

# Vitol Bunkers - GTCs

# GENERAL TERMS AND CONDITIONS FOR THE SALE AND DELIVERY OF MARINE FUELS, Effective 1 March 2021

## 1. Application of these Seller's Terms

- 1.1 These Seller's Terms shall apply to and be incorporated into each and every offer and/or quotation made and/or contract entered into on or after 1 March 2021 under which Seller agrees to sell and deliver to Buyer, or procure the sale and delivery to Buyer, of Marine Fuels, unless Seller expressly agrees otherwise in writing.
- 1.2 Each delivery of Marine Fuels shall constitute a separate contract and shall be confirmed in a Confirmation Note sent by Seller to Buyer by email. These Seller's Terms together with the applicable Confirmation Note ("**Transaction**") shall constitute the entire agreement between the Parties with respect to the supply of Marine Fuels contemplated therein.
- 1.3 In the event of any conflict between these Seller's Terms and the terms of the applicable Confirmation Note, the terms of the Confirmation Note shall prevail. In the event of any conflict between these Seller's Terms and any other terms or conditions, in any form, stipulated, incorporated or referred to by Buyer whether in its order, nomination, bunker delivery receipt, or elsewhere, including any conditions as to quality or fitness for any particular purpose whether expressed or implied, these Seller's Terms shall prevail and take precedence over any such other terms or conditions.
- 1.4 Buyer acknowledges that in entering into each Transaction it has not relied on any representations, warranties, statements or undertakings except those which are expressly set out herein or in the applicable Confirmation Note. Buyer further acknowledges that it will only be entitled to remedies in respect of breach of the express terms set out in these Seller's Terms and the applicable Confirmation Note and that Seller will not be liable in tort (including negligence) or under any collateral contract or warranty in respect of any representations, warranties, statements or undertakings which may have been made in relation to any Transaction.
- 1.5 These Seller's Terms are only enforceable by Seller and Buyer and are not intended to give any third party any rights. A person who is not a party to the applicable Confirmation Note shall not have any rights to enforce any term of these Seller's Terms or any Confirmation Note, save where the third party is an assignee and the assignment has been made in accordance with these Seller's Terms.
- 1.6 All persons falling within the definition "Buyer" shall be jointly and severally liable for and guarantee the proper performance of all the obligations of Buyer set out in these Seller's Terms and any Confirmation Note.

## 2. Definitions and Interpretation

- 2.1 The following words and expression shall apply in these Seller's Terms:

"**Affected Party**" has the meaning specified in clause 19.2.

"**Affiliate**" means, with respect to a Party, any person directly or indirectly controlling, controlled by or under common control with such Party.

"**Barge**" means the bunker barge which effects delivery of the Marine Fuels to the Vessel.

"**Business Day**" means a day other than a Saturday, Sunday or public holiday when banks are generally open for business in Seller's Location.

"**Buyer**" means the person who requests an offer and/or quotation and/or who places an order with Seller (whether or not such person is acting as an agent for a disclosed or undisclosed principal) for the sale and purchase of Marine Fuels and includes, without limitation, the owner, charterer (demise or otherwise), manager and/or operator of the Vessel.

“**BDN**” means bunker delivery note.

“**Confirmation Note**” means each confirmation note or contract issued by Seller to Buyer, by email or otherwise, confirming the agreed terms in respect of the applicable bunker nomination by Buyer.

“**Delivery Date**” means the date on which delivery of the Marine Fuels under the applicable Transaction is completed as stated in the relevant BDN.

“**ETA**” means the estimated time of arrival of the Vessel at the Place of Delivery as set out in the Confirmation Note.

“**EU**” means the European Union.

“**Force Majeure Event**” has the meaning specified in clause 13.1.

“**Independent Laboratory**” has the meaning specified in clause 11.3.

“**LIBOR**” means the one (1) month London interbank rate as administered by the Intercontinental Exchange Benchmark Administration Ltd (or any other person which takes over the administration of that rate) as quoted on Reuters determined at 11:00 am London time. If no such rate appears, LIBOR shall be the rate which appears on Reuters at 11:00am London time on the preceding London banking day. If Buyer reasonably believes that LIBOR is no longer representative of the market standard interest rate, Buyer may request that Seller amends this definition to replace the LIBOR benchmark with an alternative benchmark, following which Seller, acting reasonably (which shall include but not be limited to making reasonable efforts to elect a benchmark which has a materially economically neutral effect), shall stipulate an alternative benchmark which shall apply under these Seller’s Terms and be binding upon Buyer.

“**Marine Fuels**” means bunker fuel and/or intermediate bunker fuel and/or marine diesel oil and/or marine gas oil.

“**MARPOL**” means the IMO’s International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 relating thereto and as supplemented by amendments entering into force from time to time.

“**Party**” means the Buyer or Seller (as the case may be), and “**Parties**” means both of them.

“**Payment Due Date**” has the meaning specified in clause 10.1.

“**Place of Delivery**” means the port or place at which delivery of the Marine Fuels by Seller to the Vessel will take place as set out in the Confirmation Note.

“**Previous Transaction(s)**” has the meaning specified in clause 10.5.

