

# General Terms and Conditions 2016

Monjasa Group

## Preamble

These General Terms and Conditions shall apply to all deliveries contracted for unless the Seller expressly confirms otherwise in the Bunker Confirmation. Each delivery shall constitute a separate contract.

## 1 Grades/Quality

- 1.1 The Seller warrants that the Marine Fuels shall be of a homogeneous and stable nature, shall comply with the grades nominated by the Buyer and be of a quality widely accepted in the industry. Unless otherwise agreed in the Bunker Confirmation, the Marine Fuels will comply with ISO Standard 8217 (E):2005.
- 1.2 There are no conditions, guarantees or warranties, express or implied, by common law, Statute, or otherwise as to the satisfactory quality, merchantability, fitness, durability or suitability of the Marine Fuels for any particular purpose or otherwise, which extend beyond the description in Sub-clause 1.1.

## 2 Quantities/Measurements

- 2.1 The quantities of Marine Fuels delivered shall be those quantities nominated in the Bunker Confirmation with a tolerance of +/- 10% in Seller's option unless otherwise expressly agreed in the Bunker Confirmation.
- 2.2 Subject to the provisions of Sub-clause 6.3 and Clause 10, the quantities of Marine Fuels delivered shall be determined from the official gauge or meter of the Bunker Tanker effecting delivery, or in case of delivery ex wharf, of the shore-meter.
- 2.3 The Marine Fuels to be delivered under this Contract shall be measured and calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.
- 2.4 The Seller shall measure the quantity of the Marine Fuels delivered and the Buyer (or their representative) may at their own expense witness such measurement. All such measurements made by the Seller shall be conclusive and final. The Seller shall record the quantity of fuel delivered on the Delivery Receipt. The Buyer will be charged for the Marine Fuels on the basis of quantity stated on the Delivery Receipt.

## 3 Sampling

- 3.1 The Seller shall arrange for a representative sample of each grade of Marine Fuels to be drawn throughout the entire bunkering operation and that sample shall be thoroughly mixed and carefully divided into four (4) identical samples. The Buyer or their representatives have the right to be present during the sampling, however, the absence of the Buyer or their representatives shall not prejudice the validity of the samples taken.
- 3.2 The sample shall be drawn at a point as close as possible to the Bunker Tanker manifold, which point shall be determined in Seller's sole discretion.
- 3.3 The sample shall be drawn using a mutually accepted sampling device which shall be constructed, secured and sealed in such a way so as to prevent the sampling device and the sample being tampered with throughout the transfer period.
- 3.4 The four (4) identical samples referred to in Sub-clause 3.1 shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, product name, delivery date and place and point of sampling and seal number, authenticated with the Vessel's stamp and signed by the Seller's representative and the Master of the Vessel or his authorised representative.
- 3.5 Two (2) samples shall be retained by the Seller for a minimum of forty five (45) Days after delivery of the Marine Fuels to the Vessel or, on being requested in writing by the Buyer, for as long as the Buyer may reasonably require, and the other two (2) samples shall be retained by the Vessel.
- 3.6 If the quantity is delivered by more than one Bunker Tanker, the sampling procedure shall be repeated for each Bunker Tanker as outlined in this Clause 3.
- 3.7 In the event of a dispute relating to the quality of the Marine Fuels supplied, the samples drawn by the Bunker Tanker under this Clause shall be conclusive, notwithstanding that samples other than those drawn by the Bunker Tanker may have been recorded on the Delivery Receipt and/or acknowledged by an agent or representative of the Seller in any similar document. Only the results of testing of samples drawn under this section shall be admissible in any proceedings to prove the quality of the marine fuel provided.

#### **4 Agents and brokers**

- 4.1 The person or entity with whom the Seller is corresponding shall be a Buyer and responsible for payment for the Marine Fuels unless that person specifically declares in writing to the Seller prior to dispatch by the Seller of the Bunker Confirmation that it is not the Buyer and at the same time provides in writing to the Seller the full name and address of the Buyer.
- 4.2 Without prejudice to the provisions of Sub-clause 4.1, in the event that the person or entity with whom the Seller is corresponding is an agent of the Buyer then such person or entity shall be jointly and severally liable with the Buyer for all obligations of the Buyer under the Contract notwithstanding that such person or entity purports to contract as an agent.

