

## TERMS AND CONDITIONS FOR SALE OF MARINE FUELS 2017

### 1 INTERPRETATION

#### 1.1 In these Terms and Conditions

“**Buyer**” means the party(ies) as described in the Sales Confirmation and shall include the Vessel, the Owner, her master, operators, charterers, 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 comprising of the Sales Confirmation and these Terms and Conditions.

“**Marine Fuel**” means the marine fuel(s) 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.

“**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.

“**Seller**” means Equatorial Marine Fuel Management Services Pte Ltd.

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

“**Terms and Conditions**” means the standard terms and conditions set out in this documents and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

“**Vessel**” means the vessel nominated by the Buyer to receive the Marine Fuel.

“**working day**” means any day other than a Saturday, Sunday or public holiday in Singapore.

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

## **2 BASIS OF SALE**

- 2.1 Each sale of the Marine Fuel shall be confirmed by a Sales Confirmation. No terms and conditions proposed by the Buyer, whether before or after the Sales Confirmation, shall be or become part of the Contract.
- 2.2 The Contract shall be firm and binding upon the Buyer's acceptance of the price quoted by the Seller by way of fax, telex, 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.
- 2.3 Contracts entered 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 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.

## **3 PRICE**

- 3.1 Subject to the provisions in Clause 3.3 or 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, duties, fees, wharfage dues and other costs or charges, including without limitation to pipeline charges, and those imposed by government and authorities, barging and delivery charge, all of which shall be included in the invoice to the Buyer and solely 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 dates, 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) working days prior to its requested delivery date, written nomination specifying: (i) the name of the Vessel; (ii) the Vessel's local agent(s); (iii) the estimated time of arrival; (iv) the approximate date of delivery; (v) location of the Vessel; (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; and (x) any other details as shall be necessary or desirable or required by the Seller.
- 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 prior notice of changes to nomination requirements. The Seller shall not be liable if despite reasonable endeavours, it is unable to accept any changes to the nomination requirements.
- 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 to 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 during normal working hours and within the port limits, unless otherwise specifically agreed to by the Seller and permitted by port regulations or authorities. If in the opinion of the Seller such delivery is likely to cause a labour dispute, in which event, the Buyer shall be required to provide its own bunker tanker or barge.

- 6.3 Delivery of the Marine Fuel shall be carried out subject to the regulation, requirements and procedures prevailing at the port and the time of delivery. The Buyer shall be solely responsible for complying with such regulations, requirements and procedures including but not limited to obtaining all necessary permits, licences and approvals required to enable the Seller and Buyer to execute their entire obligation 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 The Buyer shall pay the applicable barging charges applicable to the delivery of the Marine Fuel plus transportation taxes, if any, at the port 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 all connections and disconnections between the delivery hose 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 complete once 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 Supply 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/or the Supplying Company for all losses, expenses, charges arising therefrom or in connection therewith including but not limited to demurrage at the established rates of the Seller and/or Supplying Company.
- 6.9 Without prejudice to the Seller's right to cancel the nomination, in the event the Vessel arrives earlier or later than the indicated expected date or arrival, the Seller and Supplying Company is 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.

