR REPRESENTATIVES WITH APPROXIMATELY 72 AND 48 HOURS' NOTICE AND A DEFINITE 24-HOUR NOTICE OF THE VESSEL'S ARRIVAL, INCLUDING THE TIME AND LOCATION FOR FUEL DELIVERY. IF THE SELLERS AGREE TO THE REQUESTED DELIVERY TIME AS PER THE 24-HOUR NOTICE, OR IF BOTH PARTIES AGREE TO A DIFFERENT TIME, THE SELLERS SHALL CONFIRM THIS IN WRITING TO THE BUYERS ("CONFIRMED DELIVERY TIME").
- (D) IF THE VESSEL IS READY WITHIN 6 TO 12 HOURS OF THE CONFIRMED DELIVERY TIME, THE SELLERS SHALL COMMENCE DELIVERY WITHIN 6 TO 12 HOURS OF EITHER: (I) THE CONFIRMED DELIVERY TIME; OR (II) THE VESSEL'S ACTUAL READINESS, WHICHEVER IS LATER.
- (E) IF THE VESSEL'S ACTUAL READINESS FALLS OUTSIDE THE 6-HOUR WINDOW OF THE CONFIRMED DELIVERY TIME, THE SELLERS WILL MAKE REASONABLE EFFORTS (WITHOUT GUARANTEE) TO COMMENCE DELIVERY WITHIN 12 TO 24 HOURS OF EITHER: (I) THE CONFIRMED DELIVERY TIME; OR (II) THE ACTUAL READINESS, WHICHEVER IS LATER.
- (F) IF NO CONFIRMED DELIVERY TIME IS AGREED, THE SELLERS WILL MAKE REASONABLE EFFORTS TO COMMENCE DELIVERY WITHIN 24 HOURS OF THE VESSEL'S ACTUAL READINESS.
- (G) IF THE VESSEL ARRIVES EARLIER THAN THE AGREED DELIVERY WINDOW, THE SELLERS WILL MAKE REASONABLE EFFORTS TO SUPPLY THE VESSEL UPON REQUEST, SUBJECT TO POTENTIAL PRICE ADJUSTMENTS, BUT ARE NOT OBLIGATED TO DO SO UNTIL THE AGREED DELIVERY WINDOW BEGINS.
- (H) THE SELLERS SHALL:
  - (I) POSSESS ALL NECESSARY PERMITS REQUIRED TO COMPLY WITH RELEVANT REGULATIONS FOR DELIVERING MARINE FUELS AT THE PORT OR DELIVERY LOCATION AND ENSURE THE VESSEL IS CLEARED FOR FUEL DELIVERY BY THE RELEVANT PORT AND LOCAL AUTHORITIES.
  - (II) SUBJECT TO LOCAL LAWS, PROVIDE ANY REASONABLY REQUIRED ASSISTANCE IN CONNECTING AND DISCONNECTING THE DELIVERY HOSE(S) TO THE VESSEL'S BUNKER MANIFOLD.
- (I) THE BUYERS ARE RESPONSIBLE FOR MAKING ALL CONNECTIONS AND DISCONNECTIONS BETWEEN THE DELIVERY HOSE(S) AND THE VESSEL'S BUNKER MANIFOLD AND ENSURING PROPER CONNECTION BEFORE DELIVERY BEGINS.
- (J) THE BUYERS AND THEIR AGENTS MUST ENSURE THE VESSEL HAS ALL NECESSARY PERMITS (E.G., PORT CLEARANCE, CUSTOMS CLEARANCE, COASTGUARD CLEARANCE, ETC.) AND CERTIFICATES TO COMPLY WITH ALL REGULATIONS FOR MARINE FUEL DELIVERY AT THE PORT. ADDITIONALLY, THE VESSEL'S MASTER OR THEIR AUTHORIZED REPRESENTATIVE MUST:
  - (I) INFORM 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 SPECIFIC TO THE VESSEL THAT COULD IMPACT THE DELIVERY OF MARINE FUELS; AND
  - (III) PROVIDE A CLEAR SIDE FOR RECEIVING MARINE FUELS AND OFFER ANY NECESSARY ASSISTANCE REQUIRED TO MOOR OR UNMOOR THE BUNKER TANKER, AS APPLICABLE.
- (K) THE BUYERS ARE SOLELY RESPONSIBLE FOR UNDERSTANDING AND COMPLYING WITH ALL REGULATIONS, REQUIREMENTS, PRACTICES, AND PROCEDURES AT THE DELIVERY PORT, INCLUDING BERTH RESTRICTIONS AND REQUIREMENTS. THE BUYERS SHALL INDEMNIFY THE SELLERS AGAINST ANY LIABILITIES, LOSSES, COSTS, DAMAGES, OR EXPENSES INCURRED AS A RESULT OF THE BUYERS' FAILURE TO COMPLY WITH THESE REGULATIONS, REQUIREMENTS, OR PRACTICES.

## 6. DOCUMENTATION

- (A) PRIOR TO THE COMMENCEMENT OF DELIVERY, THE SELLERS SHALL PRESENT A BUNKER PRE-DELIVERY FORM OR SIMILAR DOCUMENT FOR WRITTEN ACKNOWLEDGMENT BY THE VESSEL'S MASTER OR THE MASTER'S AUTHORIZED REPRESENTATIVE. THIS DOCUMENT, SIGNED BY THE SELLERS OR THEIR REPRESENTATIVE, SHALL INCLUDE THE QUANTITIES TO BE DELIVERED AND ALL REQUIRED INFORMATION, PARTICULARLY THE VALUES FOR VISCOSITY, DENSITY, SULFUR CONTENT, FLASH POINT, AND DELIVERY TEMPERATURE. IF AVAILABLE, SIMILAR INFORMATION SHOULD ALSO BE PROVIDED FOR VANADIUM, ASH CONTENT, WATER CONTENT, AND POUR POINT. IF LOCAL BUNKERING RULES AND REGULATIONS ARE MANDATORY, THEY WILL TAKE PRECEDENCE OVER THE PROVISIONS OF THIS SUBCLAUSE 6(A) (DOCUMENTATION).