#### **5 Delivery**

- 5.1 Delivery of the Marine Fuels shall be made day and night, Sundays and holidays included, at the port or place of delivery, subject always to the custom of that port or place.
- 5.2 The Buyer shall at the time the order is placed designate a date or range of dates for delivery of the Marine Fuels, which dates will be confirmed in the Bunker Confirmation for delivery of the Marine Fuels.
- 5.3 The Buyer, or their agents at the port or place of delivery, shall give the Seller or its representatives at the port or place of delivery, 72 and 48 hours approximate and 24 hours definite notice of the Vessel's arrival and the location and time at which deliveries are required.
- 5.4 The Seller shall:
- 5.4.1 be in possession of all permits required to comply with all relevant regulations pertaining to delivery of Marine Fuels at the port or place of delivery; and
- 5.4.2 subject to local laws, render all necessary assistance which may be reasonably required to make connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold.
- 5.5 The Seller shall have no responsibility for detention or demurrage incurred by Buyer or to Buyer's Vessel caused by delays in the Bunker Tanker arriving on station due to bad weather, bad visibility, or breakdown.
- 5.6 The Buyer shall:
- 5.6.1 be responsible for making all connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold and to ensure that the hose(s) are properly connected to the Vessel's bunker manifold prior to the commencement of delivery; and
- 5.6.2 ensure that the Vessel is in possession of all certificates required to comply with all relevant regulations pertaining to delivery of the Marine Fuels at the port or place of delivery and that the Master of the Vessel shall:
- 5.6.2.1 advise the Seller in writing, prior to delivery, of the maximum allowable pumping rate and pressure and agree on communication and emergency shut-down procedures;
- 5.6.2.2 notify the Seller in writing prior to delivery, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Marine Fuels; and
- 5.6.2.3 provide a free side to receive the Marine Fuels and render all necessary assistance which may reasonably be required to moor or unmoor the Bunker Tanker, as applicable.

#### **6 Documentation**

- 6.1 Before commencement of delivery the Seller shall without obligation endeavour to present a bunker requisition form or similar document, duly signed by the Seller or its representative, which shall contain the quantities to be delivered and all information required in accordance with the Bunker Confirmation or any subsequent amendments thereof, including, in particular, the values for:
- viscosity
  - density
  - sulphur content
  - flash point

If available, similar information may be provided for vanadium, ash content, water content and pour point.

- 6.2 Once the delivery is completed and quantities measured, a Delivery Receipt shall be presented to the Master of the Vessel or his authorised representative containing the following information:
- delivered quantity in volume units
  - density in kg/m<sup>3</sup> at 15°C as per ISO 3675
  - flash point
  - sulphur content in % m/m as per ISO 8754
  - viscosity

The Master or his representative shall sign the Delivery Receipt, and return it to the Seller or its representative as acknowledgement of the actual volume only. A duplicate copy shall be retained by the Vessel.

- 6.3 In the event the Master of the Vessel is not satisfied with the sampling, quality, quantity or any other matter concerning the Marine Fuels or their delivery, he shall take immediate phone contact to Seller's 24/7 phone number stated in the lower right footer of the Bunker Confirmation or to Buyer, whom must take immediate action on the complaints to solve the issue raised by the Master of the Vessel. Verification of the information provided under Sub-clause 6.2 may later be obtained by analysis of the Vessel's retained sample.
- 6.4 Buyer warrants that they are authorized by the Vessel's owners/operators to order the Marine Fuels delivered to the Vessel and that they have provided a copy of these terms and conditions to the Vessel's owner and/or Master.
- 6.5 Buyer further warrants that by receiving the Marine Fuels and signing the Bunker Delivery Receipt, the Master acknowledges the Vessel is bound by the terms and conditions contained herein.

## **7 Price**

- 7.1 The price of the Marine Fuels shall be in the amount expressed per unit and in the currency stated in the Bunker Confirmation for each grade of Marine Fuels delivered to the Vessel free delivered/ex wharf as applicable and stated in the Bunker Confirmation. In the event the price is quoted in volume units, conversion to standard volume shall be at sixty (60) degrees Fahrenheit or at fifteen (15) degrees Celsius.
- 7.2 In addition to the price stated in the Bunker Confirmation, and unless otherwise expressly agreed in the Bunker Confirmation, the Buyer shall pay any and all additional charges associated with the delivery, including but not limited to:
- 7.2.1 Wharfage charges, barging charges or other similar charges;
- 7.2.2 Mooring charges or port dues incurred by the Seller which are for Buyer's account;
- 7.2.3 Any overtime charges incurred if delivery takes place outside of regular working days and hours at the relevant port of delivery, if such delivery is permitted by port regulations; and
- 7.2.4 Duties, taxes, charges, tariffs or other costs in the country where delivery takes place which the Seller incurs. Where the Marine Fuels are supplied without payment by the Buyer of duties and taxes (which shall include, without limitation, customs duty, excise duty, VAT, GST or sales tax), the Buyer shall indemnify the Seller against any duties, taxes, charges costs, liability, interest and penalties that may be incurred by the Seller, at any time, as a result of the failure of the Buyer to provide any necessary proof or other supporting documentation, within the requisite time period specified by the applicable law, regulation or procedure.