“**Price**” means the price (in USD or other denomination, as provided for in the Confirmation Note, per metric ton) to be paid by Buyer for Marine Fuels sold and purchased under these Seller’s Terms.

“**Satisfactory Security**” has the meaning specified in clause 10.6.

“**SDS**” means Safety Data Sheet.

“**Seller**” means, in relation to each Confirmation Note, the party named in the Confirmation Note as the Seller.

“**Seller’s Location**” means the location in which Seller has its principal place of business.

“**Seller’s Terms**” means the general terms and conditions set out herein.

“**Spillage**” means leakage, escape or overflow of Marine Fuels.

“**Subsequent Transaction**” has the meaning specified in clause 10.5.

“**Transaction**” has the meaning specified in clause 1.2.

“**USD**” means the lawful currency of the United States of America.

“**Vessel**” means the vessel which receives, or which it is intended will receive, delivery of the Marine Fuels as set out in the Confirmation Note.

2.2 In these Seller’s Terms unless the context otherwise requires:

- (a) references to “clauses” are to clauses of these Seller’s Terms;
- (b) clause headings shall be ignored in construing these Seller’s Terms; and
- (c) a person includes a natural person, corporate or unincorporated body.

3. Estimated Times of Arrival

3.1 If Buyer fails to comply with any of the following provisions in this clause 3, Buyer shall be liable to Seller for any resulting loss (including loss of time), damage, cost and/or expense incurred by Seller arising out of such non-compliance.

3.2 Buyer shall give Seller or Seller’s representative at the Place of Delivery written updates of the Vessel’s ETA seventy two (72), forty eight (48), twenty four (24), twelve (12) and six (6) hours prior to such ETA. Buyer shall promptly advise Seller or Seller’s representative of any variation of more than 10% to the ETA.

3.3 Notwithstanding anything in these Seller’s Terms to the contrary, Seller will effect delivery of the Marine Fuels on a best endeavour basis as promptly as possible. Any agreed date of delivery stated either in the Confirmation Note or elsewhere is not guaranteed by Seller. Neither Seller nor anyone effecting delivery of the Marine Fuels on its behalf shall be liable for any demurrage or loss of time incurred by Buyer and/or the Vessel and/or any other person under any circumstances whatsoever or otherwise for any delay in delivery howsoever caused.

4. Delivery

4.1 The Buyer shall be responsible for providing safe reception of the full quantity(ies) of Marine Fuels to be delivered under the applicable Confirmation Note without risk to Seller and/or any servant, agent or supplier of Seller or to the property of any such parties (negligence by Seller or failure of or defect in Seller’s equipment being excepted).

4.2 Buyer shall ensure that the Vessel shall:

- (a) be free from all conditions or defects which might give rise to any hazard or cause any delay in connection with Seller’s delivering facilities or Barge or in the delivery of the Marine Fuels generally;
- (b) have onboard all required certificates and be compliance with all applicable national, state and local statutes, regulations and ordinances relating to the receipt of Marine Fuels at the Place of Delivery;
- (c) comply with all applicable local and international laws and regulations pertaining to the delivery of the Marine Fuels at the Place of Delivery; and
- (d) be suitable to safely take delivery of the agreed quantity(ies) of Marine Fuels at the Place of Delivery.

- 4.3 Buyer shall ensure that, prior to delivery, the Master of the Vessel shall:
- (a) advise Seller in writing of the maximum allowable pumping rate and pressure;
  - (b) agree on communication and emergency shutdown procedures with Seller or Seller's representatives; and
  - (c) notify Seller in writing of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of Marine Fuels.
- 4.4 Delivery of Marine Fuels shall take place during ordinary working days and hours at the Place of Delivery and within normal harbour limits, unless agreed otherwise by Seller and permitted by port regulations, in which event Buyer shall pay any extra costs or expenses incurred by or charged to Seller including but not limited to overtime wages of crew.
- 4.5 Delivery of the Marine Fuels shall be effected by Barge or alongside the applicable terminal, as specified in the applicable Confirmation Note. Buyer shall procure that the Vessel provides a free side for Barge deliveries. Seller shall not be obliged to deliver in locations or conditions which in its opinion are unsafe whether for its Barge, the Vessel or otherwise. Seller may interrupt or cease delivery at its discretion for safety reasons, without any liability to Buyer.
- 4.6 Buyer shall be solely responsible for and shall make all connections and disconnections between the delivery hose(s) and the Vessel's intake pipe and shall ensure that the hose(s) are properly connected to the Vessel's intake pipe prior to the commencement of delivery. Buyer shall provide all necessary assistance and sufficient tankage and equipment to receive promptly and safely the applicable quantity(ies) of Marine Fuels.
- 4.7 Buyer shall be responsible for obtaining any delivery permit required for delivery of the Marine Fuels from any applicable government or similar authority, or from any public or private port authority at the Place of Delivery. If Seller is aware that Buyer has not obtained any such required permit, Seller may withhold or suspend delivery until Buyer is in possession of the required permit and Buyer shall be responsible for any costs and/or expenses incurred by Seller as a consequence of any resulting delay.
- 4.8 If any charges are imposed on Seller by the owners/operators of a berth and/or Barge by reason of the prolonged occupation of the berth by the Vessel and/or delays in unmooring the Vessel from the Barge, such charges shall be for Buyer's account except and to the extent the same are due to the fault of Seller.
- 4.9 If the Master of the Vessel is not satisfied with the sampling, quantity measurement or any other matter concerning the Marine Fuels supplied by Seller or their delivery, the Master shall be entitled on completion of delivery to issue a letter or protest. The Master shall not under any circumstances make any remark in the BDN whether relating to a complaint or referring to a separate letter of protest, or otherwise.
5. Environmental Safety
- 5.1 In the event of any Spillage causing or likely to cause pollution occurring at any stage of delivery of the Marine Fuels, the Parties shall jointly, and irrespective of whether it is Seller or Buyer who is (or who is alleged to be) at fault, immediately take such action as is reasonably necessary to clean up such Spillage, which action shall always be conducted in accordance with such local laws and regulations at the Place of Delivery as may compulsorily apply.
- 5.2 Buyer guarantees payment of and agrees to indemnify and hold Seller harmless against any claims, losses, damages, expenses, penalties and/or other liabilities incurred by Seller (including those incurred under any state, national or international oil pollution legislation) to the extent any Spillage is caused or contributed to by Buyer.