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- (B) AFTER DELIVERY IS COMPLETED AND QUANTITIES ARE MEASURED, A BUNKER DELIVERY NOTE (BDN) SHALL BE SIGNED AND STAMPED BY THE VESSEL'S MASTER OR THE MASTER'S AUTHORIZED REPRESENTATIVE AND RETURNED TO THE SELLERS OR THEIR REPRESENTATIVE AS ACKNOWLEDGMENT OF THE ACTUAL VOLUME AND DELIVERY TEMPERATURE. A DUPLICATE COPY SHALL BE RETAINED BY THE VESSEL'S MASTER. THIS RECEIPT MUST INCLUDE THE FOLLOWING MINIMUM INFORMATION, WHICH IS WARRANTED BY THE SELLERS: DELIVERED QUANTITY IN VOLUME UNITS, DENSITY IN KG/M<sup>3</sup> AT 15°C AS PER ISO STANDARDS, DELIVERY TEMPERATURE, FLASH POINT, SULFUR CONTENT IN % M/M AS PER ISO STANDARDS, AND VISCOSITY.
- (C) IF THE VESSEL'S MASTER OR THE MASTER'S AUTHORIZED REPRESENTATIVE IS UNSATISFIED WITH THE SAMPLING, QUANTITY, OR ANY OTHER ASPECT OF THE MARINE FUELS OR THEIR DELIVERY, THE MASTER OR AUTHORIZED REPRESENTATIVE SHALL, UPON COMPLETION OF DELIVERY:
  - (I) MAKE APPROPRIATE REMARKS IN THE BDN DETAILING THE COMPLAINTS AND/OR REFER TO A SEPARATE LETTER OF PROTEST; OR
  - (II) IF REMARKS IN THE BDN ARE NOT PERMITTED, ISSUE A SEPARATE LETTER OF PROTEST.
  - (III) RECEIPT OF EITHER THE REMARKS IN THE BDN OR THE LETTER OF PROTEST MUST BE ACKNOWLEDGED IN WRITING BY THE SELLERS' REPRESENTATIVE.

## 7. PRICE

- (A) THE SELLERS' PRICE FOR THE MARINE FUELS, AS SPECIFIED IN THE CONFIRMATION NOTE, IS VALID ONLY IF THE VESSEL ARRIVES WITHIN THE AGREED DELIVERY PERIOD. THE PRICE WILL BE THE AMOUNT EXPRESSED PER UNIT FOR EACH GRADE OF MARINE FUEL DELIVERED INTO THE VESSEL'S TANKS, EITHER FREE DELIVERED OR EX-WHARF, AS STATED IN THE CONFIRMATION NOTE. IF THE PRICE IS QUOTED IN VOLUME UNITS, THE CONVERSION TO STANDARD VOLUME WILL BE BASED ON SIXTY (60) DEGREES FAHRENHEIT OR FIFTEEN (15) DEGREES CELSIUS. SHOULD THE SELLERS AGREE TO ARRANGE DELIVERY OUTSIDE THE SPECIFIED DELIVERY PERIOD, THEY RESERVE THE RIGHT TO ADJUST THE PRICE TO REFLECT THE PREVAILING MARKET RATES.
- (B) ANY ADDITIONAL CHARGES INCURRED BY THE SELLERS THAT ARE FOR THE BUYERS' ACCOUNT MAY BE OUTLINED IN THE SELLERS' QUOTATION AND/OR IN THE CONFIRMATION NOTE. THESE CHARGES SHALL INCLUDE, BUT ARE NOT LIMITED TO:
  - (I) WHARFAGE CHARGES, BARGING CHARGES, OR SIMILAR FEES;
  - (II) MOORING CHARGES OR PORT DUES; AND
  - (III) (DUTIES, TAXES, OR OTHER COSTS INCURRED IN THE COUNTRY WHERE THE DELIVERY TAKES PLACE.

## 8. PAYMENT

- (A) PAYMENT FOR THE MARINE FUELS SHALL BE MADE BY THE BUYERS WITHIN THIRTY (30) DAYS, OR WITHIN THE TIMEFRAME SPECIFIED IN THE CONFIRMATION NOTE IF OTHERWISE AGREED, FOLLOWING THE COMPLETION OF DELIVERY. IF PAYMENT IS MADE IN ADVANCE OF DELIVERY, IT WILL BE ADJUSTED BASED ON THE ACTUAL QUANTITIES DELIVERED, WITH ANY ADDITIONAL PAYMENT OR REFUND TO BE SETTLED WITHIN SIXTY (60) DAYS AFTER DELIVERY COMPLETION.
- (B) PAYMENT MUST BE MADE IN FULL, WITHOUT ANY SET-OFF, COUNTERCLAIM, DEDUCTION, AND/OR DISCOUNT, AND FREE OF ANY BANK CHARGES.
- (C) PAYMENT WILL BE CONSIDERED MADE ON THE DATE IT IS CREDITED TO THE SELLERS' DESIGNATED BANK ACCOUNT.
- (D) THE CURRENCY FOR PAYMENT WILL BE DETERMINED BY THE SELLERS AT THE TIME OF INVOICING.
- (E) IF THE PAYMENT DUE DATE FALLS ON A NON-BANKING DAY, PAYMENT MUST BE MADE ON OR BEFORE THE LAST BANKING DAY PRIOR TO THE DUE DATE.
- (F) PAYMENTS MADE UNDER THE CONTRACT WILL BE APPLIED IN THE FOLLOWING ORDER: (1) INTEREST; (2) LEGAL AND ENFORCEMENT COSTS; AND (3) OUTSTANDING INVOICES FROM OLDEST TO NEWEST.
- (G) ANY DELAY IN PAYMENT OR REFUND WILL ENTITLE EITHER PARTY TO INTEREST AT THE RATE OF THREE PERCENT (3%) PER MONTH OR AS OTHERWISE AGREED IN THE CONFIRMATION NOTE.
- (H) IN THE EVENT OF NON-PAYMENT OR NON-REFUND, THE NON-DEFAULTING PARTY RESERVES THE RIGHT TO PURSUE ANY LEGAL REMEDIES AVAILABLE TO RECOVER THE OUTSTANDING AMOUNT.

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- (I) NOTWITHSTANDING ANY PRIOR AGREEMENT, ALL AMOUNTS DUE (WHETHER PAYABLE OR NOT) UNDER THIS CONTRACT, OR ANY OTHER CONTRACT BETWEEN THE BUYERS AND SELLERS, SHALL BECOME IMMEDIATELY DUE IN THE EVENT OF:
- (J) BANKRUPTCY, LIQUIDATION, SUSPENSION OF PAYMENTS, OR ANY SIMILAR EVENT AS OUTLINED IN CLAUSE 17(A) AND (B) (TERMINATION), OR A COMPARABLE SITUATION CONCERNING THE BUYERS; OR
- (K) ANY OTHER SITUATION THAT, IN THE SELLERS' REASONABLE DISCRETION, ADVERSELY AFFECTS THE BUYERS' FINANCIAL POSITION.
  - i. DEMAND THE BUYERS FULFILL THEIR OBLIGATIONS UNDER THE CONTRACT; AND/OR
  - ii. REQUIRE ADEQUATE SECURITY; AND/OR
  - iii. SUSPEND ANY PENDING DELIVERIES; AND/OR
  - iv. REVOKE PERMISSION TO CONSUME THE MARINE FUELS FOR THE PROPULSION OF THE VESSEL; AND/OR
  - v. TERMINATE THE CONTRACT.