## 6A DELIVERY WITHIN SINGAPORE PORT LIMITS

- 6A.1 Notwithstanding any provision in these Terms and Conditions to the contrary, where delivery of the Marine Fuel to the Vessel is effected by bunker tanker or barge within Singapore port limits, the delivery shall be subject to the Technical Reference “Bunker Mass Flow Metering” (TR 48 : 2015) (where the Marine Fuel delivered is marine fuel oil) and Singapore Standard “Code of Practice for Bunkering” (SS 600 : 2014) (where the Marine Fuel delivered is marine diesel oil or marine gas oil) published by Spring Singapore and their latest editions, amendments and/or supplements (the “**Singapore Bunkering Code**”). In the event of any inconsistency between these Terms and Conditions and the Singapore Bunkering Code in any respect, the Singapore Bunkering Code 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 or meter of the bunker tanker or barge effecting delivery or the gauge or meter of the shore terminal or wharf in the case of ex-wharf delivery, or in either case, by such other method the Seller deems fit. Except where government regulations or local authorities determine otherwise, adjustment in volume owing to difference in temperature, for gauge readings, shall be made in accordance with API/ASTM-IP Petroleum Measurement Standards for Generalised Products (Table 6B, 24B or 54B depending on port location). Even if the chosen method for determining quantity of the Marine Fuel delivered is by meter, the Seller shall be entitled, at its sole option, to carry out gauging of any or all tanks for the its own records and/or determination of the final quantity delivered if the meter reading for any part of the delivery cannot be obtained/retrieved.
- 7.2 In the event that the quantity of the Marine Fuel is to be determined by meter and there is a metering stoppage/failure prior to or in the middle of a delivery and the delivery cannot be continued, determination of the remaining quantity delivered shall be from the gauge of the bunker tanker or barge effecting delivery, or the gauge of the shore terminal or wharf in case of ex-wharf delivery. The final quantity delivered shall conclusively be the sum of quantities delivered from the meter and gauge readings recorded. However, if the meter reading for any part of the delivery cannot be immediately obtained/retrieved, the determination of the final quantity delivered shall be solely and conclusively from the gauge of the bunker tanker or barge effecting delivery, or the gauge of the shore terminal or wharf in case of ex-wharf delivery.
- 7.3 Taking of measurements, by gauge and/or meter, shall be carried out by the Seller or its representative. The Buyer may appoint, at its own cost, a representative to witness the taking of measurements, but if the Buyer or its representative is not represented, the Buyer shall waive its right to challenge the measurements of the quantity of the Marine Fuel.

- 7.4 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 than a similar variation to the corresponding invoice from the Seller.

## **8 QUALITY**

- 8.1 Notwithstanding any information which may be provided by the Seller to the Buyer regarding characteristics 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) on board the Vessel.
- 8.2 The quality of the Marine Fuel shall be the usual production 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.
- 8.3 The Seller's employees, servants or agents are not authorised 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.

## **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 in accordance with the customary sampling procedures at the port or place of delivery of the Marine Fuel. 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. The samples shall be kept for a period of thirty days after delivery, or longer by written request of the Seller or Buyer.

- 9.3 In the event of any dispute concerning the quality of the Marine Fuel, one of the samples 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 endeavours 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 can at its sole discretion send the sample to a reputable and 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.
- 9.4 If the result of the test of the laboratory falls within the specification limits of the grade of the Marine Fuel, the cost of the test shall be borne by the Buyer.
- 9.5 Any additional samples drawn by the Buyer's personnel 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 fuels.

## **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 favour 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.

## **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. If the Marine Fuel is commingled with fuel owned by a third party, 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 fuel owned by a third party 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.

## **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 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 units, and the Seller cannot be held responsible for such damage. If, however, any of the involved units choose to pursue the Seller, 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 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 not 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, 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; or
- 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 refuel the Vessel to the extent of the delivered Marine Fuel; or
- 12.8.2 the Seller at its sole discretion requiring the Vessel to debunker the delivered Marine Fuel and refund all payments made by the Buyer to the Seller in respect of the debunked Marine Fuel.

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 be entitled to 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 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 13.3. 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 working day or any other day on which the Seller's bank is closed, payment shall be made on or before the working 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 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 seventy-two (72) hours 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; or
- 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.
- 14.2 In the event of failure by the Buyer to make payment on the due date of any sums due under the Contract, 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); and
  - 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.
- 14.3 Notwithstanding any of the provisions in these Terms and Conditions and 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 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 Terms and Conditions relating to the 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 Contract is cancelled, 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 at the rate of minimum United States Dollars Four and Fifty Cents (USD 4.50) per metric ton without any formal proof of such loss or the difference between the price agreed by the parties and the market price, whichever is higher.