5.3 Buyer shall procure that the Vessel shall at all times be fully insured for oil spill liabilities as required by applicable statutory rules and regimes, including without limitation those applicable at the Place of Delivery. If the Vessel does not have such insurance coverage, it shall be the sole responsibility of Buyer to establish such coverage at its cost. Buyer shall provide Seller with proof and the conditions of such coverage promptly upon Seller's request.

## 6. Quantity

6.1 The quantity(ies) of Marine Fuels to be supplied by Seller under a Transaction shall be the quantity(ies) stated in the applicable Confirmation Note.

6.2 Except where local rules and regulations relating to quantity measurement apply mandatorily, the quantity(ies) of Marine Fuels delivered by Seller shall, at Seller's option, be measured using (a) the opening and closing gauge or manual sounding or meter figures or, where applicable, the mass flow meter figures, of the Barge effecting delivery, or (b) in the case of delivery ex-wharf, the shore tank figures.

6.3 Save in the case of fraud or manifest error, the quantity measurement(s) determined in accordance with clause 6.2 shall be final and binding on both Parties. Buyer, at its own expense, shall be at liberty to appoint a representative to witness the measurement(s), however the absence of Buyer or its representatives shall not prejudice the validity of the measurements taken.

6.4 Where applicable, measurement and calculation of the quantity(ies) of Marine Fuels delivered hereunder shall be in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.

## 7. Quality

7.1 Buyer shall have the sole responsibility for the nomination of the specifications and grades of Marine Fuels fit for use by the Vessel.

7.2 The Marine Fuels supplied hereunder shall in all respects comply with the edition of the ISO Standard stated in the Confirmation Note. THIS CONSTITUTES THE WHOLE OF THE SELLER'S OBLIGATIONS WITH RESPECT TO THE QUALITY OF THE MARINE FUELS SUPPLIED HEREUNDER AND (SAVE TO THE EXTENT THAT EXCLUSION IS NOT PERMITTED OR IS INEFFECTIVE BY OPERATION OF LAW) ALL STATUTORY OR OTHER CONDITIONS AND/OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE DESCRIPTION OR QUALITY OF THE MARINE FUELS OR THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED. BUYER WARRANTS THAT IT HAS NOT RELIED ON ANY REPRESENTATIONS MADE BY OR ON BEHALF OF SELLER WITH RESPECT TO THE QUALITY OF THE MARINE FUELS.

7.3 Buyer shall keep all Marine Fuels delivered to the Vessel segregated from other oil products or liquids of whatever kind onboard and Seller shall under no circumstances be responsible for any claim arising out of or connected with the quality of the Marine Fuels delivered if the same have been commingled or blended with any oil products or liquids of any kind onboard the Vessel, regardless of whether the claim is caused by the commingling or blending.

## 8. Sampling

8.1 During delivery one (1) representative primary sample of each grade of Marine Fuels shall be taken by an independent inspector appointed by Seller or, at Seller's option, by the Parties jointly, in accordance with normal sampling procedures at the Place of Delivery 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, or any subsequent amendments thereto. Each such primary sample shall be divided into five (5) representative samples, each of which shall be securely sealed and labelled, showing the Vessel's name, the identity of the delivery facility or the Barge (as applicable), the grade, Delivery Date, place and point of sampling and seal number,

authenticated by the Vessel's stamp and signed by Seller's representative and the Master of the Vessel or the Master's representative.

8.2 Buyer or its representative shall be at liberty to witness the sampling, however the absence of Buyer or its representative shall not prejudice the validity of the samples taken.

8.3 Three (3) of the representative samples of each grade of Marine Fuels delivered shall be provided to the Vessel, one (1) of which shall be for MARPOL purposes. The remaining two (2) representative samples from each grade shall be retained by Seller for a thirty (30) day period from the Delivery Date or the minimum period under applicable law, whichever is the longer.