## 9. CLAIMS

- (A) QUANTITY
  - (1) ANY DISPUTE REGARDING THE QUANTITY DELIVERED MUST BE NOTED AT THE TIME OF DELIVERY IN ACCORDANCE WITH SUBCLAUSE 6(C) (DOCUMENTATION), AND THE BUYERS MUST SUBMIT A WRITTEN CLAIM TO THE SELLERS WITHIN FORTY-EIGHT (48) HOURS FROM THE DATE OF DELIVERY (OR AS SPECIFIED IN THE CONFIRMATION NOTE). FAILURE TO DO SO WILL RESULT IN THE CLAIM BEING DEEMED WAIVED AND BARRED.
  - (2) THE SELLERS RESERVE THE RIGHT TO CHARGE THE BUYERS FOR ALL PROVEN ADDITIONAL EXPENSES INCURRED DUE TO THE BUYERS' FAILURE TO TAKE DELIVERY OF THE FULL QUANTITY OF MARINE FUELS ORDERED (WITH AN OPERATIONAL TOLERANCE OF +/- FIVE (5) PERCENT).
- (B) QUALITY/SPECIFICATION
  - (1) ANY CLAIM CONCERNING THE QUALITY OR SPECIFICATION OF THE MARINE FUELS MUST BE PROMPTLY NOTIFIED IN WRITING ONCE THE CIRCUMSTANCES LEADING TO THE CLAIM ARE DISCOVERED. IF THE BUYERS DO NOT NOTIFY THE SELLERS WITHIN SEVEN (7) DAYS FROM THE DATE OF DELIVERY (OR AS SPECIFIED IN THE CONFIRMATION NOTE), THE CLAIM WILL BE CONSIDERED WAIVED AND BARRED.
  - (2) IN CASE OF A QUALITY DISPUTE RAISED UNDER SUBCLAUSE 9(B)(I), THE PARTIES SHALL HAVE THE FUEL QUALITY ANALYZED BY A MUTUALLY AGREED INDEPENDENT LABORATORY. THE ANALYSIS WILL BE CONDUCTED ON ONE OF THE SAMPLES RETAINED BY THE SELLERS AS PER CLAUSE 4, AND THE TEST WILL FOCUS SOLELY ON THE CHARACTERISTIC OR COMPONENT IN DISPUTE. THE ANALYSIS WILL BE CONDUCTED IN ACCORDANCE WITH THE SPECIFICATION IN THE CONFIRMATION NOTE AND ISO 4259 STANDARDS. THE SELLERS WILL PROVIDE THE LABORATORY WITH THE SAMPLE, AND TESTING METHODS WILL FOLLOW ISO 8217. UNLESS OTHERWISE AGREED, THE COST OF THE ANALYSIS WILL BE BORNE BY THE PARTY WHOSE CLAIM IS FOUND UNPROVEN BY THE ANALYSIS.
  - (3) THE RESULTS FROM THE INDEPENDENT LABORATORY WILL BE FINAL AND BINDING ON BOTH PARTIES, EXCEPT IN CASES OF FRAUD OR MANIFEST ERROR. IF THE ANALYSIS SHOWS THE SAMPLE WITHIN THE ALLOWABLE TOLERANCE RANGES ACCORDING TO ISO 4259 OR MARPOL ANNEX VI STANDARDS, OR AS SPECIFIED IN THE CONFIRMATION NOTE, THE MARINE FUEL WILL BE CONSIDERED ON-SPECIFICATION.
- (C) DELAY

IN THE EVENT OF ANY DELAY CAUSED BY:

  - (1) THE BUYERS' FAILURE TO PROVIDE PROPER NOTICES, THE VESSEL'S FAILURE TO BE IN ACTUAL READINESS WITHIN SIX (6) HOURS (OR AS OTHERWISE SPECIFIED IN THE ELECTION SHEET) OF THE CONFIRMED DELIVERY TIME, OR THE VESSEL'S INABILITY TO RECEIVE MARINE FUELS AT THE PUMPING RATE AND PRESSURE SPECIFIED IN SUBCLAUSE 5(J) (DELIVERY); OR
  - (2) ANY REASON RELATED TO THE BUYERS AND/OR THE VESSEL, INCLUDING FAILURE TO VACATE THE WHARF OR TERMINAL PROMPTLY,

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THE BUYERS SHALL BE RESPONSIBLE FOR ANY LOSSES, DAMAGES, COSTS (INCLUDING LEGAL FEES), OR EXPENSES INCURRED BY THE SELLERS AS A RESULT OF SUCH DELAYS.

(D) TIME BAR

ALL CLAIMS BY THE BUYERS SHALL BE TIME-BARRED UNLESS ARBITRATION PROCEEDINGS ARE INITIATED IN ACCORDANCE WITH CLAUSE 24 (BIMCO STANDARD DISPUTE RESOLUTION CLAUSE 2018) WITHIN FOUR (4) CALENDAR MONTHS FROM THE DATE OF DELIVERY OF THE MARINE FUELS OR THE DATE DELIVERY SHOULD HAVE COMMENCED, AS STATED IN THE CONFIRMATION NOTE.

**10. RISK/TITLE**

- (1) RISK IN THE MARINE FUELS SHALL PASS TO THE BUYERS ONCE THE MARINE FUELS HAVE PASSED THE SELLERS' FLANGE CONNECTED TO THE VESSEL'S BUNKER MANIFOLD. 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.
- (2) THE BUYERS HAVE THE SELLERS' PERMISSION TO CONSUME THE MARINE FUELS FOR PROPULSION OF THE VESSEL, SUBJECT TO FIRST PAYING THE PRICE OF THE MARINE FUELS AS AGREED.

**11. COMPLIANCE WITH LAWS AND REGULATIONS**

BOTH PARTIES AGREE NOT TO TAKE OR ALLOW ANY ACTIONS THAT WOULD RESULT IN A BREACH OR VIOLATION OF THE LAWS AND REGULATIONS OF THE VESSEL'S FLAG STATE, THE COUNTRY OF INCORPORATION OF THE SELLERS, OR ANY JURISDICTION WHERE THE VESSEL OR SELLERS OPERATE OR PROCURE MARINE FUELS UNDER THE CONTRACT.