## **8 Payment**

- 8.1 Payment for the Marine Fuels shall be made by the Buyer as per stated in the Bunker Confirmation, after the completion of delivery. In the event payment has been made in advance of delivery, same shall be adjusted on the basis of the actual quantities of Marine Fuels delivered and additional payment and/or refund shall be made within thirty (30) Days after the completion of delivery. Should the Buyer appear to be in financial difficulty or unable to meet its obligations to other creditors as they become due, Seller on written notice to Buyer may accelerate the payment date hereunder in which case payment is immediately due. In consideration of this acceleration, Buyer are entitled to a credit against the principal amount due of two (2) per cent per Month (prorated over the 30 days) for every Day the payment is early.
- 8.2 Payment shall be made in full, without set-off, counterclaim, deduction and/or discount, free of bank charges.
- 8.3 Payment shall be deemed to have been made at the time the funds are credited to the bank account designated by the Seller. If payment falls on a non-business day, then payment shall be made on or before the business day nearest to the due date. If the preceding and succeeding business day are equally near to the due date, then payment shall be made on or before the preceding business day.

- 8.4 In the event the bank account to which payment is made is changed from that stated in the Bunker Confirmation and/or invoice, Buyer must confirm that change directly with the Seller, by email to the email address from which the Bunker Confirmation was sent and by calling the responsible bunker trader at Seller, before remitting payment. If payment is made to an account other than that designated in the Bunker Confirmation, and the funds are not received in the Seller's account, payment has not occurred.
- 8.5 Any delay in payment and/or refund shall entitle either party to interest at the rate of two (2) per cent per Month or any part thereof. Any payments made by Buyer and received by Seller shall be credited first against any interest owed under this section after which the balance of the payment, if any, shall be credited against the principal debt.
- 8.6 In the event that the Buyer has not paid the amount due to the Seller in accordance with the payment terms granted in the Bunker Confirmation the Seller shall be entitled to set-off any amounts under this Contract or any other contract against any other payment owed to the Buyer regardless of:
- 8.6.1 whether the payment obligation has arisen from this Contract or not;
- 8.6.2 the title to the product, the place and method of payment and/or the currency of either payment obligation; and/or
- 8.6.3 whether the payment obligation has arisen from agreements between the Parties and/or any affiliates or subsidiaries of the Parties.
- 8.7 The Seller shall have the right to settle any payment(s) received by the Buyer or its representative against any due invoice(s), regardless of the Buyer's designation or marking of the payment(s) or communication between the Parties.
- 8.8 In the event of non-payment, the Seller reserves the right to pursue all legal remedies available to recover the amount owed. The Seller shall have a maritime lien on the Vessel identified by its IMO number until payment and interest has been received by the Seller. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its liens attached to the Vessel. 'No-Lien' stamps or remarks in any form or wording on the Delivery Receipt(s) or in any document, letters or e-mails received from owners shall be invalid and of no effect, and shall in no way impair Seller's lien or discharge the Vessel's responsibility for debts under this Contract.

## **9 Cancellation**

- 9.1 Should Buyer elect to cancel a confirmed request for Marine Fuels or in the event the Vessel fails to take delivery of part or all of the requested Marine Fuels, the Buyer shall pay to the Seller a cancellation fee of five (5) per cent of the order price and any documented costs and/or damages resulting from such cancellation to the extent such damages exceed five (5) per cent of the order price.