## 9. Price

9.1 Buyer shall, in addition to the Price, pay any and all additional charges associated with the delivery, including but not limited to (as applicable):

(a) wharfage charges;

(b) charges for oil pollution control equipment required to be used during delivery;

(c) demurrage or other similar charges;

(d) mooring and unmooring charges and port duties incurred by Seller;

(e) overtime charges if delivery takes place outside of regular working days and hours at the Place of Delivery; and

(f) duties, taxes (other than tax on profits) and other fees or charges imposed, levied or assessed on the purchase, exchange, use, resale, transportation and/or handling of the Marine Fuels and which are imposed in the country where the Place of Delivery is located.

9.2 Whenever any amount set out in clause 9.1 for the account of Buyer is collectible from any person other than Buyer, Buyer shall pay such amount on demand plus any interest and penalties thereon. If Buyer claims exemption from any such amount(s), Buyer shall promptly furnish Seller with a properly completed exemption certificate in the form prescribed by the relevant authority of the country in which the Place of Delivery is located in lieu of payment of such amount(s) or reimbursement of such amount(s). Buyer shall indemnify Seller against any charges, costs, liability, interest and/or penalties that may be incurred by Seller as a result of Buyer's delay or failure to provide any necessary documents supporting Buyer's claim of exemption from any such amount(s).

9.3 If price controls on the Marine Fuels are imposed at the Place of Delivery or anywhere else applicable and binding on Seller, Seller may elect not to deliver the Marine Fuels if the maximum price allowed by such price controls is below the Price. In the event that Seller elects not to deliver the Marine Fuels in accordance with this clause 9.3, the applicable Transaction shall immediately become null and void and Buyer shall have no claim against Seller for any loss, damage, cost or expenses of any nature whatsoever.

9.4 The Price set out in the Confirmation Note shall be valid only if the Vessel arrives at the Place of Delivery, and is in all respects ready to receive the Marine Fuels, within four (4) hours of the expiry of the ETA (and Seller shall be under no obligation to deliver the Marine Fuels if the Vessel is not ready by such time). If Seller agrees to deliver the Marine Fuels after such time, Seller shall be entitled to amend the Price to take into account the prevailing market price, which amendment shall be final and binding on Buyer.

## 10. Payment

10.1 Payment for the Marine Fuels and any other sums due under a Transaction shall be made in USD (or such other currency as may be stated in the applicable Confirmation Note) by telegraphic transfer in

immediately available funds, without any deduction, discount, offset and/or counterclaim, free of all bank charges, at the counters of Seller's designated bank as stated in Seller's invoice (which shall be sent to Buyer by email). Unless otherwise stated in the applicable Confirmation Note, payment shall be due by no later than thirty (30) days after the Delivery Date as set out in the BDN (the "**Payment Due Date**") against presentation of Seller's commercial invoice.

- 10.2 If the Payment Due Date falls on a Saturday or a New York banking holiday other than a Monday, payment shall be effected on the preceding New York banking day. If the Payment Due Date falls on a Sunday or a Monday New York banking holiday, payment shall be effected on the following New York banking day.
- 10.3 In the event that Buyer receives a request to make payment of any amount due to Seller in connection with a Transaction to a bank account other than the account stated in Seller's invoice or the Confirmation Note (as the case may be), Buyer must take steps to verify the change with Seller before remitting payment. If payment is made to a bank account other than the account designated in Seller's invoice or the Confirmation Note (as the case may be) and is not verified in accordance with this clause 10.3, Buyer shall remain liable to Seller for such payment.
- 10.4 Buyer shall pay an interest charge on late payments from the Payment Due Date until Seller receives payment at the lesser of (i) a rate of 4% over LIBOR or (ii) the maximum rate of interest which Seller may lawfully charge to Buyer. Such interest shall be payable to Seller on demand by Buyer and shall accrue until payment. This provision shall not be construed as an indication of any willingness on the part of Seller to provide extended credit as a matter of course and shall be without prejudice to any other rights and remedies which Seller may have under the applicable Transaction or otherwise.
- 10.5 If Buyer has not by the expiration of the credit period referred to in these Seller's Terms or the applicable Confirmation Note paid any amount due to Seller in respect of any previous delivery(ies) of Marine Fuels by Seller to Buyer (the "**Previous Transaction(s)**"), then Seller may, in addition to and without prejudice to any other rights it may have: (i) if delivery of the Marine Fuels under a later Transaction (the "**Subsequent Transaction**") has been made and notwithstanding the credit period referred to in clause 10.1, notify Buyer that any amount due in respect of the Subsequent Transaction is immediately due and payable whereupon it shall so be paid; or (ii) if delivery of the Marine Fuels under the Subsequent Transaction has not been made, notify Buyer of the termination with immediate effect of the Subsequent Transaction whereupon it shall be so terminated, in which case Buyer shall have no claim against Seller for any loss, damage, cost or expenses of any nature whatsoever.
- 10.6 Notwithstanding any other provision in these Seller's Terms, in the event that Seller determines in its sole and unfettered discretion (a) that the financial condition of Buyer has become impaired or unsatisfactory and/or (b) that it is necessary to obtain adequate assurances of Buyer's financial condition and/or (c) Buyer exceeds Seller's internal credit limits, then Seller may, upon notice to Buyer, require Buyer to provide Seller with satisfactory security for Buyer's performance of the applicable Transaction in a form and substance reasonably acceptable to Seller ("**Satisfactory Security**"). Such Satisfactory Security may include but not be limited to, at Seller's option, (i) cash prepayment or (ii) an irrevocable documentary letter of credit issued in a form and by a first class international bank acceptable to Seller or (iii) delivery to Seller of a guarantee from Buyer's parent company or any other entity at Seller's discretion. Buyer shall provide Seller with Satisfactory Security by the deadline set by Seller in its notice. If Buyer fails to provide Satisfactory Security to Seller in accordance with this clause 10.6, Seller may suspend its performance under or terminate the applicable Transaction or any other agreements between the Parties.

