



## GENERAL TERMS AND CONDITIONS FOR SALE OF MARINE FUELS 2023

### 1. DEFINITIONS

- 1.1 Throughout these General Terms and Conditions, except where the context otherwise requires, the following definitions shall be applied:

**"Applicable Regulations"** means any law(s), rule(s), regulation(s), and/or statutory requirement(s) which apply to and/or which may be prescribed from time to time by any governmental authority relating to the delivery of Marine Fuel, at the port or place of delivery.

**"Buyer"** means the party(ies) as listed in the Sales Confirmation and shall include the Vessel, the Owner, her master, operators, charterers, broker(s), any party benefiting from consuming the Marine Fuel, and any other party ordering the Marine Fuel, all of whom shall be jointly and severally liable as the Buyer under the Contract.

**"Contract"** means the contract for the purchase and sale of the Marine Fuel between the Buyer and the Seller, the terms of which are evidenced by the Sales Confirmation and these General Terms and Conditions.

**"Marine Fuel"** means the marine fuel(s) specified in the Sales Confirmation, and which the Seller is to supply in accordance with these Terms and Conditions.

**"Owner"** means the registered owner(s), beneficial owner(s) and/or bareboat charterer(s) of the Vessel and any Receiving Vessel.

**"Receiving Vessel"** means any vessel which receives and utilises the Marine Fuel sold hereunder.

**"Sales Confirmation"** means a confirmation in writing from the Seller to the Buyer setting forth the particular terms of each sale of the Marine Fuel and incorporating these Terms and Conditions.

**"Sanctioned Country"** means, at any time, a country or territory which is the subject or target of any country- wide or territory-wide Sanctions broadly restricting or prohibiting dealings with such country, territory or government, including but not limited to Iran, Venezuela, the Democratic People's Republic of Korea, the Russia Federation, Donetsk, and/or Luhansk regions.

**"Sanctioned Entity"** means any person, being an individual, corporation, company, premises, association or government, who or which is (a) a person listed in any list of specially designated nationals or designated persons or entities maintained by a Sanctions Authority; (b) (1) 50% or more owned or (2) controlled, by any persons described in paragraph (a) of this definition; or (c) otherwise the subject of Sanctions.

**"Sanctions"** means any economic, financial or trade sanctions laws, regulations, executive orders, prohibition or restriction, restrictive measures or other economic, financial or trade sanctions requirements enacted, administered, imposed, enforced or publicly notified by a Sanctions Authority.



**1.2** Unless the contents otherwise require, references to the Seller or Buyer shall include their servants, agents, or designated representatives.

**“Sanctions Authority”** means (a) the United Nations Security Council, (b) the United States of America, (c) the European Union or any of its member states’ governments, (d) the United Kingdom, (e) Singapore, (h) Malaysia, and/or (g) the flag State of the Vessel, each acting through the respective governmental and agencies of any of the foregoing (including through the Office of Foreign Assets Control of the U.S Department of Treasury, the United States Department of State, the United States Department of Commerce, and His Majesty's Treasury). **“Seller”** means The Hawks Colombo Pvt Ltd

**“Supplying Company”** means the party (if any) supplying the Marine Fuel for and on behalf of the Seller.

**“Terms and Conditions”** means the standard terms and conditions set out in this document.

**“Vessel”** means the vessel nominated by the Buyer to receive and take delivery of the Marine Fuel.

**“Banking day”** means a day which banks are open in the places of business of the Sellers and the Buyers and, where a remittance is in US dollars, in New York or, if other than US dollars, in the country of the price currency.

## **2. BASIS OF SALE**

- 2.1** Each sale of the Marine Fuel shall be evidenced by a Sales Confirmation to the Buyer. No terms and conditions proposed by the Buyer (including but not limited to any purchase confirmation, purchase order, and/or any other document(s) purporting to fulfil a similar function), whether before or after the Sales Confirmation, shall be or become part of the Contract. Unless the Seller expressly agrees otherwise by manually executing a written agreement setting out any other terms and conditions, any sale of Marine Fuel by the Seller shall be evidenced by a Sales Confirmation and these Terms and Conditions.
- 2.2** The Contract shall be firm and binding upon the Buyer’s acceptance of the price quoted by the Seller by way of electronic communication including but not limited to electronic mail, chat, information, submission or instant messenger communication, telephone, registered and reply-paid letter in writing or verbally. Confirmation in writing by the Seller of the price may be provided to the Buyer, but the absence of such confirmation shall not void the agreement of sale and/or the Contract.
- 2.3** Contracts entered or negotiated via brokers, or any other authorised representative on behalf of the Seller, shall only bind the Seller upon the Seller’s broker or other authorised representative sending the Sales Confirmation to the Buyer or the Buyer’s broker as the case may be.
- 2.4** Unless otherwise provided herein or agreed in writing by the Seller, these General Terms and Conditions shall supersede all previous terms and conditions issued by the Seller and shall override any terms stipulated, incorporated or referred to by the Buyer or Seller whether in any quotation or order or in any negotiations.

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- 2.5** In the event of any inconsistency between these General Terms and Conditions and any term in the Sales Confirmation, the terms of these General Terms and Conditions shall prevail to the extent of any such inconsistency.

## **3. PRICE**

- 3.1** Subject to the provisions in Clause 3.3 of these Terms and Conditions, the price of the Marine Fuel shall be the price as set out in the Sales Confirmation.
- 3.2** The prices quoted are in United States Dollars (unless otherwise expressly stated) and are exclusive of taxes, levies, duties, expenses, fees, wharfage dues, delivery charges, barging fees, jetty fees, mooring and unmooring charges, pipeline charges, port dues and any other costs or charges arising out of or in connection with or incurred by the delivery of the Marine Fuel under the Contract (including without limitation, those imposed by governments and/or authorities), all of which shall be included in the Seller's invoice and which shall be borne by the Buyer.
- 3.3** The Seller reserves the right, by giving notice to the Buyer in writing at any time before delivery and on or after acceptance of any quotation, to increase the price of the Marine Fuel to reflect any increase in the cost to the Seller (such as, without limitation, any change in delivery date(s), quantity or quality for the Marine Fuel which is requested by the Buyer, or any delay caused by any instructions of the Buyer or the failure of the Buyer to give the Seller adequate information or instructions), and the Buyer shall be bound by and pay such increased price.

## **4. CHARGES**

- 4.1** In addition to the prices payable for the Marine Fuel, unless the agreed otherwise by the Seller, the Buyer shall pay all:
- 4.1.1** Lighterage, freight, bunker barge or tanker charges, vehicle, crane, equipment, pipeline charges, wharfage, mooring and unmooring charges, pilotage, port dues, insurance, overtime and clean-up costs which may be incurred by the Seller in connection with the delivery of the Marine Fuel under the Contract.
- 4.1.2** Duties and taxes incurred by the Seller or for which the Seller is accountable in respect of the delivery of the Marine Fuel under the Contract.



