



**Malik Supply A/S  
Nordic Marine Oil A/S**

**General Terms and Conditions of Sale**

Edition September 2020

**1. Definitions**

- 1.1. "Bunkers" means the Seller's different grades of heavy fuel, diesel, gasoil and lubricating oils and any other products and/or services offered for sale by the Seller.
- 1.2. "Buyer" means the Vessel and any party requesting quotations, placing orders, purchasing or otherwise contracting to receive the Bunkers from the Seller, including but not limited to the Vessel's owners, disponent owners, charterers, operators, managers, masters, agents and brokers.
- 1.3. "Contract" means any agreement between the Seller and the Buyer for the supply of Bunkers, always subject to these T&Cs.
- 1.4. "End User" means the party who ultimately purchases, uses or consumes the product, e.g. the Vessel's owner, charterer, operator, commercial manager, etc.
- 1.5. "Intermediary" means bunker traders and other companies that enter into an agreement as a buyer of the Bunkers with the purpose of reselling the bunkers to an End User or to another intermediary
- 1.6. "Order Confirmation" means a written confirmation issued by the Seller to the Buyer in respect of an order placed by the Buyer and/or confirmation of a similar agreement.
- 1.7. "Physical supplier" means Nordic Marine Oil A/S or a third party appointed by the Seller to deliver Bunkers to the Vessel, as applicable. Where Nordic Marine Oil A/S has Bunkers available for delivery, Nordic Marine Oil A/S will, from time to time, act as both Seller and Physical supplier.
- 1.8. "Seller" means Malik Supply A/S, Nordic Marine Oil A/S or any of their servants, officers, agents, brokers, designated representatives and their subsidiaries or affiliates, wherever applicable.
- 1.9. "T&Cs" means these General Terms and Conditions.
- 1.10. "Vessel" is the vessel to which the Bunkers are delivered under the Contract.

**2. Scope**

- 2.1. Integral part. These T&Cs shall be deemed applicable to any Order Confirmation and/or Contract. Subject to amendments adopted under clause 2.2 below, these T&Cs embody all the terms and conditions applicable to the Contract.
  - 2.2. Adopting amendments to these T&Cs. The Seller shall not be bound by, and the Buyer may not rely on, any statement, representation or warranty, collateral or other piece of communication to the extent that would amount to an amendment to these T&Cs, unless (i) the Seller has confirmed in writing which part(s) of these T&Cs the Parties have agreed to amend, (ii) the Seller states explicitly that the agreement to amend is made in pursuant to this clause 2.2, and (iii) a senior officer or member of management of the Seller (who cannot be a bunker trader), or the Seller's legal desk, has approved the amendment in writing.
  - 2.3. Severability. If any part(s) of these T&Cs are rendered invalid that shall not prejudice or limit the validity of the remaining T&Cs or of any Contract made between the Seller and the Buyer. If any provision of the Contract is held to be invalid, void or unenforceable, that will not affect the validity, legality or enforceability of any other provision of these T&Cs or any other rights of the Seller under the Contract.
  - 2.4. No waiver. Failure by either party at any time to enforce any part of these T&Cs shall not be deemed a waiver of rights by such party and shall not in any way affect the validity of these T&Cs.
  - 2.5. Whole agreement. Together with the Contract and the Order Confirmation, these T&Cs constitute the whole agreement made between the Seller and the Buyer, and the Buyer may not rely on any pre-contractual or post-contractual statement, representation or warranty, collateral or other piece of communication to the extent that prejudices the Seller's rights under these T&Cs. Further, statements made outside the Contract, which may have been given verbally or stated e.g. on the internet, in marketing material or in any form of correspondence, are not intended to have any contractual effect unless incorporated into the Contract in conformity with the requirements applicable to amendments set out in clause 2.2 above.
- 3. The Vessel owner is presumed to have accepted these T&Cs**
- 3.1. Acceptance by the owner. Bunkers are always supplied for account of the Buyer, which always includes the Vessel and her registered owners. If the legal entity to whom the Order Confirmation is issued is not the registered owner of the Vessel, the owner of the Vessel will be deemed a party to the Contract and will be bound by these T&Cs due to the Vessel's acceptance of the Bunkers and the master (or any other officer or representative of the Vessel) signing for receipt of the delivered quantity of oil. The Buyer warrants that these T&Cs are communicated to the owner of the Vessel, that the Buyer is authorized as an agent to order the Bunkers for the Vessel and that the Seller has a maritime lien on the Vessel in accordance with the applicable law (see clause 19.1 below).
  - 3.2. "No-lien stamps". When the master of the Vessel (or any other person authorized by the owner) is handed the bunker delivery note for signature on behalf of the Vessel it shall not be permitted to make any endorsements, complaints or comments (such as the insertion of "No-lien" clausings) on the bunker delivery note, and any such clausings shall be without legal effect. This clause 3.2 reflects the fundamental principle that the Bunkers are delivered to the Vessel for account of the owner of the Vessel and that the Vessel is authorized by the Owner to purchase and take delivery of the Bunkers for the Owner's account.