## **10 Claims**

- 10.1 Quantity Claims:
- 10.1.1 Any dispute as to the accuracy of the measurements of the quantity delivered must be notified by phone to Seller on its 24/7 number stated in the lower right footer of the Bunker Confirmation at the time of delivery and before signing the Delivery Receipt or a letter of protest. Any claim as to short delivery shall be presented by the Buyer in writing within twenty-four (24) hours from the time of delivery together with all documents supporting Buyer's claim, failing which any such claim shall be waived and barred.
- 10.1.2 The Buyer shall be charged for all proven additional expenses incurred by the Seller in connection with the Buyer's failure to take delivery of the full quantity of the Marine Fuels ordered by the Buyer.
- 10.2 Quality Claims:
- 10.2.1 Any claim as to the quality of the Marine Fuels must be notified in writing promptly after the circumstances giving rise to such claim have been discovered. If the Buyer do not notify the Seller of any such claim within fifteen (15) Days of the date of delivery, such claim shall be deemed to be waived and barred.
- 10.2.2 In the event the Buyer present a timely claim under Sub-clause 10.2.1, the Buyer shall within three (3) Months of the date of such claim provide all supporting documentation for such claim. Failing to do so such claim shall be deemed waived and barred.
- 10.2.3 In the event a quality claim is raised pursuant to this Sub-clause, the Parties hereto shall have the quality of the Marine Fuels analysed by a mutually-agreed, qualified and independent international recognized laboratory. The Seller shall designate a minimum of two (2) such laboratories, and Buyer shall choose one laboratory from those designated for a final and binding test. The Seller shall provide the laboratory with one of the samples retained by them as per Sub-clause 3.5. The analysis shall be established by tests in accordance with those specified under ISO Standard 8217(E):2005 or equivalent and only the parameters in dispute shall be tested. Unless otherwise agreed the expenses of the analysis shall be for the account of the Party whose claim is found wrong by the analysis.

10.3 Delay Claims:

- 10.3.1 Any notice of a claim regarding delay must be given to the Seller no later than fifteen (15) Days of the date of delivery, together with all documents supporting Buyer's claim, failing which any such claim shall be waived and barred.
- 10.3.2 In the event of any delay resulting from:
- 10.3.2.1 the Buyer's failure to give proper notices and/or to comply with the notices given pursuant to Sub-clause 5.3 and/or the Buyer's Vessel failing to receive Marine Fuels at the pumping rate referred to in Sub-clause 5.6.2.1; or
- 10.3.2.2 the Seller's failure to commence delivery of the Marine Fuels promptly in accordance with the Buyer's required delivery time as notified pursuant to Sub-clause 5.3, except as provided in Clause 5.5, and/or the Seller's failure to deliver the Marine Fuels in accordance with the minimum hourly pumping rate as advised prior to delivery;
- then the Party suffering such delay shall be entitled to compensation from the other Party for such delay.
- 10.3.3 In the event the Buyer fails to take delivery within the date or range of dates for delivery confirmed in the Bunker Confirmation, the Seller can choose to:
- 10.3.3.1 deliver to the Buyer on a date of the Seller's choice at the price stated in the Bunker Confirmation plus any additional costs incurred by the Seller in delivering on a date other than the date or range of dates confirmed in the Bunker Confirmation, hereunder any additional costs due to an increase in the relevant Platt's publications or similar quotation, which may be obtained from the Seller upon request;
- 10.3.3.2 accept a new date or range of dates for delivery of the Marine Fuels as the basis of a new contract for which a new price can be agreed upon with the Buyer; or
- 10.3.3.3 terminate the Contract and the Buyer shall pay to the Seller any costs resulting from such cancellation.

**11 Liability**

- 11.1 The Seller's total liability to the Buyer for any and all categories of loss and/or damages of whatsoever kind and type shall not exceed the total purchase price of the provision of the Marine Fuel that is the subject of the claim. This limitation of the Seller's liability to the Buyer shall apply regardless of whether that liability arises in contract, tort or any other way whatsoever and shall be in addition to any other exclusions or limitations available to Seller under law.
- 11.2 The Seller shall have no liability under this Clause 11 unless and until the Seller has received full payment from the Buyer of all sums due under this Contract.
- 11.3 Neither party hereto shall be liable, whether in contract, tort or any way whatsoever, for any indirect, special, punitive, exemplary, incidental or consequential losses, damages or expenses of any kind.
- 11.4 In addition, and for clarification, the Seller shall not be liable for any of the following:
- 11.4.1 Loss of actual, projected and/or prospective profits, anticipated costs savings, loss of other contracts or financial or economic loss; and/or
- 11.4.2 Except as provided in Clause 10.3, any demurrage, detention and/or off-hire.
- 11.5 Seller and Buyer recognize the risks inherent in ship to ship operations and that the decision to proceed with such operations is in the sound discretion of the Masters of the vessels involved. It therefore is agreed that:
- 11.5.1 Buyer assume all liability for any loss or damage to Buyer's Vessel or injury to the crew thereon caused by any condition of the Bunker Tanker or any fault of the Master or crew of the Bunker Tanker and Buyer shall indemnify and defend Seller against all such liability.
- 11.5.2 Seller assumes all liability for any loss or damage to the Bunker Tanker or injury to the crew thereon caused by any condition of Buyer's Vessel or any fault of the Master or crew of Buyer's Vessel and Seller shall indemnify and defend Buyer against all such liability.
- 11.6 Where claims arise under any other Clause of this Contract, compensation payable shall be deducted from sums payable under this Clause 11.