## 5. NOMINATION

- 5.1** The Buyer shall give the Seller, unless otherwise specified by the Seller, not less than seven (7) banking days prior to its requested delivery date, a written nomination setting out all the Buyer's requirements for delivery of the Marine Fuel, which nomination shall include, at the minimum: (i) the name of the Vessel, as well as her call sign, IMO number, deadweight tonnage, gross registered tonnage, net registered tonnage, length overall, and freeboard; (ii) the Vessel's local agent(s); (iii) the estimated date and time of arrival at the delivery location; (iv) the requested date of delivery; (v) the location of the Vessel at the time of such written nomination; (vi) method of delivery; (vii) the grade and quantity of the Marine Fuel required; (viii) the exact quantity of the Marine Fuel required; (ix) the exact location and time at which delivery is required; (x) the maximum rate and pressure at which the Vessel can receive the Marine Fuel; and (xi) the Vessel's manifold size and location to receive the Marine Fuel. In the event that the Seller requires any other details and/or information, the Buyer shall expeditiously provide the same to the Seller in writing. The Buyer shall provide the Seller with a firm 48-hour mandatory written notice (excluding Saturday, Sunday and public holidays in Sri Lanka) in advance, of the exact location, date and time, of the requested delivery failing which the seller shall effect delivery on a best endeavours basis only and shall not be responsible for any costs, losses, damages, expenses, and/or demurrage, deviation or detention, or whatsoever nature, thereby incurred.
- 5.2** The Buyer shall reimburse the Seller for overtime and/or other additional expenses incurred due to the failure of the Buyer to provide the Seller with sufficient details and/or adequate notice of changes to nomination requirements. The Buyer shall be liable for any costs, losses, damages and expenses in the event of any changes and/or additions to the details set out in the Buyer's nomination. Conversely, the Seller shall not be liable for any costs, losses, damages, and/or expenses incurred by the Buyer and/or any other party as a result of any changes and/or additions to the details set out in the Buyer's nomination.
- 5.3** The Buyer shall be liable for all costs, expenses and/or charges incurred by the Seller on account of the Buyer's failure, breach and/or non-compliance with any of its obligations under the Contract.

## 6 DELIVERY

- 6.1** The Seller's obligation to make delivery hereunder is subject to the availability of the Seller and the Supplying Company at the port of delivery of the particular Marine Fuel requested by the Buyer
- 6.2** Delivery of the Marine Fuel shall take place on 24 x7 basis subject to weather/sea conditions, port movement, availability of the terminal for loading, and the approval of port control, pilot station and ISPS office at the requested delivery location, unless otherwise specifically agreed to by the Seller and permitted by any applicable regulations or authorities, including but not limited to the flag State of the bunker tanker or barge effecting delivery. If, in the sole opinion of the Seller, delivery may cause a labor dispute and/or breach of any applicable labor regulations, the Buyer shall be required to provide its own bunker tanker or barge at its own cost and expense. Without prejudice to the above, the Seller may in its sole option delay delivery to avert any potential labor dispute and/or to comply with any applicable labor regulations; in such an event, the Seller shall not be liable for any costs, losses, damages, expenses, and/or demurrage, deviation or detention, or whatsoever nature.

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- 6.3** Delivery of the Marine Fuel shall be carried out subject to the regulations, requirements and procedures prevailing at the port or place, and the time, of delivery, as well as the respective flag States of the bunker tanker or barge effecting the delivery, and the Vessel. The Buyer shall be solely responsible for complying with such regulations, requirements and procedures including but not limited to obtaining all necessary permits, licenses and approvals required to enable the Seller and Buyer to execute their entire obligations under the Contract. The Seller shall not be required to deliver the Marine Fuel to the Buyer when such regulations, requirements and procedures have not been complied with.
- 6.4** Unless the Seller expressly states in writing that the price of the Marine Fuel is to include any applicable barging charges, the Buyer shall pay the applicable barging charges applicable to the delivery of the Marine Fuel plus transportation taxes, if any, at the port or place of delivery.
- 6.5** The Buyer shall ensure that the Vessel provides a free, safe and always afloat and accessible side for the delivery of the Marine Fuel and that all necessary assistance as required by the Seller or its representative is rendered in connection with the delivery.
- 6.6** The Buyer shall be solely responsible for making and maintaining all connections and disconnections between the delivery hose of the bunker tanker or barge effecting delivery, and the intake pipe of the Vessel, and shall render all other necessary assistance and provide sufficient equipment to receive promptly all deliveries of the Marine Fuel. Where delivery is undertaken ex-wharf, the Buyer shall promptly receive the delivery and withdraw the Vessel from shore terminal or wharf once delivery is completed.
- 6.7** Delivery of the Marine Fuel shall be deemed completed as the Marine Fuel passes the flange connection between the delivery hose and the Vessel's intake manifold.
- 6.8** The Buyer shall be responsible for any delay caused to the Seller or the Supplying Company which is caused by the Buyer, its agents or the Vessel (in her arrival or due to her condition, breakdown and/or inability to receive), and shall pay to the Seller and the Supplying Company for all losses, expenses, charges arising therefrom or in connection therewith, including but not limited to demurrage or detention at the prevailing chartering fee per day prorata. The Buyer agrees that the aforesaid sum is not a penalty sum, but is instead reasonable and accepts that it is liquidated damages. For the avoidance of doubt, such delay shall include, but not be limited to, the Vessel's inability for whatever reason to receive the Marine Fuel at the maximum allowable pumping rate or the minimum flowrate of the bunker tanker or barge (whichever is higher).
- 6.9** Without prejudice to the Seller's right to cancel the nomination, in the event the Vessel arrives earlier or later than the firm date and time of arrival, the Seller and Supplying Company shall be under no obligation whatsoever to effect prompt delivery, and any guarantee or warranty given expressly or impliedly as to prompt delivery is hereby expressly excluded.
- 6.10** The Seller may elect to discontinue operations at any delivery or loading location for any reason without obligation to the Buyer.