## 11. Claims

- 11.1 Seller shall not be liable for any claim in relation to the quality of the Marine Fuels supplied and such claims shall be waived and absolutely time barred unless (i) within fifteen (15) days of the Delivery Date (as stated in the BDN), Seller receives from Buyer written notice of such claim and (ii) within forty-five (45) days of the Delivery Date, Buyer submits to Seller a detailed written claim together with all supporting documentation substantiating each and every constituent part of the claim (including but not limited to analysis reports prepared by an independent laboratory of one (1) of



Buyer's retained quality samples and a sample drawn from the Vessel's fuel tank(s) into which the Marine Fuels in respect of which the claim arises were delivered, as well as all correspondence between Buyer and such laboratory relating to such testing.

- 11.2 Upon notifying Seller of a claim relating to the quality of the Marine Fuels supplied, Buyer shall give Seller's representative(s) a reasonable opportunity to inspect the Vessel, including, without limitation, its engines, fuel tanks, equipment, logs, records and copies of all relevant communications between Buyer and the Vessel.
- 11.3 In the event Buyer complies with the time periods set out in clause 11.1 relating to any dispute concerning the quality of the Marine Fuels supplied by Seller, one (1) of the quality samples retained by Seller in accordance with clause 8.3 shall be analysed by an independent laboratory appointed by Seller (the "**Independent Laboratory**"). Should the analysis performed by the Independent Laboratory determine that the Marine Fuels in question are on-specification, the fees charged by the Independent Laboratory shall be borne solely by Buyer. Buyer shall be entitled at its sole cost to appoint a representative to witness such parts of the seal breaking and analysis performed by the Independent Laboratory as its rules and procedures allow.
- 11.4 Seller shall not be liable for any claim in relation to the quantity(ies) of the Marine Fuels supplied and any such claim shall be waived and absolutely time barred unless (i) Buyer or Buyer's representative gives notice to Seller of such potential claim at the time of delivery and (ii) within fifteen (15) days of the Delivery Date, Buyer submits to Seller a detailed written claim together with all supporting documentation substantiating each and every constituent part of the claim.
- 11.5 Buyer shall use its best endeavours to minimise any damage and/or costs arising out of or in connection with off-specification or suspected off-specification Marine Fuels supplied by Seller, including retention and burning of the Marine Fuels in accordance with Seller's instructions. If, prior to the resolution of any claim in relation to the quality of the Marine Fuels, Buyer removes the off-specification or suspected off-specification Marine Fuels from the Vessel without the express written consent of Seller, then all such removal and related costs shall be for Buyer's account.
- 11.6 Notwithstanding anything in these Seller's Terms to the contrary:
- (a) Seller shall not be liable for deviation costs, demurrage or delays to and/or incurred by the Vessel (or for any liability that Buyer may have to a third party for such costs, demurrage or delays) or for any damage to the Vessel's engines, tanks or other machinery (and nor for any cleaning of such parts of the Vessel);
  - (b) Seller shall not be liable to Buyer whether under or in connection with these Seller's Terms or any Confirmation Note, and whether in contract, tort (including in negligence), breach of statutory duty or otherwise (whether or not foreseeable and howsoever arising) in respect of any indirect or consequential losses or expenses and, to the extent not constituting indirect or consequential losses or expenses, any loss of anticipated profits, goodwill, use, market reputation, business contracts or commercial opportunities; and
  - (c) Seller's maximum liability to Buyer under any Transaction shall not exceed the invoice value for that portion of the Marine Fuels supplied by Seller to Buyer on which liability is asserted and in respect of which Buyer is able to show that a loss has been suffered. This limitation of Seller's liability shall apply regardless of whether the liability arises in contract, tort (including negligence) or any other way whatsoever and shall be in addition to any other exclusions or limitations available to Seller under these Seller's Terms and/or at law.
- 11.7 It is a condition precedent to Buyer's right to pursue any claim against Seller under or in connection with a Transaction (including but not limited to any claim relating to the quality or quantity of the Marine Fuels supplied by Seller) that all sums due from Buyer in connection with such Transaction have first been paid, in full and on the applicable Payment Due Date. Any deduction made from or late payment of all or any part of the amount due under Seller's invoice under a Transaction for any reason whatsoever shall be considered a breach of these Seller's Terms and in such event the Buyer shall be deemed to have automatically waived and lost its right to pursue any claim against Seller of

whatsoever nature whether notified or not and shall be bound to pay, in full, all sums deducted or withheld forthwith.