**4. Terms for offers and sales**

- 4.1. Formation of Contract. The Contract shall be deemed to have formed when the Seller provides the Buyer with an Order Confirmation.
- 4.2. Approximate prices, values and information. Unless otherwise expressly provided for in the Order Confirmation, the Seller's descriptions of its products and/or services (e.g. analytical data, delivery times, names of delivery vessels, specifications of the Bunkers, etc.) and all documents to which the Buyer has been given access shall be deemed to contain only approximate values pursuant to trade custom and do not constitute undertakings or warranties. The Seller further reserves the right to alter such descriptions or documents, and the Seller's offers and quotations are conditional upon availability and subject to unilateral right of alteration.
- 4.3. FoB and Incoterms. The Bunkers are always delivered on FoB terms unless another Incoterm is expressly stated in the Order Confirmation. References to FoB or other Incoterms shall be deemed to have the meaning contained in the most recent edition of the Incoterms. This Clause and any applicable Incoterms shall always be subject to, and be deemed varied in accordance with, clause 8.13 below.
- 5. Prices, Invoicing, Payment, Interest, Collection Costs, Allocation**
- 5.1. Prices. The Buyer shall pay the agreed prices as set out in the Seller's Order Confirmation and invoice.
- 5.2. Additional expenses and costs. The Buyer shall pay any additional expenses and other costs such as barging, overtime, demurrage, wharfage, dockage, part/harbor/agency fees, dues, duties, taxes, levies and other costs. The Seller shall endeavor to include, by way of estimates, all such costs in the Order Confirmation, however, the Seller shall at all times be entitled to invoice the aforementioned expenses and costs. Price which are quoted as "Delivered" includes transportation to the Buyer's Vessel but does not include demurrage or any other expenses or costs as indicated above.
- 5.3. Customs, VAT and other taxes. All quoted prices and the prices mentioned in the Order Confirmation are exclusive of customs, VAT and other taxes, which the buyer is obligated to pay when the purchase price for Bunkers falls due.
- 5.4. Due date for payment. Payment shall be received by the Seller in full no later than on the due date stated in the Seller's invoice free of bank charges and other cost, which the Buyer shall not be permitted to set off.
- 5.5. Currency. Unless otherwise specified in the Order Confirmation or in the Seller's invoice, prices shall be in US dollars and shall represent only the purchase price for the Bunkers (typically quoted in USD per metric ton). Payment shall always be made in the invoiced currency.
- 5.6. No set-off. Payment shall be made in full, without any set-off, deduction and/or discount, unless agreed in writing prior to payment being made.
- 5.7. Interest and administration charges. In the event that payment is not received by the Seller on the due date the Seller is entitled to charge interest at the rate of 2 (two) percent per month pro rata compounded each month without prejudice to any other rights or remedies available to the Seller. The Seller shall also be entitled to charge a delayed payment administration fee of USD 1.50 per metric ton supplied, however, as a minimum an administration fee of USD 500.00.
- 5.8. Collection costs. The Seller's collection costs shall be solely for the Buyer's account. If the Buyer fails to make payment in full on the due date for payment, the Seller may take legal action (such as ship arrest and/or

arbitration) to collect any overdues. The Seller's costs and expenses incurred in connection with the collection of such overdues shall be indemnified by the Buyer upon demand. These costs and expenses include, but are not limited to, interest charges, internal and external costs, such as expenses to lawyers, debt collectors or other consultants, court fees, costs for translating documents, fees of bailiffs and Marshalls and any collection costs of whatsoever nature. The Seller shall be entitled to invoice such costs from time to time.

- 5.9. Allocation of payments. All payments received by the Seller shall be applied to settle, first, any overdue interest and administration charges (accrued in accordance with clause 5.7 above), then, to any collection costs incurred (such costs to be indemnified by the Buyer as set out in clause 5.8 above), and, then, to principal.
- 5.10. Anticipatory breach. If the Buyer's right to possession of the Bunkers ceases as provided for in clause 17.3, the Seller shall be entitled to demand all payments settled immediately, whether or not such payments have fallen due under the Seller's invoice.
- 5.11. Security. The Seller may demand that the Buyer provides security for the due and proper performance of all of the Buyer's payment obligations under the Contract. Security shall be given to the satisfaction of the Seller. Failure to immediately provide such security shall entitle the Seller, inter alia, to suspend further performance and to assert any other right and remedy available under the Contract and under the law applicable.