**12. SANCTIONS COMPLIANCE CLAUSE**

- (A) "SANCTIONS LAWS" REFERS TO ANY SANCTIONS, PROHIBITIONS, OR RESTRICTIONS IMPOSED BY THE UNITED NATIONS, THE EUROPEAN UNION, THE UNITED KINGDOM, OR THE UNITED STATES OF AMERICA, INCLUDING, BUT NOT LIMITED TO, THOSE ENFORCED BY THE U.S. DEPARTMENT OF THE TREASURY'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC"), SUCH AS THE OFAC SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS LIST (SDN), AND THE U.S. DEPARTMENT OF STATE.
- (B) THE BUYERS AND SELLERS EACH WARRANT THAT FROM THE DATE OF ENTERING INTO THE CONTRACT AND CONTINUING UNTIL THE DELIVERY OF THE MARINE FUELS AND FULL PAYMENT BY THE BUYERS TO THE SELLERS:
  - (1) NEITHER PARTY IS SUBJECT TO ANY OF THE SANCTIONS LAWS REFERENCED IN SUBCLAUSE 12(A) (SANCTIONS COMPLIANCE CLAUSE) THAT WOULD PROHIBIT OR MAKE UNLAWFUL ANY PERFORMANCE UNDER THE CONTRACT.
  - (2) THE SELLERS ARE SELLING AND THE BUYERS ARE PURCHASING THE MARINE FUELS AS PRINCIPALS, NOT AS AGENTS, TRUSTEES, OR NOMINEES FOR ANY PERSON WITH WHOM TRANSACTIONS ARE PROHIBITED OR RESTRICTED UNDER SUBCLAUSE 12(A) (SANCTIONS COMPLIANCE CLAUSE).
  - (3) THE BUYERS FURTHER WARRANT THAT THE VESSEL IS NOT A DESIGNATED VESSEL AND IS NOT, NOR WILL IT BE, CHARTERED TO ANY ENTITY OR USED TO TRANSPORT ANY CARGO IN VIOLATION OF THE RESTRICTIONS OR PROHIBITIONS OUTLINED IN SUBCLAUSE 12(A) (SANCTIONS COMPLIANCE CLAUSE).
- (C) IF, AT ANY TIME DURING THE PERFORMANCE OF THE CONTRACT, EITHER PARTY BECOMES AWARE THAT THE OTHER PARTY IS IN BREACH OF THE AFOREMENTIONED WARRANTIES, THE NON-BREACHING PARTY SHALL COMPLY WITH THE LAWS AND REGULATIONS OF ANY GOVERNMENT TO WHICH THEY OR THE VESSEL ARE SUBJECT AND FOLLOW ANY ORDERS OR DIRECTIONS FROM ANY REGULATORY OR ADMINISTRATIVE AUTHORITY WITH THE POWER TO ENFORCE COMPLIANCE. IN THE ABSENCE OF SUCH ORDERS, DIRECTIONS, LAWS, OR REGULATIONS, THE NON-BREACHING PARTY MAY IMMEDIATELY TERMINATE THE CONTRACT.
- (D) NOTWITHSTANDING ANYTHING IN THIS CLAUSE, NEITHER THE BUYERS NOR THE SELLERS SHALL BE REQUIRED TO TAKE ANY ACTION THAT WOULD RESULT IN A VIOLATION OF THE LAWS AND REGULATIONS OF ANY JURISDICTION TO WHICH THEY ARE SUBJECT.

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- (E) BOTH THE BUYERS AND SELLERS SHALL INDEMNIFY THE OTHER PARTY AGAINST ANY AND ALL CLAIMS, INCLUDING THE RETURN OF ANY PAYMENTS, LOSSES, DAMAGES, COSTS, AND FINES RESULTING FROM A BREACH OF THE AFOREMENTIONED WARRANTIES AND IN ACCORDANCE WITH THE TERMS OF THE CONTRACT.

### 13. ANTI-CORRUPTION CLAUSE

- (A) THE PARTIES AGREE THAT, IN CONNECTION WITH THE PERFORMANCE OF ANY CONTRACT, THEY SHALL EACH:
- (1) COMPLY AT ALL TIMES WITH ALL APPLICABLE ANTI-CORRUPTION LAWS AND HAVE PROCEDURES IN PLACE THAT, TO THE BEST OF THEIR KNOWLEDGE AND BELIEF, ARE DESIGNED TO PREVENT THE COMMISSION OF ANY OFFENSE UNDER SUCH LAWS BY ANY MEMBER OF THEIR ORGANIZATION OR ANY PERSON PROVIDING SERVICES FOR OR ON THEIR BEHALF; AND
  - (2) MAINTAIN ACCURATE AND DETAILED BOOKS, RECORDS, AND ACCOUNTS THAT FAIRLY AND REASONABLY REFLECT THE TRANSACTIONS RELATED TO ANY CONTRACT.
- (B) IF EITHER PARTY RECEIVES A DEMAND FOR PAYMENT, GOODS, OR ANYTHING OF VALUE ("DEMAND") FROM ANY OFFICIAL, CONTRACTOR, SUBCONTRACTOR ENGAGED BY OR ACTING ON BEHALF OF EITHER PARTY, OR ANY OTHER THIRD PARTY NOT EMPLOYED BY EITHER PARTY, AND IT APPEARS THAT FULFILLING SUCH A DEMAND WOULD VIOLATE ANY APPLICABLE ANTI-CORRUPTION LEGISLATION, THE PARTY RECEIVING THE DEMAND SHALL NOTIFY THE OTHER PARTY AS SOON AS PRACTICABLE. THE PARTIES SHALL THEN COOPERATE TO TAKE REASONABLE STEPS TO RESIST THE DEMAND.
- (C) IF EITHER PARTY FAILS TO COMPLY WITH ANY APPLICABLE ANTI-CORRUPTION LEGISLATION, THAT PARTY SHALL DEFEND AND INDEMNIFY THE OTHER PARTY AGAINST ANY FINES, PENALTIES, LIABILITIES, LOSSES, OR DAMAGES, INCLUDING RELATED COSTS (SUCH AS COURT COSTS AND LEGAL FEES) ARISING FROM THE BREACH.
- (D) WITHOUT PREJUDICE TO ANY OTHER RIGHTS UNDER ANY CONTRACT, EITHER PARTY MAY TERMINATE A CONTRACT WITHOUT INCURRING LIABILITY TO THE OTHER PARTY IF:
- (1) AT ANY TIME, THE OTHER PARTY OR ANY MEMBER OF ITS ORGANIZATION COMMITS A BREACH OF ANY APPLICABLE ANTI-CORRUPTION LEGISLATION IN CONNECTION WITH THE CONTRACT; AND
  - (2) SUCH A BREACH CAUSES THE NON-BREACHING PARTY TO VIOLATE ANY APPLICABLE ANTI-CORRUPTION LEGISLATION.
- THE RIGHT TO TERMINATE MUST BE EXERCISED WITHOUT UNDUE DELAY.
- (E) EACH PARTY REPRESENTS AND WARRANTS THAT, IN CONNECTION WITH THE NEGOTIATION OF ANY CONTRACT, NEITHER IT NOR ANY MEMBER OF ITS ORGANIZATION HAS COMMITTED ANY BREACH OF APPLICABLE ANTI-CORRUPTION LEGISLATION. A BREACH OF THIS SUBCLAUSE 13(E) (ANTI-CORRUPTION CLAUSE) SHALL ENTITLE THE OTHER PARTY TO TERMINATE THE CONTRACT WITHOUT INCURRING LIABILITY.

