



## **General Terms and Conditions for the Sale of Marine Fuels dated November 8, 2016**

These General Terms and Conditions, together with the Confirmation constitute the entire agreement (“Agreement”) between the parties with respect to the supply of Marine Fuels contemplated herein and supersedes any prior understandings, agreements or arrangements between the parties, written or oral, to the extent they relate to this subject matter. The Agreement can only be amended or changed by written agreement (which may be by exchange of emails confirming the amendment) by both parties. In the event of a conflict between these General Terms and Conditions and the Confirmation, the Confirmation shall prevail.

### 1. Definitions.

“Buyer” means the party purchasing Marine Fuels from Seller.

“Confirmation” means any commitment by Buyer and Seller to purchase and sell Marine Fuels under the terms specified hereunder. Such Confirmation may include among other commercial terms, the price, volume, place and date for delivery of the Marine Fuels.

“Force Majeure” means any cause not reasonably within the control of a party, whether or not foreseen, including, without limitation, labor disputes, strikes, governmental interventions, decisions of the courts, orders, demands or requests of any international, national or local port, transportation or other authority, embargos, requisitions, mobilization, quarantine, blockage, riot wars, military operations, national emergency, terrorism acts, civil commotion, hijacking, fire, explosion, mechanical breakdown, flood, accident, storm or any act of God, curtailment, failure or cessation of supplies of Marine Fuels from any of Seller’s sources of supply (whether or not in fact such sources of supply are for the purposes of any Confirmation) and any cause attributable to any of the foregoing shall also be considered a Force Majeure event. A change in rotation or route for any reason other than as expressly stated herein shall not constitute a Force Majeure event. A change in rotation or route for economic reasons shall not constitute a Force Majeure event.

“Marine Fuels” means products derived from crude oil, delivered or to be delivered to a vessel for consumption by such vessel.

“Pollution Event” means any occurrence as a result of which the Marine Fuels escaped onto or into land or water.

“Seller” means Freepoint Commodities LLC, or its affiliates

2. Price. The price for Marine Fuels shall be the amount stated in the Confirmation, payable in the currency stated in the Confirmation. In addition to the price payable for Marine Fuels, Buyer shall pay any and all charges associated with the delivery including:

- (a) expenses incurred as a result of the Master of the vessel rejecting the whole or any part of the delivery;
- (b) wharfage charges, barging charges, including demurrage or other similar charges;
- (c) mooring or unmooring charges or port dues which may be incurred by Seller in connection with any vessel to which Marine Fuels are delivered hereunder;
- (d) duties, taxes (other than taxes on profits), carbon or other greenhouse gas costs or imposts, impositions, charges, freights, premiums, or other costs incurred by Seller, or for which Seller is accountable, in respect of deliveries of Marine Fuels hereunder; and
- (e) any additional costs incurred by Seller in respect of deliveries made under a Confirmation including payments for overtime.

3. Cancellation Fee/Loss Reimbursement. If Buyer cancels or fails to take, in whole or in part, the delivery of Marine Fuels as specified in the Confirmation within the agreed delivery period for any reason other than a Force Majeure event, Buyer shall pay Seller a cancellation fee equal to the greater of (a) US\$500 (five hundred United States dollars) as liquidated damages and (b) all losses and liabilities incurred by Seller as a result of such cancellation or failure to take full delivery, including, without limitation, (i) the difference in price per the Confirmation and Seller’s reasonable estimate of market price for the delivery port as per the customary market marker on the date of such cancellation or failure to take full delivery, (ii) losses, costs and damages associated with terminating, liquidating, obtaining or re-establishing any hedging arrangement or related trading position, (iii) costs to sell, (iv) storage, (v) pump-back fees, (vi) fuel oil, (viii) demurrage (“Actual Losses”). If the cancellation fee as set forth in section (a) is in fact higher than any Actual Losses the parties agree that it was nevertheless, at the time of contracting, a genuine pre-estimate of the losses which will be sustained as a result of Buyer’s cancellation or failure to take full delivery.