## 6. Quality and Samples – claims

- 6.1. Quality. The agreed quality shall always be limited to the quality description set out in the Order Confirmation; for instance, by reference in the Order Confirmation to the quality standard term ISO 8217:2017, which is mentioned in this clause only as an illustrative example. If the Order Confirmation does not contain any quality standard term, the Bunkers shall be of the quality that is generally offered by the Seller to its customers at the time and place of delivery and subject to being available for delivery at the agreed place of delivery.
- 6.2. No implied warranties. Any implied conditions, obligations and warranties – including warranties for merchantability, fitness for a particular purpose and/or any similar warranty or implied condition – are expressly excluded and disclaimed and shall not apply to the Contract.
- 6.3. The Buyer's responsibility. The Buyer, having greater knowledge than the Seller of the Buyer's own requirements and needs, shall have the sole responsibility for the prior selection of grade(s). The Order Confirmation shall be deemed to describe the type of Bunkers requested by the Buyer, and the Buyer shall immediately upon receipt of the Order Confirmation notify the Seller of any wrongful description in the Order Confirmation. Unless the Buyer promptly notifies the Seller of such wrongful description, the Order Confirmation shall be binding on the Buyer.
- 6.4. Agreed procedure for sampling and analysis (testing) of samples. The following clauses shall exclusively govern the taking of samples and the analysis (testing) of such samples:
- A. During delivery, a primary sample shall be drawn at a point as close as possible to the bunker barges/the delivery facility's manifold and in accordance with the rules and procedures of 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). The primary sample must be thoroughly mixed and divided into at least four (4) identical samples, one of which is the MARPOL-sample, one is given to the Vessel and one is given to the Physical Supplier. Any additional sample that the Buyer may draw are

not representative of the quality of the oil and can only be used for the Buyer's own purposes, which are irrelevant to the Seller.

- B. Sampling shall be witnessed by both the Buyer and the Seller, or their representatives. Failure of the Buyer to attend the sampling process shall not prejudice the validity of the samples.
- C. The samples must be sealed with a security seal and provided with a label containing information on the name of the Vessel and the bunker barge/delivery facility, a specification of the product delivered, the date of delivery, place of delivery and seal number. The seal numbers for the samples taken must be stated in the bunker delivery note, and the parties declare by their signature to the BDN that the samples have been validly taken in conformity with the guidelines in these T&Cs.
- D. In the event of a dispute regarding the quality of the Bunkers delivered, no other samples than the sample drawn pursuant to clause 6.4A, and which is kept by the Seller and/or the Physical Supplier, may be tested, unless the parties specifically have agreed otherwise. This sample shall be forwarded to an independent laboratory that analyses the content of the sample and performs a set of tests based on a testing protocol agreed by the parties, or, in the event of disagreement, the Seller's testing protocol. In order to avoid uncertainty of evidence, the analysis undertaken by the laboratory shall not include other parameters for the quality of the Bunkers than the parameters specified in ISO 8217:2017, Table 1 and 2 (or equivalent, if the parties in the Contract have agreed to an earlier version of the ISO 8217 standard). It is emphasized that in case the Buyer unilaterally draws samples or conducts testing, any such samples and/or test results cannot validly be used as evidence; see also clause 6.4 G below.
- E. The parties are to use best endeavors to agree on the independent laboratory to perform the tests. If the parties have not reached an agreement on the choice of laboratory within 7 calendar days from the date one which one of the parties requested testing, the Seller is at liberty to send the sample mentioned in clause 6.4 D to a reputable and independent laboratory of its choice to carry out such tests as are mentioned in the Seller's testing protocol. THE TEST RESULTS WILL BE FINAL AND BINDING UPON THE PARTIES WITH RESPECT TO THE PARAMETERS ANALYSED.
- F. The samples' seal may only be breached in the presence of both parties, unless the Buyer (or its representative) fails to be present after being notified of the place and time for the testing. The seal may also be breached without both parties being present, if the Seller – in cases where the parties have not been able to agree on the choice of laboratory and/or the testing protocol (as mentioned above) – sends the sample to an independent laboratory for testing in accordance with the clauses above. Both parties shall have the right to appoint independent surveyor(s) to witness the seal breaking and testing.
- G. Samples and tests which are not drawn/conducted in accordance with the procedure described above CANNOT BE USED AS EVIDENCE for the quality of the Bunkers. The Buyer is thus not entitled to submit its own test results in arbitration. The fact that such samples may bear the signature of personnel on board the bunker barge/delivery facility shall have no legal significance since such personnel has no authority from the Seller to deviate from these T&Cs. The purpose of this clause is to ensure that an alleged claim for deficient Bunkers is settled under simple and predictable guidelines and to avoid the taking of conflicting evidence.
- H. If the seal on a sample is broken, the sample in any other way has been tampered with, or if attempted tampering is obvious, any such sample shall have no evidentiary value.

I. The Buyer shall never be entitled to debunker unless preapproved in writing by the Seller and always provided that the Seller's and the Physical Supplier's instructions are strictly adhered to. The Seller may assist in obtaining prices from other suppliers who are willing to purchase the debunkered oil, provided that the purchase price corresponds to the value of the oil. The oil cannot be sold at a price below what is acceptable to the Seller, as the Buyer is obligated to mitigate the loss as much as possible. All costs and expenses related to debunkering, storage, etc., shall always be borne by the Buyer.