11.8 Should any timely claim submitted by Buyer not be settled to Buyer's satisfaction, such claim shall be waived and absolutely time barred unless legal proceedings in accordance with the provisions of clause 17 have been commenced within ninety (90) days after the Delivery Date or the date on which delivery should have been made.

11.9 To the extent permissible by applicable law, Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of the Marine Fuels delivered hereunder.

## 12. Risk and Property

12.1 Risk in the Marine Fuels shall pass from Seller to Buyer progressively as the Marine Fuels pass the flange connecting the delivery facilities/Barge (as the case may be) and the bunker manifold of the Vessel.

12.2 Title to the Marine Fuels shall pass from Seller to Buyer upon payment of all sums due to Seller in respect of the applicable Transaction. Until such time as full payment is received by Seller, on behalf of itself and the Vessel, Buyer agrees that: (a) it is in possession of the Marine Fuels solely as bailee for Seller; and (b) it shall not be entitled to use the Marine Fuels other than for the Vessel's propulsion.

12.3 The Marine Fuels are supplied on the credit of the Vessel being supplied in addition to Buyer's promise to pay. Buyer warrants that Seller shall have a lien over the Vessel for the value of the Marine Fuels delivered, in addition to any interest due thereon and any costs incurred by Seller in recovering these sums. Buyer, if not the owner of the Vessel, warrants it has the authority of the owner (i) to enter into Transaction(s) on these Seller's Terms and (ii) to create a lien over the Vessel in respect of any sums owed to Seller under this clause 12.3. Such lien shall be without prejudice to any other rights and remedies Seller may have under these Seller's Terms or at law. If, prior to payment, the Marine Fuels are commingled with other marine fuels onboard the Vessel, title to the Marine Fuels shall remain with Seller corresponding to the quantity(ies) of Marine Fuels delivered.

## 13. Force Majeure

13.1 Seller shall not be liable for damages or otherwise for a failure, delay, hindrance, reduction in, interference with, curtailment or prevention of performance of its obligations under a Transaction insofar as the failure was due to an impediment beyond its control including but not limited to:

- (a) war, whether declared or not, civil war, riots and revolutions, acts of piracy, acts of sabotage;
- (b) natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;
- (c) explosions, fires or destruction of tankage, pipelines, refineries or terminals or any kind of installations;
- (d) boycotts, strikes, lock-outs, labour disputes of all kinds, go-slows, occupation of plant and premises;
- (e) any compliance with any law, regulation or ordinance, or with any order, demand or request of an international, national, port, transportation, local or other authority or agency (including the International Energy Agency) or of any body or person purporting to be or to act for any such authority or agency or any corporation directly or indirectly controlled by any of them;
- (f) any curtailment, reduction in, interference with, failure or cessation of supplies of product from any of the Seller's or the Seller's suppliers' sources of supply or by any refusal to supply whether lawful or otherwise by the Seller's suppliers (whether or not in fact such sources of supply are for the purposes of the applicable Transaction);

each a “Force Majeure Event”.

13.2 Seller shall as soon as reasonably practicable after the Force Majeure Event becomes known to it give notice in writing to Buyer of such Force Majeure Event and the effects, or the reasonably anticipated effects, on its ability to perform in as much detail as possible and the appropriate relief sought, and of its intention to rely on this clause. Seller shall use all reasonable endeavours to mitigate and overcome the effects of the Force Majeure Event and shall, during the continuation of the Force Majeure Event, provide Buyer with reasonable updates, when and if available, of the extent and expected duration of the Force Majeure Event. Delay or failure to comply with this clause shall not deprive Seller of the right to claim relief.

13.3 The appropriate relief under this clause shall be as follows:

- (a) in respect of a Force Majeure Event that renders impossible Seller’s performance of its obligations under a Transaction, immediate termination of the affected delivery obligation(s) without liability for damages, penalties and other contractual remedies;
- (b) in respect of a Force Majeure Event that delays, hinders, reduces or interferes with the delivery of the Marine Fuels, immediate postponement of those obligations without liability for damages, penalties and other contractual remedies for a period until midnight (local time at the Place of Delivery) three (3) days after the date of the ETA, or until such time as the Force Majeure Event is removed, whichever is the earlier. Further, should the Force Majeure Event continue beyond midnight (local time at the Place of Delivery) three (3) days after the date of the ETA, then either Party may terminate the applicable Transaction without liability for damages, penalties and other contractual remedies by and upon giving written notice to the other Party.

13.4 Seller shall not be required to make up deliveries omitted on account of the occurrence of a Force Majeure Event.

13.5 Nothing in this clause shall be taken to limit or prevent the operation of the common law doctrine of frustration (including frustration of the adventure, of purpose or of the applicable Transaction).