### 14. INDEMNITY

- (A) WITHOUT PREJUDICE TO ANY OTHER CLAIMS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, AND NOTWITHSTANDING THE PROVISIONS OF SUBCLAUSE 9(D) (CLAIMS), IF THE SELLERS INCUR ANY LOSS OR LIABILITY AS A DIRECT RESULT OF FOLLOWING DIRECTIONS GIVEN BY THE BUYERS DURING OR FOR THE PURPOSES OF FULFILLING THE PARTIES' OBLIGATIONS UNDER THIS AGREEMENT, THE BUYERS SHALL INDEMNIFY THE SELLERS FOR SUCH LOSS OR LIABILITY, EXCEPT WHERE SUCH LOSS OR LIABILITY ARISES FROM THE SELLERS' OWN NEGLIGENCE OR OMISSION.
- (B) IN CASES WHERE CLAIMS ARISE UNDER BOTH SUBCLAUSE 9(C) (CLAIMS) AND SUBCLAUSE 14(A) (INDEMNITY), ANY COMPENSATION PAYABLE UNDER SUBCLAUSE 9(C) (CLAIMS) SHALL BE CONSIDERED WHEN DETERMINING SUMS PAYABLE UNDER SUBCLAUSE 14(A) (INDEMNITY).

### 15. LIABILITY

- (A) THE SELLERS SHALL NEVER BE LIABLE TO THE BUYERS FOR:

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- (i) ANY LOSS OF PROFIT OR LOSS OF PRODUCTION, WHETHER ARISING DIRECTLY OR INDIRECTLY FROM THE PERFORMANCE OR NON-PERFORMANCE OF THE CONTRACT, REGARDLESS OF WHETHER SUCH LOSS IS DUE TO NEGLIGENCE OR ANY OTHER FAULT ON THE PART OF THE SELLERS, THEIR EMPLOYEES, OR AGENTS; AND
  - (ii) ANY INDIRECT OR CONSEQUENTIAL LOSS ARISING FROM OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THE CONTRACT, WHETHER DUE TO BREACH OF CONTRACT, NEGLIGENCE, OR ANY OTHER FAULT ON THE PART OF THE SELLERS, THEIR EMPLOYEES, OR AGENTS.
- (B) SELLERS SHALL NEVER HAVE ANY LIABILITY WHATSOEVER, WHETHER OR NOT DUE TO NEGLIGENCE, INCLUDING FOR EXPENSES, LOSSES, DAMAGES, LOSS OF USE, LOSS OF HIRE, DETENTION, OR DEMURRAGE, ARISING OUT OF OR IN CONNECTION WITH: (1) BUYERS' FAILURE TO ARRIVE AND TAKE DELIVERY OF THE MARINE FUELS WITHIN THE DELIVERY PERIOD SPECIFIED IN THE CONFIRMATION NOTE; (2) DELAY IN DELIVERY OF THE AGREED PRODUCT FOR ANY REASON WHATSOEVER, INCLUDING (WITHOUT LIMITATION) WHEN CAUSED BY CONGESTION AFFECTING THE SELLERS' AND/OR SELLERS' SUPPLIER'S DELIVERY FACILITIES AND/OR BUNKER TANKER(S) AND/OR MORE GENERALLY BY PORT CONGESTION OR BUNKER SLOT UNAVAILABILITY; (3) ANY PRIOR COMMITMENTS OF AVAILABLE BUNKER TANKERS, PUBLIC HOLIDAYS OR PRACTICES AT THE PORT OF DELIVERY; (4) ANY OTHER CIRCUMSTANCES WHATSOEVER OUTSIDE THE DIRECT AND IMMEDIATE CONTROL OF THE SELLERS; OR (5) THE UNAVAILABILITY, IN THE SELLERS' OPINION, OF A CLEAR AND SAFE BERTH OR OF QUALIFIED STAFF TO SECURE THE MOORINGS.
- (C) WITHOUT PREJUDICE TO CLAUSE 15(B) ABOVE, THE SELLERS' LIABILITY, IF ANY, ARISING OUT OF OR IN CONNECTION WITH FAILURE TO COMMENCE DELIVERY OF MARINE FUELS WITHIN THE REQUIRED SUPPLY TIME FOR ANY REASON WHATSOEVER, WHETHER OR NOT DUE TO THE SELLERS' NEGLIGENCE OR OTHERWISE, WILL BE LIMITED TO A MAXIMUM OF US\$6,000 PER DAY OF DELAY.
- (D) NOTWITHSTANDING ANY OTHER PROVISION IN THESE GENERAL TERMS AND CONDITIONS, THE TOTAL LIABILITY OF THE SELLERS, WHATSOEVER OR HOWSOEVER CAUSED, WHETHER OR NOT DUE TO THE SELLERS' NEGLIGENCE, SHALL (EXCLUSIVE OF INTEREST AND LEGAL AND ENFORCEMENT COSTS) NOT EXCEED THE INVOICE VALUE OF THE MARINE FUELS OR USD 500,000, WHICHEVER IS THE LOWER FIGURE.

## 16. FORCE MAJEURE

NEITHER PARTY SHALL BE HELD LIABLE FOR ANY LOSS, DAMAGE, OR DELAY CAUSED BY THE FOLLOWING FORCE MAJEURE EVENTS AND/OR CONDITIONS AT THE PORT OF DELIVERY, WHICH COULD NOT HAVE BEEN REASONABLY FORESEEN AT THE TIME OF ENTERING INTO THE CONTRACT OR GUARDED AGAINST. FORCE MAJEURE APPLIES ONLY IF THE PARTY INVOKING IT IS PREVENTED OR HINDERED FROM FULFILLING ANY OR ALL OF THEIR OBLIGATIONS UNDER THE CONTRACT AND HAS MADE ALL REASONABLE EFFORTS TO AVOID, MINIMIZE, OR MITIGATE THE EFFECTS OF SUCH EVENTS AND/OR CONDITIONS:

- (E) ACTS OF GOD;
- (F) ANY GOVERNMENT REQUISITION, CONTROL, INTERVENTION, REQUIREMENT, OR INTERFERENCE;
- (G) CIRCUMSTANCES ARISING FROM WAR, THE THREAT OF WAR, OR WARLIKE OPERATIONS, ACTS OF TERRORISM, SABOTAGE, OR PIRACY, OR THE CONSEQUENCES THEREOF;
- (H) RIOTS, CIVIL COMMOTION, BLOCKADES, OR EMBARGOES;
- (I) EPIDEMICS OR PANDEMICS;
- (J) EARTHQUAKES, LANDSLIDES, FLOODS, OR OTHER EXTRAORDINARY WEATHER CONDITIONS;
- (K) STRIKES, LOCKOUTS, OR OTHER INDUSTRIAL ACTION, UNLESS LIMITED TO THE EMPLOYEES OF THE PARTY INVOKING FORCE MAJEURE;
- (L) FIRE, ACCIDENT, OR EXPLOSION, EXCEPT WHERE CAUSED BY THE NEGLIGENCE OF THE PARTY INVOKING FORCE MAJEURE;
- (M) ANY OTHER SIMILAR CAUSE BEYOND THE REASONABLE CONTROL OF EITHER PARTY.