6.5. Lubricating oil. For the sale of lubricating oils it has been agreed (i) that clause 6.4 does not apply as the quality of the lubricant must live up to the manufacturer's fact sheet or other technical description of the product issued by the manufacturer, which may be provided by the Seller upon request; (ii) in the event of a dispute relating to the quality of the lubricating oil delivered, joint testing shall be carried out on unopened container(s) on board the Ship in accordance with the manufacturer's testing and in compliance with the Seller's instructions.

6.6. Quality claims – notification and time bar. The Buyer or the Vessel must notify the Seller of any claims relating to the quality of the Bunkers without delay and AT THE LATEST WITHIN FOURTEEN (14) DAYS AFTER COMPLETION OF DELIVERY. The notification must be in the form of a written letter of protest with full supporting documentation. If the Buyer or the Vessel fails to present such letter of protest to the Seller within the mentioned timeframe, the buyer's claim shall be extinguished as non-existent and the Buyer shall be deemed to have expressly waived any such claim against the Seller. In addition, any and all claims of the Buyer that have been notified to the Seller in due time shall become time-barred unless arbitration has been commenced as per clause 19 below within 12 (twelve) months from the date of delivery.

6.7. Determination of quality – evidence. Any claims relating to quality shall be solved amicably or in arbitration in accordance with clause 19 below. The evidence obtained under the procedure that governs the taking of samples and the testing of such samples (the full procedure is detailed in clause 6.4 above) shall be final and binding on the parties and shall accordingly be conclusive for the arbitral tribunal's decision with respect to the evidence relied on by the tribunal to assess quality.

6.8. No liability for commingling. The Seller's potential liability ceases in circumstances where the circumstances indicate that Buyer has commingled the Bunkers on board the Vessel with other fuel products.

6.9. Duty of mitigation. The Buyer and the End User shall mitigate their losses and minimize the consequences of the Vessel receiving defective Bunkers, e.g. by using additives, diluting the oil and/or heating the oil, or otherwise treating the oil as to ensure that the oil may be used for the propulsion of the Vessel. The Buyer and the End User are at all times required to treat and handle the Bunkers according to current standards, including the standards set out in ISO 8217:2017, Clause 1 Scope ("*conventional onboard treatment (settling, centrifugation, filtration) before use*").

## **7. Quantity – claims**

7.1. Quantity. All quantities referred to in the Contract are understood to be approximate with a margin of 10 per cent more or less in the Seller's option.

7.2. Determination of quantity – evidence. The quantity of the Bunkers delivered shall be determined solely from the information on quantity inserted into the bunker delivery note, or, if the BDN has not been signed, the official gauge/sounding of the delivering barge, road wagon, or rail tank car, delivery note for drum deliveries, or by gauging in the Seller's shore tank or by the Seller's oil meter, at the Seller's election. The Buyer is entitled

to be present or represented by a properly accredited agent or surveyor when quantity measurements are taken. If the Buyer is not present or represented, the Seller's determination of quantities shall be final and binding on the parties. Quantity calculations based on the Vessel's own soundings shall not be considered.

- 7.3. Quantity claims – notification and time bar. Unless the Buyer or the Master of the Vessel immediately and prior to the signing of the bunker delivery claims a quantity deficiency in the delivered Bunkers, the Buyer's quantity claims shall be extinguished as non-existent and the Buyer shall be deemed to have expressly waived any such claim against the Seller. In addition, any and all claims of the Buyer that have been notified to the Seller in due time shall become time-barred unless arbitration has been commenced as per clause 19 below within 12 (twelve) months from the date of delivery.

## **8. Delivery and Risk of Delay**

- 8.1. Approximate times. The time of delivery stated by the Seller is an approximate time.
- 8.2. 72 hours' notice. The Buyer shall always notify the Seller at least 72 hours (Saturday, Sunday and local holidays excluded) in advance of the Vessel's readiness to take delivery. This duty of the Buyer shall ensure that the Seller has ample time to make the necessary preparations with respect to delivery.
- 8.3. Range for delivery. The Order Confirmation includes the earliest estimated time of the Vessel's arrival (ETA) as advised by the Buyer. The Vessel shall always begin to take delivery within the ETA provided for in the Order Confirmation. If the ETA listed in the Order Confirmation exceeds 3 (three) calendar days, the Vessel shall always begin to take delivery of the Bunkers within the first 3 (three) calendar days. The Contract price shall be valid only for deliveries begun within the ETA stated in the Order Confirmation, or, within the 3 (three) calendar day-period if the ETA as informed by the Buyer exceeds 3 (three) calendar days. If the Buyer takes delivery or requests delivery to begin later, the Seller shall – without prejudice to the Seller's potential claim against the Buyer – be entitled to amend the agreed price(s) under the Contract.
- 8.4. Failure to take delivery. If the Buyer fails to take delivery of the Bunkers within the agreed time frame, the Seller shall be entitled, at the Buyer's risk and expense, either, to transport the Bunkers back to storage, or, to sell the Bunkers at the price available in the market and claim damages against the Buyer, without prejudice to the Seller's other rights. The Seller shall also be entitled to charge a minimum cancellation fee of 5% (five) of the agreed prices.
- 8.5. Delivery circumstances permitting. The Vessel shall be bunkered as promptly as the prevailing circumstances permit, having regard to circumstances such as weather, ship traffic, congestion and bunker barge/delivery facility's accessibility and other delays caused by local authorities and other local conditions. The Seller and/or the Physical Supplier shall not be liable for any time lost or other consequences of the bunkering not commencing or being completed. The Seller shall not be obligated to deliver prior to the ETA.
- 8.6. Shortage of supply. If the Seller anticipates that there may be such a shortage of Bunkers at any port of place that it may be unable to meet the demands of all its customers, the Seller may allocate its available and anticipated supply among its Buyers in such a manner as it may in its sole discretion determine. The Buyer may raise no claim against the Seller in these circumstances.
- 8.7. Buyer's fault. The Buyer shall be in breach of contract and be liable accordingly for having caused delay.