- 6.11** The Buyer shall ensure that the Vessel is in possession of all necessary certificates, approvals, and equipment to receive, store, and use the Marine Fuel as ordered, and shall indemnify the Seller for any loss and/or liability incurred as a result of the Vessel's failure to obtain and/or procure any such certificate(s), approval(s), and/or equipment. The Buyer warrants that the Vessel shall comply with the requirements of the International Ship and Port Facility Security Code and relevant amendments as per Chapter XI of SOLAS (the "ISPS Code"). Notwithstanding any prior acceptance of the Vessel, should the Vessel not comply with the requirements of the ISPS Code, the Seller shall have the right not to moor or make delivery to any such Vessel, and any demurrage, detention and/or expense resulting from the Seller exercising the right not to berth or moor any such Vessel shall be for the sole account of the Buyer. If the Buyer is obliged to replace or otherwise gain certification for the Vessel, all costs associated with requalifying or replacing the Vessel and any subsequent costs shall be for Buyer's account. Any cost or expense incurred by the Vessel resulting solely from the failure of the Vessel to comply with the ISPS Code shall be for the account of the Buyer but shall be limited to demurrage and documented costs incurred and paid by the Buyer in accordance with the provisions of this clause, excluding consequential losses. In no event shall the Seller be responsible for any such costs and expenses after the Vessel casts off from the bunker tanker or barge (or, where delivery is made ex-wharf, from the loading terminal). Where the place of delivery is within the United States, its territories, or waters, the references herein to the ISPS Code shall be deemed to also incorporate the requirements of the US Maritime Transportation Security Act 2002.

## **6A DELIVERY WITHIN PORT LIMITS**

- 6A.1** Notwithstanding any provision in these General Terms and Conditions to the contrary, where delivery of the Marine Fuel to the Vessel is effected within Sri Lankan port limits by a bunker tanker or barge which is licensed by the Marine Environment Protection Authority (MEPA) of Sri Lanka, the delivery shall be subject to the internationally accepted standards. In the event of any inconsistency between these General Terms and Conditions and International Bunkering Code in any respect, these General Terms and Conditions shall prevail.

## **7. QUANTITY**

- 7.1** The quantity of the Marine Fuel delivered shall, at the Seller's sole option, be finally and conclusively determined from the gauge, ullage, meter or sounding of the bunker tanker or barge effecting delivery, and the barge sounding is final and binding. Even if the chosen method for determining quantity of the Marine Fuel delivered is by any method, the Seller shall be entitled to appoint a joint surveyor with the supplier, to carry out gauging of any or all tanks in the case of a quantity dispute. In such cases the delivered quantity based on the bunker tanker/barge sounding/ullage confirmed by the independent surveyor is final and binding.
- 7.2** In respect of the quantity agreed upon, the Seller shall be at liberty to provide, and the Buyer shall accept, a variation of 5% from the agreed quantity, with no other consequence save for a corresponding adjustment to the price to be invoiced from the Seller to the Buyer.
- 7.3** In the event that the Buyer and/or Vessel is/are unable or refuse(s) to take delivery of the full ordered quantity, the Buyer shall nevertheless be obliged to make payment for the full ordered quantity irrespective of the fact that a small quantity may have been delivered to the Vessel. Notwithstanding the above, in the event that the





Vessel receives any quantity whatsoever above the Buyer's requested quantity, the Buyer shall pay the Seller for the total quantity delivered at the unit price set out in the Contract.

## 8 QUALITY

- 8.1** Notwithstanding any information which may be provided by the Seller to the Buyer regarding characteristics and/or quality of the Marine Fuel, the Buyer shall have the sole responsibility for selection and acceptance of the Marine Fuel for use in the Vessel nominated by the Buyer to receive the Marine Fuel including determination of compatibility with fuel already on board the Vessel. In no event shall the Seller be responsible for any loss caused by quality or compatibility of the Marine Fuel delivered if the Marine Fuel is mixed or comingled with any other product(s), marine fuel(s), and/or additives after delivery has been completed.
- 8.2** The quality of the Marine Fuel shall be the usual quality of that grade being sold by the Seller at the time and place of delivery. Any warranty as to quality or fitness or suitability of the Marine Fuel for any particular purpose and all warranties and conditions whether written or implied whether by statute, common law or otherwise as to quality, merchantability, or fitness or suitability for any particular purpose, are expressly excluded to such extent permitted by law. The Seller further does not warrant that the Marine Fuel to be delivered is compatible with any other marine fuel, additives, lubricants and/or cylinder oil, which may be or will be on board and/or used by the Vessel. In the case of quality claims buyer and supplier should joint appoint a surveyor/laboratory to test the representative samples within 07 days of the supply to determine the quality of the fuel supplied to the buyer.
- 8.3** The Seller's employees, servants or agents are not authorized to make any representation concerning the Marine Fuel and its characteristics, description or specifications unless confirmed by the Seller's designated representative in writing. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.
- 8.4** The Seller warrants that the Marine Fuel shall remain homogeneous up to the point of delivery. The Buyer, in taking delivery of the Marine Fuel acknowledges that it has not relied upon any written and/or oral representation made by or on behalf of the Seller but has relied exclusively on its own knowledge and judgment as to the fitness for its purpose and usage of the Marine Fuel.
- 8.5** The Buyer acknowledges and agrees that the Marine Fuel may contain biofuel, in which case, any such biofuel may contain FAME (fatty acid methyl esters) and shall comply with the requirements of the latest edition of EN 14214 or ASTM D6751 (at Seller's sole option).



## 9 SAMPLING AND TESTING

**9.1** The Seller or its representative shall arrange for representative samples of the Marine Fuel to be drawn at the time of delivery of the Marine Fuel. Unless otherwise agreed between the Seller and Buyer in writing, the sampling shall be drawn from a point and in a manner chosen by the Seller or its representative. The Buyer or its representative is entitled to be present at the sampling but the absence of the Buyer or its representative during all or any part of the sampling process shall not prejudice the validity of the samples.

**9.2** The samples taken in accordance with Clause 9.1 shall be divided and stored in sample bottles, which shall be sealed in the presence of the Buyer or its representative and signed by both the Seller or its representative and the Buyer or its representative (an "Official Sample"). The samples shall be kept for a period of Seven (07) Days after delivery, or longer by written request of the Buyer subject to the Seller's acceptance. Nothing herein shall preclude the Seller from retaining any Official Sample for a period longer than seven days after delivery.

**9.3** In the event of any valid dispute and/or claim concerning the quality of the Marine Fuel, an Official Sample retained by the Seller shall be tested by an independent laboratory agreed upon by the Buyer and Seller whose results shall be conclusive to determine the quality of the Marine Fuel supplied. The parties are to use best endeavors to agree on the independent laboratory to perform the tests. If, however, no agreement can be reached on the choice of laboratory within three (3) days of the Buyer being advised of the Seller opting to have the sample tested, the Seller shall have the sole option, at its sole discretion, to send the sample to an independent laboratory of its choice for the tests to be conducted and those test results will be the final and conclusive evidence of the quality of the Marine Fuel supplied to the Vessel, in accordance with the variances set out in ISO 4259:2006 (as may be amended from time to time) ("ISO 4259").

The interpretation of any test results and/or analysis under this clause, including but not limited to those which the Buyer purports to rely, shall adhere to ISO 4259, in particular, sections 9 and 10 in respect of precision and interpretation of test results.

**9.4** If the result of the test of the laboratory falls within the specification limits of the grade of the Marine Fuel in accordance with ISO 8217:2010 (or such other version of ISO 8217 as may be expressly agreed between the Seller and the Buyer) and ISO 4259, the cost of the test shall be borne by the Buyer.