THE PARTY INVOKING FORCE MAJEURE MUST NOTIFY THE OTHER PARTY IN WRITING WITHIN TWO (2) DAYS OF THE OCCURRENCE OF SUCH AN EVENT OR CONDITION.

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## 17. TERMINATION

WITHOUT PREJUDICE TO ANY ACCRUED RIGHTS UNDER THE CONTRACT, EITHER PARTY SHALL BE ENTITLED TO TERMINATE THE CONTRACT IN THE EVENT OF:

- (A) ANY APPLICATION BEING MADE, PROCEEDINGS BEING INITIATED, OR ANY COURT ORDER OR JUDGMENT BEING ISSUED FOR:
  - i. THE WINDING UP, DISSOLUTION, LIQUIDATION, OR BANKRUPTCY OF EITHER PARTY (EXCEPT FOR RECONSTRUCTION OR AMALGAMATION PURPOSES), OR IF A RECEIVER OR ADMINISTRATOR IS APPOINTED, OR THE PARTY SUSPENDS PAYMENTS, STOPS BUSINESS OPERATIONS, OR ENTERS INTO AN ARRANGEMENT OR AGREEMENT WITH ITS CREDITORS; OR
  - ii. THE APPOINTMENT OF A RECEIVER, LIQUIDATOR, TRUSTEE, ADMINISTRATOR, OR SIMILAR AUTHORITY OVER ALL OR A SIGNIFICANT PORTION OF THE OTHER PARTY'S ASSETS (EXCEPT FOR RECONSTRUCTION OR AMALGAMATION PURPOSES);
- (B) Any act or event occurs that, under applicable law, has a similar effect to the acts or events described above;
- (C) EITHER PARTY VIOLATES CLAUSE 12 (SANCTIONS COMPLIANCE CLAUSE), IF APPLICABLE;
- (D) EITHER PARTY BREACHES ANY SIGNIFICANT PROVISION OF THE CONTRACT;
- (E) A FORCE MAJEURE EVENT, AS DEFINED IN CLAUSE 16 (FORCE MAJEURE), PREVENTS OR SIGNIFICANTLY HINDERS THE PERFORMANCE OF THE CONTRACT FOR MORE THAN TEN (10) CONSECUTIVE DAYS FROM THE TIME THE EVENT BEGINS, PROVIDED PROMPT NOTICE IS GIVEN. IF NOTICE IS DELAYED, TERMINATION CAN OCCUR TEN DAYS AFTER THE OTHER PARTY RECEIVES NOTICE;
- (F) THE BUYERS CANCEL OR TERMINATE THE CONTRACT IN VIOLATION OF ITS TERMS, OR FAIL TO TAKE FULL OR PARTIAL DELIVERY OF THE MARINE FUELS SPECIFIED IN THE CONFIRMATION NOTE. IN THIS CASE, THE BUYERS MUST COMPENSATE THE SELLERS FOR ALL COSTS, DAMAGES, AND LOSSES INCURRED, INCLUDING BUT NOT LIMITED TO LOST PROFITS, THE DIFFERENCE BETWEEN THE CONTRACT PRICE AND THE PRICE THE SELLERS CAN REASONABLY OBTAIN IN A SALE TO A THIRD PARTY, AS WELL AS COSTS FOR RETURNING, DOWNGRADING, AND ANY DEMURRAGE OR DEAD FREIGHT ASSOCIATED WITH THE BUNKER TANKERS. THESE AMOUNTS WILL BECOME IMMEDIATELY DUE UPON RECEIVING THE SELLERS' INVOICE.
- (G) THE BUYERS MUST DECLARE IF THE VESSEL HAS VISITED ANY SANCTIONED PORTS OR COUNTRIES IN THE PAST 12 MONTHS. FAILURE TO DO SO MAY RESULT IN THE CONTRACT BEING CANCELLED AT THE SELLERS' DISCRETION.

## 18. POLLUTION

- (A) IN THE EVENT OF ANY SPILLAGE (DEFINED IN THIS CLAUSE AS ANY LEAKAGE, ESCAPE, SPILLAGE, OR OVERFLOW OF MARINE FUELS) THAT CAUSES OR IS LIKELY TO CAUSE POLLUTION DURING ANY STAGE OF THE BUNKERING OPERATION, BOTH THE BUYERS AND SELLERS SHALL IMMEDIATELY TAKE ALL REASONABLY NECESSARY ACTIONS TO INITIATE A CLEANUP, REGARDLESS OF WHICH PARTY IS RESPONSIBLE. SUCH ACTIONS MUST ALWAYS COMPLY WITH APPLICABLE LOCAL LAWS AND REGULATIONS.
- (B) IF LOCAL LAWS AT THE PORT OR PLACE OF DELIVERY OF THE MARINE FUELS REQUIRE THE SELLERS TO HAVE THEIR OWN OIL SPILL CONTINGENCY PLANS, THE SELLERS SHALL ENSURE THAT THEY HAVE VALID AND COMPLIANT PLANS IN PLACE.
- (C) EACH PARTY GUARANTEES PAYMENT AND AGREES TO INDEMNIFY AND HOLD THE OTHER PARTY HARMLESS AGAINST ANY CLAIMS, LOSSES, DAMAGES, EXPENSES, PENALTIES, OR OTHER LIABILITIES (INCLUDING THOSE ARISING UNDER ANY STATE, NATIONAL, OR INTERNATIONAL OIL POLLUTION LEGISLATION) RESULTING FROM ANY SPILLAGE RELATED TO THE PERFORMANCE OF THIS CONTRACT. IF THE SPILLAGE IS CAUSED OR CONTRIBUTED TO BY BOTH PARTIES, EACH PARTY SHALL INDEMNIFY THE OTHER IN PROPORTION TO THEIR RESPECTIVE DEGREE OF FAULT.