- 8.8. Permitted tanks only. The Seller shall not be required to deliver the Bunkers into any of the Vessel's tanks which are not permitted for use with such product or which are not normally used for such product.
- 8.9. Port Licenses and permits. The Buyer and the Vessel shall comply with requirements of local authorities and facilitate a smooth delivery. If the Buyer fails to comply with such requirements, the Buyer shall be deemed to have breached the Contract. The Seller is entitled to cancel and/or stay delivery if any customary requirements, or requirements/permit by local authorities, are not met or obtained in due time before delivery.
- 8.10. Modes for delivery. Delivery shall be made either from a shore terminal, by barge, truck or by any other accredited method of delivery. If one, or more than one, method of delivery is available, The Seller may at its discretion select one, provided that the Seller does not breach its obligations under the Contract.
- 8.11. The Buyer's obligation to provide a safe berth, position or anchorage. The Buyer shall provide a clear and safe berth, position or anchorage alongside the Vessel's receiving lines from where the Seller and the Physical Supplier may deliver the agreed quantity at no extra costs. The Seller and/or the Physical Supplier has the sole discretion to determine if such berth, position or anchorage is available.
- 8.12. Assistance from the Buyer. The Buyer shall make all connections and disconnections between pipelines or delivery hoses and Vessel's intake lines and shall render all necessary assistance that is necessary to perform delivery. The Buyer must also ensure that the Vessel has the necessary equipment and sufficient tank capacity to take delivery of the agreed quantity of Bunker Oil.
- 8.13. Transfer of risk. Delivery shall be deemed completed and all risks and liabilities, including without limitation loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage to the Bunkers delivered and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties, shall pass to the Buyer as the Bunkers pass the flange connecting the pipelines or delivery hoses with the intake lines of the Vessel. Bunkers supplied by any other method shall be considered to be delivered under these T&Cs when passing the Vessel's rail.
- 8.14. Bunker Delivery Note. The master, or other authorized representative of the Vessel, shall confirm the delivery on behalf of the Vessel and the Buyer by signing a bunker delivery note provided by the Physical Supplier. The Seller may assume that the Buyer's representative signing the BDN is duly authorities. The Seller shall not be deemed to have any constructive knowledge of the authority or lack of authority of any purported local representative of the Buyer and shall be under no duty to verify authority of such purported representative.
- 8.15. Normal working hours. Delivery shall be made during normal working hours. Unless otherwise agreed, deliveries outside normal working hours shall be subject to additional costs, which shall be borne by the Buyer.

## **9. Health, Safety and Environment**

- 9.1. Requirements. It shall be the sole responsibility of the Buyer to comply with, and to advise its personnel, agents and/or customers to comply with all health, safety and environmental requirements applicable to the handling of the Bunkers supplied, both before and after delivery. The Seller accepts no responsibility for any consequences arising from the Buyer's failure to comply with such requirements. The Buyer acknowledges that it is knowledgeable of the hazards inherent in any petroleum products and shall protect, indemnify and hold the Seller harmless against any claims and liabilities incurred as a result of the Buyer's failure to comply with the aforementioned requirements.



9.2. Environment and duty of mitigation. The Seller and the Physical Supplier shall have no risk of harm to the environment. In the event of any leakage, spillage, overflow of bunker's causing or likely to cause pollution occurring at any stage, the Buyer shall, regardless as to whether the Buyer, the Seller or any third party is responsible, immediately take such action to limit the damage and, as is necessary, to effectuate clean up. If the Buyer fails to take prompt action, the Buyer (who hereby warrants that it has been authorized by the Vessel's owners) hereby authorizes the Seller to take whatever measure(s) the Seller deems necessary to efficiently clean-up and restore the environment at the Buyer's cost and expense. The Buyer shall defend, indemnify and hold the Seller and/or the Physical Supplier harmless against any claim or liability arising out of any leakage, spillage or overflow, unless such leakage, spillage or overflow shall be proven to be wholly caused by the Seller's and/or the Physical Supplier's gross negligence.

9.3. Regulations. The Buyer warrants that the Vessel at all material times complies with all applicable national and international regulations. It shall be the responsibility of the Buyer and the master of the Vessel to notify the Seller of any condition or defects in the Vessel which could adversely affect delivery.