4. Invoices. Seller’s invoice shall be sent via electronic mail if permitted under applicable law, or by any other means designated by Seller and permitted by applicable law. Invoiced amounts may be subject to subsequent adjustment as may be necessary on receipt by Seller of additional information concerning the transaction.



5. Payment. Payment by Buyer shall be due in the currency set forth on the Confirmation and without any discount, withholding, offset or allowance. Payment shall be made by electronic wire transfer to the bank account stated on the invoice, such that funds are received into such account no later than 21 days following the date the Marine Fuels were delivered or should have been delivered if section 3 applies or as otherwise agreed in writing. In addition to any other remedy allowed by law, if payment has not been received by Seller on or prior to the due date, Seller may, without notice, (a) charge interest and delivery costs on any amounts not paid by such date at the lesser of 2% per month and the maximum rate allowable under applicable law, (b) set-off any amounts Buyer may be owed by Seller, up to the amount Buyer owes Seller; (c) assert any rights that Seller may have against the vessel and (d) if delivery has not been made with respect to any other Confirmation, Seller may terminate such Confirmation(s) with immediate effect and without liability to Buyer and/or suspend any future deliveries to Buyer.

6. Credit. Marine Fuels are supplied on the faith and credit of (a) the vessel being supplied and (b) Buyer. Notwithstanding and in addition to the foregoing, if the financial condition of Buyer becomes, in the sole opinion of Seller, impaired or unsatisfactory or if the Buyer has exceeded the credit limit set by Seller, Seller may demand that payment be made at any time before the date due for payment whether before or after delivery of the Marine Fuels or may demand the giving of such security as it may specify. If Buyer fails to provide such security as requested by Seller within two days of such request, or such other time as may be agreed by the parties, Seller shall, in addition to any other remedy, be entitled to immediately suspend deliveries under (in so far as they have not already taken place) or terminate the Confirmation(s) without liability to Seller. Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien or liens attaching to a vessel.

7. Delivery and Health and Safety and Environmental Requirements. (a) Buyer warrants that the vessel can safely receive Marine Fuels and shall ensure that the vessel has all certificates required to comply with all relevant regulations relating to delivery of the Marine Fuels at the port or place of delivery. Buyer shall provide Seller with the maximum allowable pumping rate and pressure that the vessel requires and agree on communication and emergency shut-down procedures and advise Seller of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of, and particular to, the vessel and which might adversely affect the delivery of the Marine Fuels.

(b) Delivery shall be made at the port or dock and during the delivery period specified in the Confirmation subject to the port or dock regulations and unless otherwise agreed, during Seller's normal working hours. Deliveries shall be made ex-wharf, ex-barge or ex-truck. Seller shall not be liable for inability to deliver on public /dock holidays. Buyer must arrange to take bunkers concurrently with commencement of working cargo (load or discharge). The vessel will be bunkered as promptly as circumstances permit, but Seller shall not be liable for any loss, expense, damage, delay or demurrage whatsoever which may be suffered by Buyer.

(c) Buyer shall ensure that either the Master of the vessel which requires delivery of Marine Fuels or the accredited representative of Buyer at the delivery port, gives not less than two local working days' notice to Seller of the estimated time of such vessel's readiness to receive such Marine Fuels, identifying Buyer and specifying the grades and actual quantities of Marine Fuels and the method of delivery required. If the vessel arrives earlier than the agreed loading range, Seller shall exercise reasonable efforts to supply the vessel upon request but shall not be bound to do so until the commencement of the agreed loading range.