## 19. DRUGS AND ALCOHOL POLICY

- (A) EACH PARTY SHALL ENFORCE A COMPANY DRUG AND ALCOHOL POLICY ONBOARD THE VESSEL AND BUNKER TANKER, AND IN THE CASE OF THE SELLERS, ALSO WITHIN THEIR FACILITIES.
- (B) THESE DRUG AND ALCOHOL POLICIES MUST MEET OR EXCEED THE STANDARDS SET BY THE INTERNATIONAL CONVENTION ON STANDARDS OF TRAINING, CERTIFICATION, AND WATCHKEEPING FOR SEAFARERS, 1978, AS AMENDED.

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- (C) BUYERS' PERSONNEL MUST ADHERE TO THE SELLERS' DRUG AND ALCOHOL POLICY WHEN IN THE SELLERS' FACILITIES OR ONBOARD THE BUNKER TANKER, WHILE THE SELLERS' PERSONNEL MUST FOLLOW THE BUYERS' POLICY WHEN ONBOARD THE VESSEL.
- (D) BOTH PARTIES ACKNOWLEDGE AND AGREE THAT THE SELLING, POSSESSION, DISTRIBUTION, USE, OR BEING UNDER THE INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCES, EXCEPT THOSE MEDICALLY PRESCRIBED, IS STRICTLY PROHIBITED.

## 20. CONFIDENTIALITY

- (A) NEITHER PARTY SHALL DISCLOSE ANY CONFIDENTIAL INFORMATION RELATED TO PRE-CONTRACTUAL DISCUSSIONS AND/OR THE TERMS AND CONDITIONS OF THE CONTRACT TO THIRD PARTIES WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER PARTY, WHICH SHALL NOT BE UNREASONABLY WITHHELD, EXCEPT AS REQUIRED BY LAW OR IN RESPONSE TO A REQUEST FROM A GOVERNMENT OR ITS AGENCY.
- (B) BOTH PARTIES SHALL TAKE REASONABLE PRECAUTIONS TO ENSURE THAT NO UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION OCCURS.
- (C) IF A PARTY IS UNCERTAIN WHETHER SPECIFIC INFORMATION IS CONFIDENTIAL, THE SELLERS OR BUYERS, AS APPLICABLE, SHALL CONSULT WITH THE OTHER PARTY.
- (D) IF EITHER PARTY IS REQUIRED BY LAW TO DISCLOSE CONFIDENTIAL INFORMATION, THE DISCLOSING PARTY WILL, WHERE PERMITTED, NOTIFY THE OTHER PARTY AND WILL ONLY DISCLOSE THE MINIMUM AMOUNT OF CONFIDENTIAL INFORMATION NECESSARY TO COMPLY WITH LEGAL OBLIGATIONS.
- (E) INFORMATION SHALL NOT BE CONSIDERED CONFIDENTIAL UNDER THIS CLAUSE IF IT WAS IN THE POSSESSION OF THE RECEIVING PARTY BEFORE BEING PROVIDED BY THE OTHER PARTY, BECOMES PUBLICLY AVAILABLE THROUGH NO FAULT OF EITHER PARTY, OR IS LAWFULLY OBTAINED FROM A THIRD PARTY.
- (F) THIS CLAUSE SHALL SURVIVE THE TERMINATION OF THE CONTRACT.

## 21. THIRD PARTY RIGHTS

NO THIRD PARTY SHALL HAVE ANY RIGHT TO ENFORCE ANY TERM OF THIS CONTRACT.

## 22. ASSIGNMENT

NEITHER PARTY SHALL ASSIGN ANY OF THEIR RIGHTS UNDER THE CONTRACT WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER PARTY, WHICH SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED, UNLESS OTHERWISE AGREED IN THE ELECTION SHEET. THE ONLY PERMISSIBLE ASSIGNMENT IS INVOICE ASSIGNMENT TO THE RESPECTIVE BANKS OF THE BUYER AND/OR SELLER FOR THE PURPOSE OF INVOICE FINANCING.

## 23. PARTIAL VALIDITY

IF ANY PROVISION OF THE CONTRACT IS OR BECOMES ILLEGAL, INVALID, OR UNENFORCEABLE UNDER ANY LAW OR JURISDICTION, THAT PROVISION SHALL BE DEEMED AMENDED TO THE EXTENT NECESSARY TO AVOID SUCH ILLEGALITY, INVALIDITY, OR UNENFORCEABILITY. IF AMENDMENT IS NOT POSSIBLE, THE PROVISION SHALL BE DEEMED DELETED TO THE EXTENT OF THE ILLEGALITY, INVALIDITY, OR UNENFORCEABILITY, AND THE REMAINING PROVISIONS SHALL CONTINUE IN FULL FORCE AND EFFECT, UNAFFECTED AND UNIMPAIRED.

## 24. DISPUTE RESOLUTION CLAUSE

- (A) SUBJECT TO CLAUSE 24(B), THIS CONTRACT WILL BE GOVERNED BY AND INTERPRETED ACCORDING TO ENGLISH LAW. ANY DISPUTE ARISING FROM OR RELATED TO THE CONTRACT SHALL BE RESOLVED THROUGH ARBITRATION IN LONDON, IN ACCORDANCE WITH THE ARBITRATION ACT 1996 OR ANY SUBSEQUENT AMENDMENTS OR REPLACEMENTS OF THAT ACT, AS REQUIRED BY THIS CLAUSE.

THE ARBITRATION WILL BE CONDUCTED UNDER THE TERMS OF THE LONDON MARITIME ARBITRATORS ASSOCIATION (LMAA) THAT ARE APPLICABLE AT THE TIME THE ARBITRATION BEGINS.

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DISPUTES WILL BE HANDLED BY A PANEL OF THREE ARBITRATORS. THE PARTY INITIATING ARBITRATION MUST APPOINT THEIR ARBITRATOR AND NOTIFY THE OTHER PARTY IN WRITING, REQUESTING THEM TO APPOINT THEIR OWN ARBITRATOR WITHIN FOURTEEN (14) CALENDAR DAYS. THE NOTICE WILL ALSO INDICATE THAT IF THE OTHER PARTY DOES NOT APPOINT AN ARBITRATOR WITHIN THE GIVEN TIMEFRAME, THE INITIATING PARTY WILL APPOINT THEIR ARBITRATOR AS THE SOLE ARBITRATOR. IF THE OTHER PARTY FAILS TO DO SO WITHIN THE FOURTEEN (14) DAYS, THE INITIATING PARTY MAY PROCEED BY APPOINTING ITS ARBITRATOR AS THE SOLE ARBITRATOR, WHOSE DECISION WILL BE FINAL AND BINDING ON BOTH PARTIES AS IF MUTUALLY AGREED UPON.

THE PARTIES MAY ALSO AGREE IN WRITING TO MODIFY THESE TERMS TO APPOINT A SOLE ARBITRATOR.