## **10. Indemnity**

10.1. The Buyer shall defend, indemnify and hold the Seller harmless with respect to any and all liability, loss, claims, expenses or damage the Seller may suffer or incur by reason of, or in any way connected with, the fault or default by the Buyer and/or its agents in the purchase of, receipt, use, storage handling or transportation of the Bunkers in connection with each bunker transaction.

## **11. Warranty**

11.1. Seller's warranty. Subject to clauses 11.2, 11.3 and 11.4, the Seller warrants that at the time when the Bunkers were delivered such Bunkers conform to the Contract and were delivered with reasonable skill and care.

11.2. The Buyer's remedy for the Seller's breach of warranty. In the event of a breach by the Seller of the warranty in clause 11.1, the Seller shall only be obliged (and shall have no further liability in contract, tort, law or otherwise) at its option either to:

- A. Credit the price (if already paid) attributable to the non-conforming Bunkers; or
- B. Replace and/or redeliver the non-conforming Bunkers, provided that any Bunkers are returned to the Seller in their delivered state at the Buyer's expense. The Seller shall not be responsible for debunkering, nor for storage, transportation, customs clearing and/or any other precondition necessary to return the non-conforming Bunkers.

This clause 11.2 shall be the Buyer's sole remedy for breach in lieu of any other rights and remedies which might otherwise have been available to the Buyer under law. Any repair, rectification or replacement of the Bunkers can only be performed on the terms set out in this clause 11.2.

11.3. No liability beyond warranty. Any liability of the Seller that goes beyond these clauses is hereby expressly excluded to the fullest extent possible.

11.4. Exclusions from the scope of warranty. The warranty given under these clauses will not apply:

- A. Where the warranty claim arises from normal wear and tear, the Buyer's willful damage or willful misconduct, the Buyer's negligence, abnormal working conditions, use for unintended purpose, misuse, abuse or lack of maintenance;
- B. If the Buyer fails to comply with the Seller's and/or the Physical Supplier's specific advice or general instructions (whether oral or in writing);
- C. If the Bunkers supplied are debunkered, unless the Seller has accepted debunkering in advance;
- D. If the Buyer has not notified the Seller of the warranty claim within 14 days after the time the Buyer discovered, or ought to have discovered, the material circumstances which gave rise to the claim; or
- E. In the event the Buyer has not complied with the notification and time-barring provisions set out in clauses 6.6 and 7.3 above.

## **12. Limitation of Liability**

- 12.1. Limitation of liability. Considering that the Seller undertakes certain warranty obligations (as set out in clause 11), the Seller shall be under no liability whatsoever to the Buyer for any loss, damage, delay or expense incurred of whatsoever nature, whether direct or indirect – including but not limited to – (i) any loss of profit, hire, business contracts, trading, revenues or anticipated savings, or (ii) for damage to the Buyer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special, indirect, consequential or incidental loss or damage of any nature whatsoever.
- 12.2. Limitation to USD 500.000 or the price of Bunkers. The Seller's liability shall never exceed the lowest of (i) USD 500.000 or (ii) the price for the Bunkers delivered under the Contract as set out in the Seller's invoice.

## **13. The Seller's right of cancellation**

- 13.1. Cancellation. Without prejudice to any other remedies and rights under the contract, the Seller may cancel the Contract, store or procure the storage of the Bunker for the account and risk of the Buyer and charge the Buyer the expenses thereby incurred, hold the Buyer fully to the Contract, or take any other measures which the Seller deems appropriate, including claiming damages, in any one of the following cases:
  - A. If the Buyer fails, in whole or in part, to pay any amount due to the Seller and/or provide security as set out in clause 5.11;
  - B. If, before the date of delivery, it becomes apparent in the Seller's discretionary opinion that the financial position of the Buyer entails a risk to the Seller, or in case of force majeure as defined in clause 15.1;
  - C. If the Seller, in its sole discretion, has reasonable grounds to consider it likely that the Buyer, the Vessel, the End-User, any other party, entity or person connected to the supply and use of the Bunkers is/are:
    - (i) Iranian(s), Syrian(s) or North Koreans;
    - (ii) Related in any way to Iran or Iranian(s), to Syria or Syrian(s) or to North Korea or North Korean(s);
    - (iii) Resides in, operates from or intends to use the Bunkers in Crimea & Sevastopol;

- (iv) Listed on the US OFAC Specially Designated Nationals and Blocked Persons List (or similar lists from time to time);
- (v) Covered by any US-, UN- and/or EU sanctions;
- (vi) Subject to any form of sanction or embargo in countries that include but is not limited to Afghanistan, Burma-Myanmar, Congo, the Central African Republic, Belarus, Iraq, China, Lebanon, Libya, North Korea, Russia, Somalia, Sudan, South Sudan, Syria, Venezuela and Zimbabwe; or
- (vii) Covered by any sanctions of any other jurisdiction and/or administration in discretion of the Seller.