**9.5** Any additional samples drawn by the Buyer's personnel, representative or surveyor either during delivery of the Marine Fuel or at any later date after delivery of the Marine Fuel shall not be valid as an indicator of or evidence of the quality of the Marine Fuel supplied. The fact that such samples may eventually bear the signature of the personnel on board the barge or tank truck or other delivery conveyance shall have no legal significance as such local personnel have no authority to bind the Seller to different contractual terms. The Seller shall have no liability for claims arising in circumstances where the Buyer may have commingled the Marine Fuel supplied to the Vessel with other marine fuel and/or any additives after delivery has been completed.



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## **10 MARITIME LIEN**

**10.1** Without prejudice to any other right and remedies which the Seller may have, the Marine Fuel supplied to the Vessel is sold and delivered on the faith and credit of the Vessel and on the order of the Owner, and it is agreed and acknowledged that the said supply creates a maritime lien over the Vessel in favor of the Seller. Nothing shall prejudice the Seller's right of the maritime lien under any applicable law, whether at the place of delivery, or the flag of the Vessel, or the place or jurisdiction of arrest of the Vessel whatsoever. This clause shall supersede any markings, annotations, stamps, and/or clauses on the bunker delivery note and/or any other delivery documentation.

## **11 RISK AND TITLE**

**11.1** Risk in the Marine Fuel shall pass to the Buyer once the Marine Fuel passes the flange connection between the delivery hose and the Vessel's intake manifold.

**11.2** Title in the Marine Fuel shall pass to the Buyer only upon payment by the Buyer of the Marine Fuel in full pursuant to Clause 13 of these Terms and Conditions and the Buyer shall have no right and/or authority to consume or burn the Marine Fuel until such payment and transfer of title is effected. If the Marine Fuel is commingled with any other product(s), marine fuel and/or additives after delivery has been completed, title to the Marine Fuel shall remain with the Seller corresponding to the quantity of the Marine Fuel delivered. If the Marine Fuel is commingled with any other product(s), marine fuel and/or additives and the total commingled fuels are reduced through use to an amount less than the amount delivered under the Contract, title in the unused Marine Fuel will remain with the Seller on a pro rata basis calculated using the amounts as they were when first commingled. Notwithstanding any other provision in the Contract, the Buyer shall have no right and/or authority to on-sell the Marine Fuel or purport to transfer title in the Marine Fuel to any other party(ies) unless and until full payment by the Buyer of the Marine Fuel is made to the Seller and title to the Marine Fuel is transferred to the Buyer in accordance with the terms of this Contract.



## 12 INDEMNITY AND LIMITATION OF LIABILITY

- 12.1** The Buyer shall indemnify the Seller against and hold the Seller harmless in respect of any claim, liability, loss, damage, costs, fine, penalty, and expenses whatsoever and howsoever incurred or sustained out of or in connection with the act, omissions, neglect or default of the Buyer, its representatives, servants, agents, contractors, the Vessel, the Vessel's crew and agent in the purchase, delivery, receipt, use, storage, handling or transport of the Marine Fuel.
- 12.2** In no event shall the Seller be liable to the Buyer for any indirect or consequential loss or damage of whatsoever including but not limited to loss of hire, loss of profits or business, increased cost or expenses for obtaining replacement fuel, or loss by reason of shutdown or non-operation. In no event shall the Seller be liable for punitive damages.
- 12.3** Any loss of or damage to the Marine Fuel, or to any property of the Seller or the Supplying Company or to any other person, during or after delivery caused by the Buyer its representatives, servants, agents, contractors, the Vessel, the Vessel's crew and agent shall be borne by the Buyer and the Buyer shall to such extent indemnify or reimburse the Seller for the same.
- 12.4** In the event that the Marine Fuel delivery is made by bunker tanker or barge, any damage caused by contact and/or collision and/or swell and/or other weather or sea related condition or incident, such damage is to be dealt with by the Owner directly of the involved vessels, and the Seller shall not be held responsible for such damage. If, however, any of the involved vessels choose to bring any claim against the Seller as a result of any such damage, the Buyer will fully indemnify and hold the Seller harmless in relation thereto.
- 12.5** All costs borne by the Seller in connection with the collection of overdue payments, whether made in or out of court and in general all costs in connection with breach of this agreement by the Buyer, shall be for the sole account of the Buyer.
- 12.6** The Vessel shall be covered under an appropriately worded "Tovalop" and have protection and indemnity insurance from a Protection and Indemnity Club which is a member of the International Group, and shall have on board the certificate of insurance in respect of liability for oil pollution.
- 12.7** The Seller and the Supply Company shall have no liabilities whatsoever, including but not limited to any expenses, loss, damages, demurrage whatsoever which may be suffered by the Buyer or any other party as a result of or in connection with:
- 12.7.1** any disputes as to the quantity or the quality of the Marine Fuel;
- 12.7.2** any delay, demurrage, deviation, detention or non-delivery due to any other circumstances whatsoever outside the direct and immediate control of the Seller including but not limited to congestion affecting the delivery, any prior commitment of delivery facilities, public holidays or practices at the port of delivery;

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- 12.7.3** Any inspection or survey conducted by or on behalf or at the request of the Buyer, independently or pursuant to these Terms and Conditions.
- 12.8** Notwithstanding the foregoing, the Seller's liability herein for any claim or dispute arising out of or in connection with the Contract and/or delivery of the Marine Fuel shall be limited to:
- 12.8.1** the Seller at its sole discretion requesting the Vessel to debunker the delivered Marine Fuel and refueling the Vessel to the extent of the delivered Marine Fuel, at Sri Lanka; or
- 12.8.2** the Seller at its sole discretion requiring the Vessel to debunker the delivered Marine Fuel at Sri Lanka, and refunding all payments made by the Buyer to the Seller in respect of the debunked Marine Fuel; or
- 12.8.3** the Seller at its sole discretion making lump sum compensation equivalent to the price of the Marine Fuel as set out in the Seller's invoice. Provided always that the Seller's extent of liability to the Buyer shall in no event exceed the price of the Marine Fuel as set out in the Sales Confirmation.

## **13 PAYMENT**

- 13.1** The Seller shall invoice the Buyer for the price of the Marine Fuel delivered by the Seller into the Vessel and for any other charges referred to in Clauses 3 and 4 on or at any time after delivery of the Marine Fuel or in the event the Buyer wrongfully fails to take delivery or accept the Marine Fuel, at any time after the Seller has notified the Buyer that the Marine Fuel are ready for delivery.
- 13.2** The Buyer shall within the time stipulated by the Seller in the invoice or in the absence of such provision, within thirty (30) days from the date of the delivery, or in the event the Buyer wrongfully refuses to take delivery, thirty (30) days from the date of the Buyer's failure to take delivery or accept the Marine Fuel, which period shall include the date of delivery or the invoice as the case may be, make full payment in United States Dollars (or other currency expressly stated by the Seller) without any discount or deduction whatsoever for or on account of any taxes, levies, duties, charges, fees, withholdings, discounts, set offs, counterclaims, restrictions or conditions of any nature and notwithstanding any claims of whatsoever nature and howsoever arising, by telegraphic transfer immediately available funds to the Seller's bank account with details as provided in the invoice from the Seller to the Buyer or otherwise as instructed by the Seller.