**12 Risk/Title**

- 12.1 Risk of loss and all responsibility for any damage caused by or to the Marine Fuels shall pass to the Buyer once the Marine Fuels have passed the Seller's flange connecting the Vessel's bunker manifold to the delivery facilities provided by the Seller.

12.2 Title to the Marine Fuels shall pass to the Buyer upon payment for the value of the Marine Fuels delivered, pursuant to the terms of Clause 8 hereof. Until such time as payment is made, on behalf of themselves and the Vessel, the Buyer agree that they are in possession of the Marine Fuels solely as Bailee for the Seller, and shall not be entitled to use the Marine Fuels delivered other than for the propulsion of the Vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the Marine Fuels to any third party or other Vessel. The Seller shall have a lien on the Marine Fuels to secure the purchase price, and the Buyer agree that upon demand the Seller may remove the Marine Fuels from the Vessel without judicial intervention if the purchase price is not timely paid.

12.3 The Seller's right to remove the Marine Fuels set forth in Clause 12.2 is not an exclusive remedy, and is in addition to any other legal rights the Seller may have under this Contract.

### **13 Termination**

13.1 Without prejudice to accrued rights hereunder, the Seller shall be entitled to terminate this Contract in the event of:

13.1.1 any application being made or any proceedings being commenced, or any order or judgement being given by any court, for:

13.1.1.1 the liquidation, winding up, bankruptcy, insolvency, dissolution, administration or re-organisation or similar; or

13.1.1.2 the appointment of a receiver, liquidator, trustee, administrator, administrative receiver or similar functionary of the Buyer of all or a substantial part of its assets (otherwise than for the purpose of a reconstruction or amalgamation).

13.1.2 the Buyer or any of their affiliates failing to pay their debts as they become due or suspending payment of their financial obligations, ceasing to carry on business, or compounding or making any special arrangement with their creditors; or

13.1.3 any act being done or event occurring which, under the applicable law thereof, has a substantially similar effect to any of the said acts or events described above.

### **14 Sanctions Compliance**

14.1 In this 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 economic sanctions, laws or regulations of the European Union or the United States of America.

14.2 The Buyer and the Seller each warrant that at the date of entering into this Contract and continuing until delivery of the Marine Fuels and payment by the Buyer to the Seller in full:

14.2.1 neither Party is subject to any of the sanctions, prohibitions, restrictions or designation referred to in Sub-clause 14.1 which prohibit or render unlawful any performance under this Contract;

14.2.2 the Seller is selling and the Buyer are purchasing the Marine Fuels as principals and not as an agent, trustee or nominee of any person with whom transactions are prohibited or restricted under Sub-clause 14.1;

14.2.3 the Buyer further warrant that 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 in Sub-clause 14.1 above; and

14.2.4 the Seller further warrants that the Marine Fuels are not of an origin or have been exported as a product from a place that is subject to any of the sanctions, prohibitions, restrictions or designation referred to in Sub-clause 14.1 above.

14.3 If at any time during the performance of this Contract either Party has reasonable grounds to believe that the other Party is in breach of warranty as aforesaid, the Party not in breach shall comply with the laws and regulations of any government to which that Party 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 Party not in breach may terminate this Contract forthwith.

14.4 Without prejudice to the generality of the foregoing, Seller reserves the right at all times, whether prior to or after confirmation of nomination of a Vessel, to decline to supply Marine Fuels to such Vessel if Seller reasonably considers that such supply could cause Seller to be in violation of, or exposed to, punitive measures under any sanctions, prohibitions, restrictions or designation.