#### **14. Sanctions, anti-corruption and bribery**

##### **14.1. Compliance with international sanctions. The Buyer warrants, that**

- A. the Buyer and its assignees, agents, shareholders, subsidiaries, sister companies, associated companies and/or parent companies as well as any other person or company which the Buyer enters into transactions with or who controls or is controlled by the same interests who own and/or control the Buyer;
- B. the Vessel or other vessels who takes delivery of the Bunkers;
- C. the cargo on the Vessel and the owner of the cargo; and
- D. any End User, including the Owner of the Vessel and her charterer, operator, manager, and disponent owner;

is/are not subject to any international trade sanctions and financial sanctions, including but not limited to the sanctions mentioned in clause 13.1C, and that Bunkers will not be used for any purpose contrary thereto.

If the Buyer at any point becomes aware of a breach or possible breach of this clause, the Buyer must immediately inform the Seller in writing. The Seller will be to cancel the Contract and notify the relevant authorities, and the Buyer shall indemnify the Seller of any claims, damages, costs or losses, including fines, arising as a consequence of the Buyer's breach of this clause.

##### **14.2. Anticorruption and bribery. The Buyer acknowledges that any Contracts and any actions related to such Contracts as well as any interaction with third parties related to such Contract are covered by certain anticorruption laws and regulations, including but not limited to the U.S. Foreign Corrupt Practices Act and the UK Bribery Act. Therefore, the Buyer shall comply with all applicable anticorruption laws and regulations and agrees that the Buyer has not, and will not, offer, promise, pay or authorize the payment of any money or anything of value, or take any action in furtherance of such a payment, whether by direct or indirect means, to any public official or private individual to influence the decision of such person in the performance of his duties to a government or to his company. The Buyer shall be fully liable in case of breach of this clause and shall pay for any and all claims, damages, costs or losses that accrue due to breach of clause 14.1 and 14.2.**

#### **15. Force Majeure**

- 15.1. Neither the Seller nor the Physical Supplier shall be liable for any loss, claim, damage, delay, demurrage, etc., in case of failure in their performance under the Contract due to:
- A. Orders/directions from public authorities or persons who act or purport to act on their behalf;
  - B. Failure in, or unavailability of, the production, manufacture, supply, storage, transportation, distribution or delivery of the Bunker Oil, or if the delivery cannot be completed due to shipping traffic or for other reasons irrelevant to the Seller;
  - C. Any cause not within the immediate control of the Seller, such as labor disputes, strikes, stoppages, lock-out, governmental intervention, lockdown, wars, civil commotion, riot, quarantine, fire flood, earthquake, accident, storm, swell, ice, adverse weather, epidemic or pandemic and any act of God;
  - D. Any loss of, alteration of, or damage to, or any a reduction in the functionality, availability or operation of the internet, or other forms of telecommunication, or of a computer system, hardware, program, software, data, information repository, microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Seller, the Buyer, the Physical Supplier or any other third party (*cyber risks*); or
  - E. Any other similar circumstances;

Any of the events set out above are deemed force majeure. Neither the Seller nor the Physical Supplier shall be required to remove any such cause or replace any affected source or supply or facility if doing so shall involve additional expense.

## 16. Assignment

- 16.1. The Seller's right of assignment. The Seller may assign/transfer any/all of its right and obligation under the Contract.
- 16.2. No assignment for the Buyer. The Buyer shall not assign/transfer any/all of its right under the Contract, without written consent of the Seller.

## 17. Title

- 17.1. Retention of title. Title in the Bunkers shall not be transferred to the Buyer until the Seller has received payment in accordance with the Seller's invoice(s) and until the Seller has paid the Physical Supplier in full (the latter requirement shall not apply if the Seller acts as Physical Supplier, in which case title shall transfer only at the time of the Buyer's payment in full to the Seller).

Until the time when title is transferred to the Buyer, the Buyer shall:

- A. Hold the Bunkers as bailee for the Seller and shall not be entitled to use them other than for the propulsion of the Vessel;
- B. Store them in such a way that they can be identified as the Seller's property and keep them separate from the Buyer's own property and the property of any third-party;

- C. Keep them at the Buyer's risk and expense from the time of delivery and until the time when the Seller takes redelivery or repossession (in case of default by the Buyer); and
- D. Insure them against any loss and damage, and, in the event of such loss or damage, it shall notify the relevant insurers that the insured property is owned by the Seller and that insurance proceeds are to be paid out to the Seller; any insurance proceeds received by the Buyer shall be held by the Buyer on behalf of the Seller as trustee to be wired to the Seller upon demand.

17.2. Res Cogitans clause. The transaction contemplated under these T&Cs is not a contract for the sale of goods but a *sui generis* contract. The Contract is not subject to any express or implied terms for the transfer of title as a condition to the Buyer's obligation to make payment on the due date. The Buyer has agreed to contract not for the transfer of property in the whole of the Bunkers prior to payment but for the delivery of a certain quantity of Bunkers which the Buyer has an immediate right to use for the Vessel's propulsion against not having to pay the price for the Bunkers until the agreed period of credit has expired.