(d) In any case where delivery is ex-barge, Buyer shall provide free of cost to Seller a clear and safe berth for the lighter(s) alongside the vessel's receiving lines and the assistance of qualified staff to secure the lighter(s) moorings. Buyer shall provide a safe access to the lighter, including use of the accommodation ladder. If the position of the lighter does not fit with the position of the accommodation ladder, the Buyer shall rig a pilot ladder. Buyer is responsible for a safe access to and from the lighter. Vessels will be bunkered in turn as promptly as circumstances permit but Seller shall not be liable for demurrage or for any loss, expense, damage or delay due to congestion at the terminal or to prior commitments of available barges, or when in Seller's opinion clear and safe berth or the assistance of qualified staff to secure moorings is unavailable. Buyer must be able to receive the agreed quantity of Marine Fuels plus 5%. If the delivery is ex-wharf or ex-truck, the responsibility for connecting the delivery facilities provided by Seller to the receiving facilities provided by the Buyer shall be in accordance with the custom of the delivery port.

(e) Unless otherwise agreed, Buyer shall not be entitled to receive Marine Fuels other than into tanks usually used as the fuel bunkers of the vessel. Buyer shall not take delivery of the Marine Fuels for export if Buyer does not have all required Government approvals and permits.

(f) Buyer agrees that, if a Pollution Event occurs before, during or after delivery of the Marine Fuels, and in addition to whatever action that Buyer may take, Seller or the terminal may at its sole discretion take reasonable steps to control and terminate the Pollution Event, contain and remove the escaped Marine Fuels and clean the affected area. Buyer and Seller shall cooperate fully. If the



Pollution Event is caused by an act or omission of Buyer, its servants or agents (other than Seller), Buyer shall indemnify Seller for the cost of any steps taken under this Section 7 above.

(g) Buyer shall supply Seller with any documents and information concerning the Pollution Event or any program for the prevention thereof as are requested by Seller or are required by law or regulations applicable at the delivery port.

(h) Buyer shall be fully responsible for the proper use, maintenance and repair of its equipment. Buyer will immediately inform Seller of any defects, ruptures, spills or other problems with or related to the equipment which occur during the delivery process or which may impact it.

(i) Buyer will provide ready and safe means of access to the equipment for delivery of the Marine Fuels at the delivery port and shall not obstruct access to its equipment for delivery.

(j) Seller and Buyer represent to each other that they are in compliance with all applicable laws and government regulations with respect to the environment and that they have policies of environmental responsibility in place concerning their respective Marine Fuels processes.

8. SDS. Seller shall provide Safety Data Sheets for the Marine Fuels sold under this Agreement through its website: <http://www.freepoint.com/client-login/?wfrom=%2Fclient-downloads%2F>. Buyer agrees to visit the website and obtain a copy of the appropriate SDS Sheet. Buyer shall disseminate the information so as to warn of possible hazards to all persons whom Buyer can reasonably foresee may be exposed to the hazards including, without limitation, Buyer's employees, agents, contractors, and customers. Buyer agrees to defend, indemnify, and hold harmless Seller against all liability arising out of or in any way connected with its failure to properly disseminate the warnings and information including, without limitation, liability for injury, sickness, death, and property damage.

9. Documents. On completion of the delivery of Marine Fuels, the Master of the vessel or Buyer's authorized representative shall be given an Original (1) and three (3) Copies of a Bunker Delivery Note (BDN) in a form required by Seller. These BDNs shall be signed by the Master of the vessel or Buyer's authorized representative) and stamped with the vessel's stamp, of which two copies shall be retained by the Master or such representative.

10. Risk and Title. Deliveries of Marine Fuels at any particular delivery port shall be deemed to be complete and title and risk shall pass from Seller to Buyer as the Marine Fuels pass the flange connecting the delivery facilities provided by Seller with the receiving facilities provided by Buyer.

11. Quality. (a) Marine Fuels shall be Seller's commercial grades of Marine Fuels available at the time and place of delivery. Unless otherwise indicated to Buyer in writing by Seller, any information provided to Buyer regarding the characteristics of Marine Fuels at any delivery location shall not be construed as specifications of the Marine Fuel to be delivered hereunder, but only as indications of the general characteristics of the Marine Fuels available at that location from time to time.