## 15 CLAIMS

- 15.1 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 within seven (7) days from the date of delivery, in writing, together with all supporting documents and all necessary details required by the Seller to satisfactorily evaluate the claim, 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.
- 15.2 In the event of any claim presented in accordance with Clause 15.1, the Buyer shall use best endeavours to:
- 15.2.1 present the Seller or its representatives an investigation report with regard to its claim, including but not limited to 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 copying of the Vessel's records, log books, engine logs, etc.;
  - 15.2.2 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 specifications, the Buyer shall use all reasonable endeavours to mitigate the consequences hereof and shall burn the Marine Fuel if possible even if this requires employment of purification tools or other similar measures; and
  - 15.2.3 preserve the Seller's rights and remedies against the Supplying Company of the Marine Fuel or any culpable third party.
- 15.3 A breach by the Buyer of any part of Clause 15.2 above will entitle the Seller to set off any loss caused by the breach against any liability to the Buyer.

- 15.5 Provided that (where applicable) such claims have been duly notified to the Seller by the Buyer in accordance with Clause 15.1 above, any claim against the Seller in respect of the Contract, including but not limited to a claim for demurrage, deviation or detention, shall be brought in accordance with Clause 22 within sixty (60) days of the date of delivery of the Marine Fuel, failing which such claim shall be deemed to be waived and absolutely time barred, and the Seller shall be irrevocably discharged and forever released from all liabilities in relation to such claim.
- 15.6 The Buyer's submission of any claim does not relieve it of responsibility to make full payments 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 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 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, 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.

## **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 shall 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 reasonably 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 whensoever 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 authorised, 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 judgement 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 programme 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.

## **18 INTERNATIONAL SANCTIONS**

- 18.1 In the Contract the following provisions shall apply where any sanction, prohibition or restriction is imposed on any specified persons, entities or bodies including the designation of any specified vessels or fleets under United Nations Resolutions or trade or economic sanctions, laws or regulations of Singapore, the European Union or the United States of America.
- 18.2 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:
- 18.2.1 the Buyer is not subject to any of the sanctions, prohibitions, restrictions or designation referred to in Clause 18.1 which prohibit or render unlawful any performance under the Contract;
- 18.2.2 the Buyer is purchasing the Marine Fuel as principals and not as agent, trustee or nominee of any person with whom transactions are prohibited or restricted under Clause 18.1; and
- 18.2.3 the Vessel is not a designated vessel and is not and will not be chartered to any entity or transport any cargo contrary to the restrictions or prohibitions under Clause 18.1.
- 18.3 If at any time during the performance of the Contract, the Seller becomes aware that the Buyer is in breach of warranty as aforesaid, the Seller shall comply with the laws and regulations of any government to which the Buyer or the Vessel is subject and follow any orders or directions which may be given by any regulatory or administrative body, acting with powers to compel compliance. In the absence of any such orders, directions, laws or regulations, the Seller may terminate the Contract forthwith.
- 18.4 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.
- 18.5 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 delivery as the Buyer until payment has been received by the Seller in full.

## 20 ASSIGNMENT

- 20.1 These 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.
- 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 do hereby assign, effect 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 of sale or supply or delivery 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 authorises 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 co-plaintiff/co-claimant in such action and hereby authorises 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 endeavours 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 letter, email or facsimile to the Seller at:

**Equatorial Marine Fuel Management Services Pte Ltd**  
**38 Carpenter Street, #05-01, Singapore 059917**  
**Tel: (65) 6259-1314**  
**Fax: (65) 6259-0760**  
**Email: [bunkers@emf.com.sg](mailto:bunkers@emf.com.sg)**  
**Website: [www.emf.com.sg](http://www.emf.com.sg)**

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

- 21.2 The Contracts (Rights of Third Parties) Act of Singapore shall not apply as to extend any rights, interests, benefits, defences, exemptions etc. conferred on the Buyer pursuant to the Contract to any third party.
- 21.3 No waiver by either party of any breach of any of these Terms and Conditions shall be effective unless the waiver is issued in writing by the waiving party. No waiver of breach of any of these Terms and Conditions by either party to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or any other of these Terms and Conditions.
- 21.4 If any provision or part of these Terms and Condition is adjudged invalid or unenforceable, such provision or part of Terms and Condition shall be deemed omitted and the remaining provisions and parts shall remain in full force and effect.

## 22 GOVERNING LAW AND JURISDICTION

- 22.1 The Contract shall be governed by and construed in accordance with the laws of Singapore. The United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply to the Contract or these Terms and Conditions.
- 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.
- 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.