Payment shall only be deemed to be made when the said transfer is unconditionally cleared and confirmed by the Seller's bank within the period stated herein and in Clause Overdue payments shall bear compound interest at the rate of two percent (2%) per month as pro-rated from the date the payment falls due until full payment is made.

- 13.3** In the event payment due date does not fall on a banking day or any other day on which the Seller's bank is closed, payment shall be made on or before the banking day immediately preceding the day on which payment would, apart from this clause, have fallen due.



**13.4** Partial payments shall be applied in order of priority (i) firstly towards payment of any costs and expenses incurred in respect of the Contract due from the Buyer to the Seller including but not limited to that set out in Clause 12.5, (ii) secondly towards interest incurred in respect of the Contract due from the Buyer to the Seller under Clause 13.2, and (iii) lastly towards the price of the Marine Fuel delivered under the Contract and/or any other charge and/or expense under Clauses 3 and 4 and/or any other balance monies due and unpaid from and by the Buyer to the Seller under the Contract.

**13.5** The Buyer is not entitled to assert any right to set off or counterclaim in making any payment or, in any legal proceedings by the Seller against the Buyer, for payment of price of deliveries, or any monetary claims or damages asserted by the Buyer unless the same is admitted by the Seller.

## **14 EVENTS OF DEFAULT**

**14.1** There shall be an Event of Default if any of the following events occur:

**14.1.1** when the Buyer, for whatever reason, fails to accept or take delivery of the Marine Fuel in part or in full at the place and time designated for delivery;

**14.1.2** the Vessel fails to present herself for the bunker tanker or barge, or at the shore terminal or wharf to effect delivery for more than twenty-four (24) from the nominated date and time of delivery;

**14.1.3** when the Buyer fails in part or in full to comply with its obligations to pay any amount due to the Seller;

**14.1.4** when the Buyer fails to comply with any of its obligations under the Contract;

**14.1.5** when, before the date of delivery, it is apparent in the opinion of the Seller that the financial position of the Buyer entails a risk to the Seller;

**14.1.6** When the Buyer fails to make payment on the due date of any sums due under the Contract.

**14.1.7** when the Buyer becomes insolvent or enters any arrangement or composition with its creditors; or

**14.1.8** any application is made or any proceedings are commenced against the Buyer, or any order or judgment is given by any court for :-

(i) The liquidation, winding up, bankruptcy, insolvency, dissolution, scheme of arrangement, protection under Chapter 7 or 11 of Title 11 of the United States Code or the Insolvency, Restructuring and Dissolution Act 2018 of Singapore, English Law or any other applicable insolvency laws, administration or reorganization or similar of the Buyer ; or

(ii) The appointment of a receiver, liquidator, trustee, administrator, judicial manager, scheme manager, or similar functionary of the Buyer of all or a substantial part of the Buyer's assets (other than for the purpose of a merger or an amalgamation) ; or

(iii) A stay of proceedings against the Buyer as a result of any application referred to in sub-clause (i), above ; or

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- 14.1.9** Any act being done or event occurring which, under the applicable law thereof, has a substantially similar or analogous effect to any of the said acts or events described above.
- 14.2** On the occurrence of an Event of Default, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 14.2.1** terminate the Contract or suspend any further deliveries to the Buyer;
- 14.2.2** appropriate any payment by the Buyer to such of the Marine Fuel (or marine fuel supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
- 14.2.3** Enter onto the Vessel, take possession of and remove in such manner and for such use as the Seller sees fit, or for sale to any party as the Seller may in its sole discretion decide, the Marine Fuel. The Buyer shall render full assistance to the Seller to facilitate the said entry and the removal of the Marine Fuel. The Seller shall not be responsible for any loss or damage, including any loss arising out of or in connection with the said entry or removal of the Marine Fuel; and/or
- 14.2.4** in derogation of any agreement governing payment or credit, demand and receive immediate payment in advance under the Contract.
- 14.3** Notwithstanding any of the provisions in these General Terms and Conditions and
- 14.3.1** where:- 14.3.1 an Event of Default takes place;
- 14.3.2** the Buyer makes any voluntarily arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or being a company goes into liquidation;
- 14.3.3** an encumbrancer takes possession, or a receiver is appointed, of any property or assets of the Buyer;
- 14.3.4** the Buyer ceases, or threatens to cease, to carry on business;
- 14.3.5** liquidation, bankruptcy or any other changed financial or legal position of the parent company, sister companies or affiliated companies to the Buyer which in the sole discretion of the Seller is deemed to adversely affect the financial position of the Buyer;
- 14.3.6** the Seller reasonably apprehends that any of the events mentioned above is about to occur or that the Buyer is unlikely to perform any of its obligations under the Contract; or
- 14.3.7** in the case of any other situation, which in the sole discretion of the Seller is deemed to adversely affect the financial position of the Buyer. The Seller may in its sole discretion and without prejudice to any other available right or remedy, cancel or terminate the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Marine Fuel has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, or may alter any of these General Terms and Conditions relating to the

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Buyer's obligation to pay or may demand the Buyer to effect payment in advance of delivery of request the Buyer to provide security satisfactory to the Seller.

**14.4** In the event that the Buyer (whether by way of express written cancellation or otherwise) fails to nominate the Vessel and/or fails to take delivery of the quantity or reduce the nominated quantity of Marine Fuel ordered under the Contract, the Seller may without prejudice to its other available rights and remedies sell the Marine Fuel contracted for at the prevailing market price and the Buyer shall be liable for all loss, costs (including the costs of all services rendered and labour and materials used), damage, charges and expenses incurred by the Seller as a result of the default. In addition to the foregoing, the Seller shall be entitled, at its sole option, to be paid liquidated damages, without any proof of loss, comprising the total of:-

(i) United States Dollars Fifteen (USD 15.00) per metric ton; and

(ii) the difference between the price agreed by the parties and the prevailing market price on the date of the Buyer's cancellation or default OR the difference between the market price on date of fixture and the prevailing market price on the date of the Buyer's cancellation or default, whichever is higher.

If the above calculation amounts to less than United States Dollars Two Thousand (USD 2,000.00), then the liquidated damages will be determined to be at United States Dollars Two Thousand (USD 2,000.00).