#### 14. Termination

14.1 Seller, at its sole discretion, shall have the right to terminate a Transaction forthwith and/or suspend delivery under a Transaction upon notifying Buyer either orally (later confirming such notification in writing) or in writing in the event:

- (a) of any breach (including without limitation anticipatory breach) by Buyer of these Seller’s Terms or the applicable Confirmation Note; and/or
- (b) any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of Buyer other than a solvent liquidation or reorganisation of Buyer; or
  - (ii) the appointment of a liquidator (other than in respect of a solvent liquidation), receiver, administrative receiver, administrator, compulsory manager, trustee in bankruptcy or other similar officer in respect of Buyer or any of Buyer’s assets, or any analogous procedure or step is taken in any jurisdiction.
- (c) Buyer:
  - (i) otherwise becomes insolvent however evidenced;
  - (ii) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

- (iii) proposes or makes a general assignment or an arrangement or composition with or for the benefit of its creditors;
- (iv) is unable or admits inability to pay its debts as they fall due;
- (v) is deemed to, or is declared to, be unable to pay its debts under applicable law as they become due; or
- (vi) fails to provide adequate assurance of its ability to perform all of its obligations under a Transaction within 48 hours of a reasonable request from Seller.

14.2 Whether or not Seller exercises its option to terminate and/or suspend delivery pursuant to clause 14.1 shall be entirely without prejudice to and shall not affect Seller's other rights under these Seller's Terms or the applicable Confirmation Note, at law or otherwise.

## 15. Cancellation

If subsequent to Seller issuing a Confirmation Note in respect of a Transaction Buyer cancels its order or request for Marine Fuels or Buyer fails to take delivery of part or all of the Marine Fuels specified in such Confirmation Note in accordance with these Seller's Terms, Buyer shall pay Seller, at Seller's option, either (i) a cancellation fee equal to USD 5 per metric ton in respect of the quantity(ies) of Marine Fuels specified in the application Confirmation Note or (ii) the actual losses and liabilities incurred by Seller as a result of such cancellation or failure to take, including without limitation:

- (a) the difference between the Price set out in the applicable Confirmation Note and Seller's reasonable estimate of the market price of the applicable quantity(ies) of Marine Fuels at the Place of Delivery on the date of such cancellation or failure to take;
- (b) liabilities, losses, damages, costs and expenses incurred by Seller in terminating, liquidating, obtaining or re-establishing any hedging arrangement or related trading position; and
- (c) the costs and expenses incurred by Seller in re-selling the applicable quantity(ies) of Marine Fuels.

## 16. Notices

Any notice or other communication (including without limitation invoices) given to a Party under these Seller's Terms or a Confirmation Note shall be in writing and in English and sent by post, courier or email. If a notice is received after 5.00 pm (local time at the location of the recipient party) on a Business Day, it shall be deemed to have been delivered on the next Business Day.

## 17. Governing Law and Jurisdiction

### 17.1 Where the Seller is Vitol Asia Pte Ltd or Vitol Bunkers (S) Pte Ltd:

- (a) these Seller's Terms and the applicable Confirmation Note shall be governed by English law; and
- (b) any dispute or claim whatsoever arising out of or in connection with these Seller's Terms and the applicable Confirmation Note, its or their subject matter, existence, validity, formation or termination and including non-contractual disputes shall be referred to and finally resolved by arbitration in Singapore in accordance with the arbitration rules of the Singapore Chamber of Maritime Arbitration, current at the commencement of the arbitration, which terms are deemed to be incorporated by reference into this clause. For the avoidance of doubt this will not prevent Seller from taking proceedings in any other jurisdiction to obtain security or ancillary relief or to enforce any order or judgment or to enforce maritime liens or maritime claims in any jurisdiction.

17.2 Where the Seller is Vitol SA or Vitol Bunkers BV:

- (a) these Seller's Terms and the applicable Confirmation shall be governed by English law; and
- (b) any dispute or claim whatsoever arising out of or in connection with these Seller's Terms and the applicable Confirmation Note, its or their subject matter, existence, validity, formation or termination and including non-contractual disputes shall be referred to and finally resolved by arbitration in London in accordance with the London Maritime Arbitrators Association (LMAA) Terms, current at the commencement of the arbitration, which terms are deemed to be incorporated by reference into this clause. The reference shall be to three (3) arbitrators. For the avoidance of doubt this will not prevent Seller from taking proceedings in any other jurisdiction to obtain security or ancillary relief or to enforce any order or judgment or to enforce maritime liens or maritime claims in any jurisdiction.

17.3 Where the Seller is Zhejiang Seaport International Trading:

- (a) these Seller's Terms and the applicable Confirmation Note shall be governed by Chinese law; and
- (b) any dispute or claim whatsoever arising out of or in connection with these Seller's Terms and the applicable Confirmation Note, its or their subject matter, existence, validity, formation or termination and including non-contractual disputes shall be referred to and finally resolved by arbitration in China in accordance with the arbitration rules of the China International Economic and Trade Association Commission for the time being in force at the commencement of the arbitration which terms are deemed to be incorporated by reference into this clause. For the avoidance of doubt this will not prevent Seller from taking proceedings in any other jurisdiction to obtain security or ancillary relief or to enforce any order or judgment or to enforce maritime liens or maritime claims in any jurisdiction.