14.5 Notwithstanding anything to the contrary in this Clause, Buyer and Seller shall not be required to do anything which constitutes a violation of the laws and regulation of any State to which either of them is subject.

14.6 The Buyer and the Seller shall be liable to indemnify the other Party against any and all claims, including return of any payment, losses, damage, costs and fines whatsoever suffered by the other Party resulting from any breach of warranty as aforesaid and in accordance with this Contract.

## **15 Anti-bribery & Corruption**

- 15.1 The Seller and Buyer warrant and undertake that in connection with the sale and purchase of Marine Fuels under this Contract they will each respectively comply with all applicable laws, regulations, rules, decrees and/or official government orders and requirements of the United States, the United Kingdom, Denmark, and any other relevant jurisdiction relating to anti-money laundering and anti-bribery.

## **16 Force Majeure**

- 16.1 Except in relation to payment obligations under this Contract, neither Party shall be responsible to the other for any loss, damage, delay or failure in performance of obligations required of them under this Contract, resulting from an Act of God, war, civil commotion, riot, quarantine, strike, stoppage, lock-out or labour dispute, arrest, restraint of princes, rulers and people, piracy, acts of terrorism, trade restrictions, fire and explosion, accident, any government or lawful authority requisition, control, intervention, requirement, order or interference or any other event whatsoever which is beyond the control of Parties and cannot be avoided or guarded against by the exercise of due diligence.
- 16.2 In addition, the Seller shall not be liable for loss, damage, delay or failure by it to perform all or any part of its obligations under this Contract resulting from:
- 16.2.1 delay of the Bunker Tanker en-route from the load port to the delivery location due to breakdown or bad weather and/or visibility; or
- 16.2.2 shortage or delay in the delivery of the Marine Fuels to the Bunker Tanker at the load port due to the producing, manufacturing and/or blending of the Marine Fuels outside the load port or the transportation of the Marine Fuels to the load port which is beyond the control of the Seller.

## **17 Safety and the Environment**

- 17.1 In the event of any spillage (which for the purpose of this Clause shall mean any leakage, escape, spillage or overflow of the Marine Fuels) causing or likely to cause pollution occurring at any stage of the bunkering operation, the Buyer and the Seller shall jointly, and regardless as to whether the Buyer or the Seller are responsible, immediately take such actions as are reasonably necessary to abate the spill and effect clean up and which shall always be conducted in accordance with such local laws and regulations which may compulsorily apply.
- 17.2 Where it is a compulsory requirement of the law of the port or place of delivery of the Marine Fuels that the Seller shall have in place their own oil spill contingency plans, the Seller shall ensure that valid oil spill contingency plans approved by the relevant authorities are in effect to the extent that is so required.
- 17.3 The Seller hereby guarantees payment of and/or agrees to indemnify and hold the Buyer harmless for any claims, losses, damages, expenses, penalties or other liabilities incurred by the Buyer under the United States Oil Pollution Act of 1990, or other state, national or international oil pollution legislation, as a result of any spillage occurring before risk of loss and responsibility for the Marine Fuels passes to the Buyer under Sub-clause 12.1, except to the extent that such spillage is caused or contributed to by any fault on the part of the Buyer. The Buyer shall similarly indemnify the Seller where any such spillage occurs once risk in the Marine Fuels has passed to the Buyer.
- 17.4 The Seller shall use its best endeavours to ensure that the bunker supplying company is fully insured for oil spill liabilities as required by statutory rules or regulations. Proof and conditions of such coverage established by the bunker supplying company shall be made available to the Buyer at their request, as soon as practically possible.
- 17.5 The Buyer warrant that the Vessel is entered with a P&I Club and insured for pollution liability risks.
- 17.6 The Buyer warrant that they enforce a company drug and alcohol policy on board their vessels, whereby the Seller's personnel must not be intoxicated at any time on board. It is understood and agreed that the selling, possession, distribution, use or being under the influence of any controlled substance or dangerous drugs other than those medically prescribed is prohibited.
- 17.7 The Seller hereby advises the Buyer that it enforces a company drug and alcohol policy in its facilities and on board its vessels, which the Buyer's personnel must comply with while in such facilities or on board such vessels. It is understood and agreed that the selling, possession, distribution, use or being under the influence of alcohol or any controlled substance or dangerous drugs other than those medically prescribed is prohibited.