For the purposes of this clause:-

**14.4.1** the "prevailing market price" or "market price" shall refer to the corresponding prices published by Platts; and

**14.4.2** the quantity by which the above-mentioned liquidated damages are to be calculated shall be the maximum quantity of Marine Fuel to be supplied under the Contract

## 15 CLAIMS

**15.1** Any claim(s) by the Buyer arising out of or in relation to the quantity of Marine Fuel delivered (or which ought to have been delivered) under the Contract must be notified to the Seller in writing as soon as possible but in any event no later than seven (7) days from the date of such delivery (date of delivery being Day 1), together with all supporting documents and all necessary details required by the Seller to satisfactorily evaluate the claim, failing which any such claim shall be deemed to be irrevocably and forever barred, and the Seller and Supplying Company shall be irrevocably discharged and forever released from any and all liabilities in relation to any and all such claims.

**15.2** Any claim(s) by the Buyer arising out of or in relation to the specification(s), description and/or quality of Marine Fuel delivered (or which ought to have been delivered) under the Contract must be notified to the Seller in writing as soon as possible but in any event no later than twenty-one (21) days from the date of such delivery (date of delivery being Day 1), together with all supporting documents and all necessary details required by the Seller to satisfactorily evaluate the claim, failing which any such claim shall be deemed to be irrevocably and forever barred, and the Seller and Supplying Company shall be irrevocably



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discharged and forever released from any and all liabilities in relation to any and all such claims. Such supporting documents and necessary details shall include, but not be limited to, a report issued by an independent laboratory, based on tests carried out on an official sealed sample taken at the time of delivery, showing the relevant quality parameter(s) falling outside the relevant and applicable ISO 8217 and ISO 4259 or EN 14214 limits, as well the independent laboratory's finding that any alleged contaminants in the Marine Fuel are of a concentration that causes the Marine Fuel to be unacceptable for use because it is harmful to personnel, jeopardizes the safety of the Vessel and/or adversely affects the performance of the Vessel.

Notwithstanding any other provision in the Contract and these General Terms and Conditions, the Seller will not be responsible for any claim as to the quality of the Marine Fuel where the Marine Fuel has been commingled with any other product, oil and/or substance on board the Vessel. The burden of proof shall be on the Buyer to demonstrate that no such commingling has taken place.

- 15.3** In the event of any claim presented in accordance with Clause 15.1 and/or 15.2, the Buyer shall use best endeavors to:
- 15.3.1** present the Seller or its representative's information and documents from the Buyer or its representatives for the Seller or its representatives to investigate such claim including but not limited to the boarding and inspection of the Vessel, the interviewing of crew and the review and taking copies of the Vessel's records, log books, engine logs, etc.;
  - 15.3.2** mitigate any damages, losses, costs and expenses related to any claim of the alleged off-specification or defective Marine Fuel. If the Marine Fuel deviates from the contractual specifications, the Buyer shall use all reasonable endeavors to mitigate the consequences hereof and shall burn the Marine Fuel if possible even if this requires employment of purification tools, additives, or other similar measures; and
  - 15.3.3** Preserve the Seller's rights and remedies against the Supplying Company of the Marine Fuel or any third party.
- 15.4** A breach by the Buyer of any part of Clause 15.3 above will entitle the Seller to set-off any loss cause by the breach against any liability to the Buyer.
- 15.5** Notwithstanding any other provision in these Terms and Conditions, in the event of any other claim(s) which does not within Clauses 15.1 and/or 15.2 of these Term and Conditions ("Other Claims"), the Buyer shall notify the Seller in writing of any such Other Claims as soon as possible and in any event within fourteen (14) days of the date of delivery of the Marine Fuel (date of delivery being Day 1), failing which any such Other Claims shall be deemed to be irrevocably waived and forever barred, and the Seller and the Supplying Company shall be irrevocably discharged and forever released from any and all liabilities in relation to any and all such Other Claims.



**15.6** Without prejudice to any of the provisions in these Terms and Conditions, unless any claims as to the specification, description, quality or quantity of the Marine Fuel delivered to the Buyer under the Contract is notified to the Seller as aforesaid, delivery by the Seller of the Marine Fuel in the Contract shall be deemed to be fulfilled and the Seller shall be irrevocably released and forever discharged from all liabilities whatsoever in relation to the Marine Fuel.

**15.7** The Buyer's submission of any claim does not relieve it of responsibility to make full payment as required under Clause 13 and, without prejudice to Clause 13.5, the Buyer shall not be entitled to set off any claim from payment.

## **16 FORCE MAJEURE**

**16.1** Without prejudice to any other exclusion or limitation provided herein or by law, no failure or omission by the Seller to carry out or observe any of these General Terms and Conditions shall give rise to any claim against the Seller of whatsoever nature and howsoever arising or be deemed to be a breach of these General Terms and Conditions if the same shall rise out of a cause not within the control of the Seller, whether foreseen or not, including but not limited to causes such as labour disputes, lock outs, strikes, industrial actions, governmental intervention (including but not limited to any form of price control, rationing, allocation, or emergency measures), the Seller's response to the insistence or request of any governmental body or person purporting to act therefor, war, invasion, act of foreign enemy, hostilities, (whether war has been declared or not), civil war, revolution, insurrection, civil commotion, any breakdown in machinery or power failure, fire, flood, accident, storm or any act of God, statutes, rules, acts, restrictions, regulations, bye laws, orders, requisitions, prohibitions or measures of any kind on the part of any governmental or duly constituted authority, import or export regulations, or embargoes and the Seller shall be relieved of all liabilities incurred under the Contract wherever and to the extent to which the fulfilment of such obligation is prevented, frustrated or impeded as a consequence of any such event or events as aforesaid or any other cause (whether or not of like nature) beyond the Seller's control.

**16.2** This provision however does not relieve the Buyer from its obligations to make payment of all amounts due to the Seller under the Contract and in accordance with these Terms and Conditions.

**16.3** If, as a result of any of the events, matters or things referred to above or any other events (including but not limited to contractual changes relating to the delivery of crude oil or petroleum products from which marine fuel of the grade to be sold to the Buyer is derived or use of its available supplies of such marine fuel to meet its own requirements and those of its related and affiliated companies and other customers including the Buyer), supplies of the Marine Fuel are in the Seller's sole opinion curtailed, and the Seller shall not be required to increase supplies from other sources or to purchase Marine Fuel to replace supplies so curtailed. The Seller shall not be responsible to the Buyer for any loss or liability incurred by the Buyer as a result of such shortage of delivery. In the event of an actual or anticipated shortage of supply that directly or indirectly prevents the Seller from fulfilling its own requirements as well as those of its customers (including the Buyer), the Seller may allocate available quantities of Marine Fuel to it, the Buyer, and its other customers in its absolute discretion.