17.3. Cessation of the Buyer's right of possession and usage. Notwithstanding clause 17.1 above, the Buyer's rights to possession and use of the Bunkers shall cease if:

- A. The Buyer defaults on its obligations towards the Seller when due, or the Seller has reason to believe that the Buyer will not fulfill its obligations;
- B. The Buyer enters into any other form of insolvency proceedings, such as US Chapter 11 proceedings or similar proceedings in other jurisdictions, rehabilitation or reconstruction proceedings, compulsory agreements with creditors, suspension of payment or any other similar in-court proceedings;
- C. The Buyer makes a proposal to of its creditor(s) for restructuring or rehabilitation;
- D. A receiver, liquidator, administrator or the like is appointed in respect of the Buyer's business; or
- E. The Buyer breaches any of its financial covenants or warranties provided by the Buyer to its financiers.

Upon cessation of the Buyer's right to possession of the Bunkers as provided for under these T&Cs, the Buyer shall at his own expense make the Bunkers available to the Seller and allow the Seller to repossess them. The Buyer hereby grants the Seller, his agents and employees an irrevocable license to enter any premises where the Bunkers are stored in order to repossess them at any time.

## **18. Special Clauses applicable to sales of Marine Fuels to Intermediaries (traders)**

18.1. The following clauses shall apply in each case where the Contract is made with an Intermediary as the buyer and notwithstanding anything to the contrary contained in these T&Cs:

- (a) The Intermediary's claim against its customer is assigned to the Seller as security for the Intermediary's due payment of the Seller's claim for payment against the Intermediary. Until the Seller receives payment from the Intermediary, the Intermediary shall have no right to collect payment from its customer or from the End User. If the Intermediary receives payment from its customer or from the End User prior to the Intermediary's payment to the Seller, the payment to the Intermediary shall be held in trust by the Intermediary on behalf of the Seller and the amount, minus the Intermediary's margin/profit, shall be paid to the Seller.

- (b) In the event of the Intermediary's bankruptcy or similar situation of insolvency as set out in clause 17.3, the Bunkers and the Seller's claim for payment shall not form part of the insolvency estate, and the Intermediary or insolvency estate must transfer any sum to the Seller that it has received from its customer or from the End User. If the Intermediary or its insolvency estate has not received payment yet for the Bunkers, its customer or the End User shall be entitled to pay the purchase price directly to the Seller. Such payment will constitute fulfillment of the customer or the End User's payment obligations towards the Intermediary, and the payment shall also constitute fulfillment of the Seller's claim against the Intermediary for the sale of the Bunkers, minus the Intermediary's margin/profit, which shall be the Intermediary's sole entitlement.
- (c) The Intermediary must ensure that this clause is incorporated in every contract, concluded with or by other parties in the supply chain down to and including the contract that is concluded with the End User.

## **19. Governing law and arbitration**

- 19.1. Law. This Contract shall be governed by and construed in accordance with Danish law, except with respect to the existence of the Seller's maritime lien. The General Maritime Law of the United States of America shall always apply with respect to the existence of the Seller's maritime lien, regardless of the country in which the Seller takes legal action. The Seller shall be entitled to assert its rights of lien or attachment or other rights, whether in law, in equity or otherwise, in any jurisdiction where the Vessel may be found.
- 19.2. Arbitration. Any dispute arising out of or in connection with a Contract, including any disputes regarding the existence, validity or termination thereof, shall be settled following negotiations, and, if the dispute cannot be solved amicably, by arbitration administered by The Danish Institute of Arbitration ("DIA") in accordance with the rules of simplified arbitration procedure adopted by The DIA and in force at the time when such proceedings are commenced. If the total value of the Seller's claim(s) and counterclaims exceed(s) USD 500,000, the arbitral tribunal shall consist of three arbitrators and there may be an oral hearing, but otherwise the arbitration shall be resolved in accordance with the rules on simplified arbitration procedure. The place of arbitration shall be Aalborg or Copenhagen in the Seller's option. The language to be used in the arbitration shall be English, unless both parties are Danish. The arbitration tribunal may consist of one or more arbitrators of Danish nationality, which also applies if the DIA shall appoint an arbitrator, including a sole arbitrator.
- 19.3. Enforcement of rights – ship arrest. If the Buyer fails to pay on the due date for payment or in the event of any other form of breach of contract the Seller is entitled to take any such legal action as it shall in its sole discretion consider necessary to enforce, safeguard or secure its rights under the Contract. The Seller is entitled to take such action in any court or tribunal in any state or country, including for the purpose of obtaining security (such as the arrest of the Vessel or of other ships or attachment of other assets). Following any such legal action as mentioned herein, the Seller may bring substantive legal action in any competent court against the Buyer or against the owner of the arrested vessel or other attached asset.

## **20. Entry into force**

- 20.1. Entry into force. These Conditions enter into force with effect from 1<sup>st</sup> of September 2020 at 00.01 hours (GMT) and shall apply to all Contracts and Order Confirmations agreed on this date and time or thereafter.