FOR DISPUTES WHERE NEITHER THE CLAIM NOR ANY COUNTERCLAIM EXCEEDS USD 100,000 (OR ANOTHER AMOUNT AGREED BY THE PARTIES), THE ARBITRATION WILL FOLLOW THE LMAA SMALL CLAIMS PROCEDURE IN EFFECT AT THE TIME OF COMMENCEMENT.

FOR DISPUTES WHERE THE CLAIM OR COUNTERCLAIM SURPASSES THE THRESHOLD FOR THE SMALL CLAIMS PROCEDURE BUT REMAINS UNDER USD 400,000 (OR ANOTHER AGREED AMOUNT), ARBITRATION WILL PROCEED UNDER THE LMAA INTERMEDIATE CLAIMS PROCEDURE APPLICABLE AT THAT TIME.

- (B) CLAUSE 24(A) IS DESIGNED FOR THE BENEFIT OF THE SELLERS. HOWEVER, DESPITE CLAUSE 24(A), THE SELLERS HAVE THE RIGHT, AT THEIR SOLE DISCRETION, TO TAKE ANY ACTION OR INITIATE AND PURSUE ANY CLAIMS OR LEGAL PROCEEDINGS RELATED TO THIS CONTRACT IN ANY COURT WITH APPROPRIATE JURISDICTION.
- (C) THE PARTIES MAY MUTUALLY AGREE AT ANY TIME TO REFER ANY DISAGREEMENT AND/OR DISPUTE ARISING FROM OR RELATED TO THE CONTRACT TO MEDIATION. IF ARBITRATION HAS ALREADY BEEN INITIATED FOR ANY DISPUTE, THE FOLLOWING PROVISIONS SHALL APPLY:
- i. EITHER PARTY MAY, AT ANY TIME, CHOOSE TO REFER THE DISPUTE, OR PART OF IT, TO MEDIATION BY SENDING A WRITTEN NOTICE ("MEDIATION NOTICE") TO THE OTHER PARTY, REQUESTING THEIR AGREEMENT TO MEDIATE.
  - ii. THE OTHER PARTY MUST RESPOND WITHIN FOURTEEN (14) CALENDAR DAYS OF RECEIVING THE MEDIATION NOTICE, CONFIRMING THEIR AGREEMENT TO MEDIATION. THE PARTIES MUST THEN AGREE ON A MEDIATOR WITHIN THE NEXT FOURTEEN (14) CALENDAR DAYS. IF THEY FAIL TO DO SO, A MEDIATOR WILL BE PROMPTLY APPOINTED BY THE ARBITRATION TRIBUNAL ("THE TRIBUNAL") OR A PERSON DESIGNATED BY THE TRIBUNAL. THE MEDIATION WILL TAKE PLACE AT A LOCATION, FOLLOWING PROCEDURES, AND UNDER TERMS AGREED UPON BY THE PARTIES, OR IF THEY CANNOT AGREE, AS DETERMINED BY THE MEDIATOR.
  - iii. IF THE OTHER PARTY REFUSES TO MEDIATE, THIS FACT CAN BE PRESENTED TO THE TRIBUNAL, WHICH MAY CONSIDER IT WHEN DECIDING HOW TO ALLOCATE ARBITRATION COSTS BETWEEN THE PARTIES.
  - iv. MEDIATION WILL NOT INTERFERE WITH EITHER PARTY'S RIGHT TO SEEK RELIEF OR TAKE ANY NECESSARY STEPS TO PROTECT THEIR INTERESTS.
  - v. EITHER PARTY MAY INFORM THE TRIBUNAL THAT THEY HAVE AGREED TO MEDIATION. ARBITRATION WILL CONTINUE DURING MEDIATION, BUT THE TRIBUNAL MAY ADJUST THE ARBITRATION SCHEDULE TO ACCOMMODATE THE MEDIATION PROCESS.
  - vi. UNLESS OTHERWISE AGREED OR SPECIFIED IN THE MEDIATION TERMS, EACH PARTY WILL COVER ITS OWN MEDIATION COSTS, AND BOTH PARTIES WILL SHARE THE MEDIATOR'S FEES AND EXPENSES EQUALLY.
  - vii. THE MEDIATION PROCESS WILL BE CONFIDENTIAL AND WITHOUT PREJUDICE, MEANING THAT NO INFORMATION OR DOCUMENTS DISCLOSED DURING MEDIATION WILL BE SHARED WITH THE TRIBUNAL UNLESS REQUIRED BY THE GOVERNING LAW AND ARBITRATION PROCEDURE. (NOTE: PARTIES SHOULD BE AWARE THAT THE MEDIATION PROCESS MAY NOT PAUSE OR AFFECT ANY LEGAL TIME LIMITS.)

## 25. NOTICES

ANY PARTY PROVIDING NOTICE UNDER THE CONTRACT MUST ENSURE IT IS PROPERLY DELIVERED. THE NOTICE WILL BE CONSIDERED RECEIVED DURING THE RECIPIENT'S OFFICE HOURS. IF THE NOTICE IS SENT OUTSIDE OF THE RECIPIENT'S OFFICE HOURS, IT WILL BE DEEMED RECEIVED ON THE RECIPIENT'S NEXT WORKING DAY.

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**26. ENTIRE AGREEMENT AND PRIORITY OF TERMS**

- (A) THE WRITTEN TERMS OF THIS CONTRACT FORM THE COMPLETE AGREEMENT BETWEEN THE BUYERS AND SELLERS REGARDING THE SALE AND PURCHASE OF MARINE FUELS, OVERRIDING ANY PRIOR AGREEMENTS, WHETHER VERBAL OR WRITTEN, BETWEEN THE PARTIES ON THIS MATTER. ANY CHANGES TO THE CONTRACT MUST BE MUTUALLY AGREED UPON IN WRITING.
- (B) BOTH PARTIES CONFIRM THAT IN ENTERING INTO THIS CONTRACT, THEY HAVE NOT RELIED ON, AND WILL NOT SEEK ANY REMEDY BASED ON, ANY STATEMENT, REPRESENTATION, ASSURANCE, OR WARRANTY (WHETHER NEGLIGENT OR NOT), EXCEPT AS EXPRESSLY STATED IN THE CONTRACT.
- (C) ANY TERMS IMPLIED BY APPLICABLE LAWS OR STATUTES ARE EXCLUDED TO THE EXTENT LEGALLY PERMISSIBLE. HOWEVER, THIS CLAUSE DOES NOT LIMIT OR EXCLUDE LIABILITY FOR FRAUD BY ANY PARTY INVOLVED IN THE CONTRACT.
- (D) IN CASE OF ANY CONFLICT BETWEEN THE PROVISIONS OF THESE GENERAL TERMS AND CONDITIONS AND THE CONFIRMATION NOTE, THE PROVISIONS OF THE CONFIRMATION NOTE SHALL TAKE PRECEDENCE, BUT ONLY TO THE EXTENT OF THE CONFLICT.

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