- 16.4** Without prejudice to any other term in these General Terms and Conditions, in the event that at any time and from time to time, prior to any delivery under a Contract, any laws, and/or regulations applicable to the Seller and/or the subject-matter of the Contract are changed, or new laws and/or regulations become effective, and the effect of such changed or new laws and/or regulations (a) is not covered by any other provision of these General Terms and Conditions; and/or (b) has material adverse economic effect upon the Seller, then the Seller shall have the option to request renegotiation of the prices or other terms, by written notice to the Buyer. In the event that the Buyer does not agree to such renegotiation and/or if the parties are unable to agree upon new prices or terms (as the case may be) within fourteen (14) days after such written notice, the Seller shall have the right to terminate the Contract immediately, without any liability whatsoever.

## **17 SAFETY AND ENVIRONMENTAL PROTECTION**

- 17.1** It shall be the sole responsibility of the Buyer to ensure that the Vessel, her crew and those responsible for her operation and management observe and comply with all health, safety and environment laws and regulations with regard to the receipt, handling and use of the Marine Fuel. The Buyer warrants that the Vessel is in compliance with same and shall indemnify and hold the Seller harmless to any delay, claim, loss, expense or penalties arising from breach of the Buyer of this warranty.
- 17.2** The Buyer warrants to the Seller that the Vessel will be properly equipped, maintained and operated so as to prevent leakage, spillage, discharge, overflow or water or land pollution. The Buyer and the Vessel's personnel shall exercise due diligence to prevent oil pollution. The Buyer shall further take all necessary measures and precautions to provide a safe environment for the Vessel prior to and during delivery of the Marine Fuel. If, at any time prior to or during delivery, the Seller determines that the environment for delivery is unsafe or has the potential for a spill occurring due to conditions such as, but not limited to, unsafe working environment, lack of or insufficient practices/procedures, facilities, or use of tools/equipment, or incompatible configuration or bad weather, the Seller reserves the right not to commence delivery or to terminate the delivery immediately without any prior notice to the Buyer and without liability. As between the Seller on one hand and the Buyer on the other, the Buyer shall be solely responsible for any loss or damage occurring on board or to the Vessel resulting from any incident arising out of or in connection with any such conditions.
- 17.3** In the event of any escape, spillage or discharge of oil occurs while the Marine Fuel is being delivered to the Vessel, the Buyer shall promptly take such action as is necessary to remove the oil and mitigate the effects of the escape, spillage or discharge. Notwithstanding the cause of such escape, spillage or discharge, the Seller is hereby authorized, at its sole option and at the expense of the Buyer, to take such measures, either in cooperation with the Buyer or by itself, and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonable in the judgment of the Seller to remove the oil and mitigate the effects of such escape, spillage or discharge. If the Seller exercises such option, the Buyer



shall cooperate and render such assistance as may be required by the Seller. Any loss, damage, cost, expense, fine or penalty arising from escape, spillage, discharge or pollution of oil shall be paid by the party that caused the same by a negligent act or omission. If both parties have acted negligently, any expenses etc. shall be divided between the parties in accordance with the respective degrees of negligence. The Buyer also agrees to give or cause to be given to the Seller all such documents and other information concerning any escape, spillage or discharge or any program for the prevention thereof, which are requested by the Seller or required by law or regulation applicable at the time and place where the Seller delivers the Marine Fuel to the Buyer, or any of the Seller's or Supplying Company's or bunker tanker or barge's underwriter(s).

## **18 INTERNATIONAL SANCTIONS**

**18.1** The Buyer warrants that at the date of entering into the Contract and continuing until delivery of the Marine Fuel, and payment by the Buyer to the Seller in full:

**18.1.1** the Buyer and the Vessel and any Receiving Vessel are each not owned, controlled, managed and/or chartered by a Sanctioned Entity;

**18.1.2** the Buyer is purchasing the Marine Fuel as principal and not as agent, trustee or nominee of any person with whom transactions are prohibited or restricted by any Sanctions;

**18.1.3** the Vessel and any Receiving Vessel, as well as her Owner, charterers, managers, DOC company, Master, agents, and manning agents, are each not subject to Sanctions;

**18.1.4** the Vessel and any Receiving Vessel is/are not be flagged in Sanctioned Country or the Russian Federation;

**18.1.5** at the time of delivery of the Marine Fuel, the Vessel and any Receiving Vessel shall not be carrying goods originating and/or loaded from (directly or indirectly, through intermediaries or otherwise), and/or bound for, any port, anchorage or territory in a Sanctioned Country or in the Russian Federation, Donetsk, and/or Luhansk regions;

**18.1.6** the Vessel's immediately-preceding and next ports from time of delivery of the Marine Fuel and that of any Receiving Vessel, shall not be in any Sanctioned Country or in the Russian Federation, Donetsk, and/or Luhansk regions; ; and

**18.1.7** the Vessel's automatic identification system and that of any Receiving Vessel shall be switched on and operating at all times.

**18.2** The Seller shall indemnify and hold the Buyer harmless against any and all losses, damages, costs, expenses, claims, causes of action, consequences of any enforcement action and/or investigation and/or fines, whether imposed by any financial institution(s), authority(ies) and/or regulator(s), or otherwise, of any kind or whatsoever nature arising out of our in connection with any breach of any of the aforesaid

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- 18.3** The Buyer undertakes to and shall be subject to a duty to disclose to the Seller, upon the Seller's request, all particulars and supporting documents necessary to evidence the Buyer's compliance with the above warranties and Sanctions, including but not limited to such information relating to the Buyer, the Vessel, any vessel which receives and utilizes the Marine Fuel sold hereunder, and any voyage(s) undertaken by the Vessel and/or any vessel which receives and utilizes the Marine Fuel sold hereunder.
- 18.4** If at any time the Buyer is in breach of warranty as aforesaid in the Seller's reasonable opinion, the Seller shall comply with the laws and regulations of any government to which the Seller or the bunker tanker or barge is subject and follow any orders or directions which may be given by any regulatory or administrative body, acting with powers to compel compliance. Notwithstanding any of the foregoing, the Seller may terminate the Contract with immediate effect without prejudice to all its rights and remedies for the Buyer's breach of warranty as aforesaid, and with no liability whatsoever on the part of the Seller. In the event of such termination, cancellation charges payable hereunder shall apply, and the Buyer shall further indemnify and hold harmless the seller against all demands, claims, damages, losses, costs, expenses, fines and consequences of regulatory action whatsoever resulting from, and however arising, out of and/or in connection with such breach.
- 18.5** Notwithstanding anything to the contrary in Clause 18, the Buyer and the Seller shall not be required to do anything which constitutes a violation of the laws and regulations of any State to which either of them is subject.
- 18.6** The Buyer shall indemnify the Seller against any and all claims, including return of any payment, loss, damage, costs, expense and fines whatsoever suffered by the Seller resulting from any breach of warranty as aforesaid and in accordance with the Contract.