17.4 Where the Seller is Vitol Inc.:

- (a) these Seller's Terms and the applicable Confirmation Note shall be governed by the General Maritime laws of the United States of America and to the extent that such laws do not apply, then the laws of the State of New York shall govern, without reference to its provisions for conflict of laws;
- (b) both Parties submit to the exclusive jurisdiction of the courts sitting in the city of New York, State of New York of the United States of America in connection with any dispute or claim whatsoever arising out of or in connection with these Seller's Terms and the applicable Confirmation Note, their subject matter, existence, validity, formation or termination and including non-contractual disputes. The Parties hereby waive any objection to venue in the foregoing jurisdiction and any objection to any action or proceeding on the basis of forum non conveniens; and
- (c) TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY.

18. Confidentiality

The Parties agree to keep confidential the existence and terms of each Transaction, save that each Party may disclose the existence and terms of a Transaction pursuant to an order of any court of competent jurisdiction, or as may be required by any applicable law, regulation, or by any governmental or other regulatory authority having jurisdiction over the Parties, or to any of its Affiliates, professional advisors, auditors, insurers, agents and/or brokers or in connection with any dispute or court or arbitration proceedings. The confidentiality obligations contained in this clause 18 shall survive for a period of two (2) years following the Delivery Date under a Transaction or the date on which the Marine Fuels should have been delivered.

## 19. Trade Controls

19.1 Notwithstanding anything to the contrary herein, neither Seller nor Buyer shall be obliged to act in any way or to perform, and nothing in these Seller's Terms or any Confirmation Note is intended, or should be interpreted or construed as requiring or inducing a Party to act in any way or to perform any obligation otherwise required by these Seller's Terms or any Confirmation Note (including without limitation an obligation to (a) perform, deliver, accept, sell, purchase, pay or receive monies to, from or through a person or entity, or (b) engage in any other acts) if this would be in violation of, inconsistent with, penalized or prohibited by, or expose such party to punitive measures under any applicable laws, regulations, decrees, ordinances, orders or rules of the United Kingdom, the EU, any EU member state, the United Nations, the United States of America, Singapore, the People's Republic of China or other jurisdiction applicable to the Parties relating to international boycotts, trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism or similar laws (the "**Trade Restrictions**").

19.2 Where any performance by a Party would be in violation of, inconsistent with, or expose such Party to punitive measures under a Trade Restriction, such Party (the "**Affected Party**") shall, as soon as reasonably practicable, give written notice to the other Party of its inability to perform. The Affected Party shall be entitled:

- (a) immediately to suspend the performance of the obligation (whether a payment or performance obligation) until such time as the Affected Party may lawfully discharge such obligation; and/or
- (b) where the inability to discharge the obligation continues until the end of the contractual time for discharge thereof or a period of thirty (30) days (whichever is shorter), to a full release from the obligation, provided that where the obligation relates to payment for Marine Fuels which have already been delivered, the obligation shall remain suspended (without prejudice to the accrual of any interest on an outstanding payment amount) until such time as the Affected Party may lawfully resume payment,

in each case without any liability whatsoever (including but not limited to any damages for breach of contract, penalties, costs, fees and expenses).

19.3 Nothing in this clause shall be taken to limit or prevent the operation of the doctrine of frustration (including frustration of adventure, of purpose or of the Transaction).

## 20. Anti-Corruption

Buyer and Seller each agree and undertake to the other that in connection with every offer and/or quotation and/or contract which incorporates these Seller's Terms and every Transaction, they will each respectively comply with and act in a manner consistent with all applicable laws, rules, regulations, decrees and/or official government orders of the governments of the United Kingdom, the EU, the United States of America, Singapore, the People's Republic of China or other jurisdiction applicable to the Parties relating to anti-bribery and anti-money laundering. If one Party reasonably believes that the other Party is in breach of any of its obligations under this clause, the non-breaching Party may terminate the applicable Transaction forthwith upon written notice (supported by reasonable evidence) to the other Party without prejudice to the non-breaching Party's rights under these Seller's Terms, the applicable Transaction or generally.

## 21. Miscellaneous

21.1 The United Nations Convention on Agreements for the International Sale of Goods of Vienna 1980 shall not apply to any sale and purchase of Marine Fuels under these Seller's Terms or any Confirmation Note.

21.2 Otherwise and where not in conflict with the other provisions in the Seller's Terms, Incoterms 2010 to apply.

- 21.3 Buyer may not assign or transfer or subcontract its rights or obligations under any Transaction. Seller may without Buyer's consent assign all or a portion of its rights to receive and obtain payment under any Transaction.
- 21.4 To the extent required by the applicable laws at the Place of Delivery, Seller shall provide Buyer with the SDS appropriate to the Marine Fuels supplied. Buyer shall ensure that its employees, servants, agents and contractors (including, without limitation, the Master, officers and crew of each Vessel) comply with all obligations, requirements and recommendations relating to the handling and use of the Marine Fuels supplied by Seller.
- 21.5 Any failure or delay by Seller in exercising any right or remedy provided under these Seller's Terms or a Confirmation Note or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that of any other right or remedy