## **18 Confidentiality**

- 18.1 Neither Party shall disclose to third parties any Confidential Information learned during pre-contractual discussions except with the prior written consent of the other Party, or to the extent required by law or regulation or by request of a government or agency thereof, or to the extent the disclosure is made in connection with an arbitration between the Parties or an action to enforce or vacate an arbitration award.
- 18.2 The Parties shall take reasonable precautions to ensure that no unauthorised disclosure of Confidential Information takes place.
- 18.3 If a Party is uncertain to whether information is confidential, that Party shall consult with the other Party.
- 18.4 Should either Party be required by law to disclose Confidential Information, the disclosing Party will notify the other party and shall disclose only the minimum Confidential Information required to satisfy legal requirements.
- 18.5 Information is not confidential for the purposes of this Clause if it was in the possession of the Party prior to receipt from the other Party; becomes public available other than as a result of a breach of this Contract by one of the Parties; or is lawfully received from a third party.
- 18.6 This Clause shall survive termination of this Contract.

## **19 Partial Validity**

- 19.1 If any provision of this Contract is or becomes or is held to be illegal, invalid or unenforceable in any respect under any law or jurisdiction, the provision shall be deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if such amendment is not possible the provision shall be deemed to be deleted from this Contract to the extent of such illegality, invalidity or unenforceability, and the remaining provisions shall continue in full force and effect and shall not in any way be affected or impaired thereby.

## **20 Dispute Resolution**

- 20.1 This Contract shall be governed by and construed in accordance with the Maritime Law of the United States, Title 9 of the United States Code, and the Uniform Commercial Code as applied in New York. Any dispute arising out of or in connection with this Contract shall be referred to arbitration before three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. In cases where neither the claim nor any counterclaim exceeds the sum of US\$75,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced. The arbitrators shall be commercial men and/or familiar with shipping matters.
- 20.2 This agreement to arbitrate is without prejudice to Seller's right to use any and all legal process to obtain security for its claims in the United States and/or anywhere in the world pending resolution of the merits of its claim in arbitration.
- 20.3 This agreement to arbitrate shall not limit the right of the Seller to commence any proceedings against the Buyer in any other jurisdiction, hereunder to commence proceedings on the merits in the jurisdiction pending an arrest of the Vessels and/or other property.
- 20.4 The Parties hereby agree that any arbitration award issued by the Society of Maritime Arbitrators, Inc. shall be confidential and may not be published by the Society of Maritime Arbitrators, Inc. or disclosed in any way unless expressly agreed and authorized by the Parties in a signed writing.

## **21 Notice**

- 21.1 Any Party giving notice under this Contract shall ensure that it is effectively given. Notice shall be considered as received by a Party on the date it is received by that Party during normal working hours. If notice is received after normal working hours it shall be considered as received on the recipients' next working day. Notice to the Buyer is effective if sent by email, fax, and/or regular mail to the Party ordering the Marine Fuels. Notice to the Seller is effective if sent by email, fax, and/or regular mail to the Monjasa entity named on the Bunker Confirmation.

## 22 Definitions

22.1 Throughout this Contract, except where the context otherwise requires, the following definitions shall be applied:

**"Bunker Confirmation"** means the Seller's written confirmation.

**"Bunker Tanker"** means bunker barge or tanker or tank truck supplying Marine Fuels to the Vessel.

**"Buyer"** means the party or parties contracting to purchase and/or take delivery of the Marine Fuels.

**"Contract"** means this contract of sale and delivery of Marine Fuels on the terms hereof as agreed by and between the Parties.

**"Clause"** means a clause in these General Terms and Conditions, and **"Sub-clause"** means a section thereof.

**"Confidential Information"** means business details and proprietary information of the Parties, including but not limited to pricing and credit terms, not generally available to the public.

**"Day"** means a calendar day, unless otherwise stated.

**"Delivery Receipt"** means the document provided by the Bunker Tanker to the Vessel after delivery of the Marine Fuel(s) is complete stating the quantity and grade(s) of Marine Fuel delivered.

**"Marine Fuels"** means products delivered or to be delivered to the Vessel.

**"Month"** means 30 calendar days.

**"Seller"** means the company contracting to sell and deliver Marine Fuels.

**"Parties"** means the Seller and Buyer collectively.

**"Party"** means the Seller or Buyer.

**"Vessel"** means the vessel nominated by the Buyer to receive the Marine Fuels.

These General Terms and Conditions shall remain applicable to any transaction between the Seller and the Buyer - including their fleet of vessels whether disposed, managed, chartered or owned.