## **19 AGENTS**

- 19.1** Should the Marine Fuel be purchased by an intermediary such as a manager, broker, trader or agent then such intermediary shall (in addition to the Buyer) be bound by and liable for all obligations as fully and completely as if they were themselves the Buyer whether such principal or intermediary be disclosed or undisclosed and whether or not such intermediary purports to contract as manager, broker, trader or agent only. Furthermore, delivery shall always take place for the account of the Owner and for the account of the current charterers all of whom shall, together with any intermediary, remain jointly and severally liable for the payment of the Marine Fuel as the Buyer until payment has been received by the Seller in full.



## 20 ASSIGNMENT

- 20.1** These General Terms and Conditions shall be binding upon and inure to the benefit of the parties hereto and their successors and the Buyer may not, without the Seller's written consent, assign any of its rights or obligations under the Contract, in whole or in part, to any party. The Seller may assign some or all of its rights under the Contract and/or these General Terms and Conditions (including but not limited to the assignment of receivables due hereunder to the Seller's financing bank(s)), in which event any such assignee shall enjoy and be entitled to exercise against the Buyer any and all rights herein conferred upon the Seller.
- 20.2** In the event that payment of the price is not received in full by the Seller in accordance with Clause 13.2 or Clause 14.3, the Buyer agrees to assign and does hereby assign, effective from the due date, all rights, receivables, benefits, interests, rights of suit, profit, claims and price, including but not limited to rights of action in rem against the Vessel and/or the Owner, to which it is entitled under any contract which it may enter with the Vessel, the Owner, charterer, manager, operator and/or trader and/or any party other whatsoever, pursuant to which it sells, re-sells or otherwise delivers or supplies the Marine Fuel sold by the Seller (or any part thereof), whether commingled with fuel sold or supplied by other parties or otherwise ("assigned interests").
- 20.3** The Buyer irrevocably authorizes or consents to the Seller giving of any notice of assignment on the Buyer's behalf or otherwise, and commencing and continuing of any and all legal proceedings or arbitrations (including any action in rem) in the Buyer's name or jointly in the names of the Seller and Buyer for the recovery of such assigned interests, and the Buyer irrevocably consents to have itself named as the plaintiff/claimant or coplaintiff/co-claimant in any such proceeding or arbitration and hereby authorizes the Seller to take all steps taken in connection with the commencement and continuation of such actions, including but not limited to the appointment of lawyers. The Buyer shall use its best endeavors to assist and cooperate with the Seller to enable the Seller to recover the assigned interests, including but not limited to the provision of evidence, securing the attendance and cooperation of witnesses and execution of documents. The Seller shall have the sole right to retain for itself any money and/or benefit recovered from a third party pursuant to this Clause 20.
- 20.4** Any claim brought against a third party under Clause 20 shall be entirely without prejudice to any rights, claims or remedies the Seller may have against the Buyer, the Vessel and/or any other parties.

## 21 MISCELLANEOUS

- 21.1** Notices hereunder shall be sent by registered post, courier, or email to the Seller at:

**HAWKS COLOMBO PVT LTD**

Level 8, Ceylinco House

69, Janadhipathi Mawatha,

Colombo 01, Sri Lanka

Email: [trading.lk@thehawks.biz](mailto:trading.lk@thehawks.biz)

or such subsequent address, email or facsimile as may be notified by the Seller in writing to the Buyer.



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- 21.2** The Contracts (Rights of Third Parties) Act shall not apply as to extend any rights, interests, benefits, defenses, exemptions etc. conferred on the Buyer pursuant to the Contract to any third party.
- 21.3** No waiver by the Seller of any breach of any of these General Terms and Conditions and/or term of the Contract shall be effective unless the waiver is issued in writing by the Seller. Any waiver by the Seller of any breach by the Buyer of any of these General Terms and Conditions shall not be construed as a waiver of any succeeding breach of the same or any other of these General Terms and Conditions and/or term(s) of the Contract. If any provision or part of these Terms and Condition is adjudged invalid, illegal or unenforceable in any respect, such provision or part of Terms and Condition shall be deemed omitted and shall not in any way affect or impair the remaining provisions and parts which shall remain in full force and effect.
- 21.4** Except where the context otherwise requires, words denoting the singular include the plural and vice versa, and words denoting persons include firms and companies, and vice versa.
- 21.5** The Buyer agrees and consents to Seller using any company or personal data of the Buyer to create or update records held by the Seller for the purposes of keeping accounts and records, product supply and product market analysis, credit analysis, and statistical compilation. Notwithstanding any other agreement to the contrary, the Buyer hereby authorizes the Seller to disclose and/or use any company or personal data of the Buyer, as well as the existence and/or terms of the Contract, to the Seller's auditors, underwriters, financiers, affiliated companies and/or professional advisors, and/or pursuant to any law, regulation, order from a court or tribunal or competent jurisdiction, and/or for the purposes of financing and/or enforcement of any rights under the Contract.

## **22 GOVERNING LAW AND JURISDICTION**

- 22.1** The Contract shall be governed by and construed in accordance with the laws of Sri Lanka and English Law. The United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply to the Contract or these Terms and Conditions. The Sale of Goods Act 1979 of Sri Lanka shall apply to the Contract and these General Terms and Conditions, though in the event of any inconsistency, the terms of the Contract and these General Terms and Conditions shall prevail.
- 22.2** Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration ("SCMA") in force at the commencement of the arbitration, which rules are deemed to be incorporated by reference in this Clause.
- 22.3** The reference to arbitration of dispute under this clause shall be to a sole arbitrator, who shall be appointed by the Chairman of SCMA. The language of the arbitration shall be English.

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**22.4** In cases where neither the claim nor any counterclaim exceeds the sum of United States Dollars One- Hundred and Fifty Thousand (USD 150,000) the arbitration shall be conducted before a single arbitrator in accordance with the SCMA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

**22.5** Nothing in this Clause shall prejudice the parties' rights to seek injunctive relief or preservative relief or security in aid of arbitration from any relevant courts in any jurisdiction.

## **23 ENTIRE AGREEMENT**

**23.1** The Contract embodies all the terms and conditions agreed upon between the parties as to the subject matter of the Contract and supersedes and cancels in all respect all previous representations, warranties, agreements, and undertakings, if any, made between the parties with respect to the subject matter therein whether such be written or oral and there are no other promises, representations or warranties affecting it, unless the Seller has expressly otherwise by executing a written agreement setting out any other terms and conditions. To the extent that any correspondence and/or documents from the Buyer, including but not limited to the Buyer's nomination, recap and/or purchase confirmation, contain any different terms (including any purporting to reject and/or supersede the terms set out in the Contract and/or these General Terms and Conditions), such terms (including but not limited to the governing law and dispute resolution clauses) shall not apply, and the Buyer expressly and irrevocably disavows any reliance on any such terms.