(b) For sales to Category 3 vessels only: In an ECA, if Marine Fuel sold contains 0.1 wt% sulfur (maximum), then the fuel is designated as ECA Marine Fuel for use in Category 3 (C3) marine vessels only. If Marine Fuel sold contains greater than 0.1 wt% sulfur, then the fuel is High Sulfur Fuel. In an ECA, High Sulfur Fuel is for use only in ships as allowed by MARPOL Annex VI, Regulation 3 or Regulation 4.

**EXCEPT FOR THIS SECTION MARINE FUELS ARE SOLD "AS IS", AND SELLER OTHERWISE MAKES NO REPRESENTATIONS, GUARANTEE, CONDITIONS OR WARRANTIES OF QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES OR CONDITIONS AS TO QUALITY, MERCHANTABILITY OR FITNESS WHATSOEVER, WHETHER STATUTORY OR OTHERWISE ARE EXPRESSLY EXCLUDED.**

(c) Buyer shall have the sole responsibility for the selection of suitable Marine Fuels for use in the Vessel. Buyer warrants that the Marine Fuels selected by Buyer for the Vessel are suitable for the Vessel. Buyer warrants that the Vessel nominated by Buyer to receive Marine Fuels is in compliance with all applicable local, national and international regulations and requirements and is free of all conditions, difficulties, peculiarities, deficiencies or defects that might impose hazards in connection with its mooring, unmooring or bunkering.



12. Measurement and Samples/Quantity and Quality Claims. (a) The quantity of Marine Fuels delivered shall be determined, at Seller's option, by measurements in accordance with either: (i) the ASTM Petroleum Measurement Table for Seller's shore tanks or Seller's Delivery Vessel; or (ii) Seller's meters. Buyer will be charged for Marine Fuels on the basis of these measurements. Buyer at its own expense has the right to have its representative or an independent inspector present during measurement, but determination of quantity shall be made solely by Seller. All such measurements noted above shall be final and binding.

(b) Seller or Seller's supplier shall take four (4) representative samples of each grade of Marine Fuels to be delivered. Buyer shall have the right to have its representative witness the drawing of the samples. The aforementioned samples shall be securely sealed and labeled, numbered and identified by name of the Vessel, delivering facility, Marine Fuels type(s), delivery date and place of delivery. One (1) sample shall be given to Buyer's representative for MARPOL compliance purposes only; one (1) sample shall be given to Buyer's representative; and the remaining two (2) samples shall be retained by Seller or Seller's supplier ("Sellers Retained Sample") for fifteen (15) days following the date of delivery in a safe place for subsequent verification of the quality thereof if required. Samples drawn at the receiving Vessel's manifold or from the receiving vessel's tank(s) shall not be considered valid as an indicator of the quality of Marine Fuels supplied.

(c) Any complaint or claim on the part pertaining to the quality or quantity of the Marine Fuels delivered shall be made to Seller as soon as possible and in any event within the earlier of the time required pursuant to applicable law or ten (10) days after the date of delivery, failing which all such claims shall be waived and forever barred.

(d) As provided for in Section 12(a) above, quantity determination will be made on the basis of Seller's shore tanks or Seller's Delivery Vessel or Seller's meters. Quantity calculations and quantity claims made on the basis of Buyer's Vessel's measurements shall not be applicable.

(e) Any claim as to the quality of the Marine Fuels delivered must be based solely on an analysis of the retained sample provided by Seller at the time of the delivery and include complete supporting documentation; however such analysis shall not be considered determinative of the claim. Providing Buyer issues a claim regarding the quality of the Marine Fuels within the time required in Section 12(c), one of the two remaining Seller retained samples shall be submitted for analysis to a mutually agreed independent laboratory. The independent laboratory's analysis shall be conclusive and binding, absent manifest error or fraud, as to the quality of the Marine Fuels delivered. The analysis shall be established by tests in accordance with ISO 8217 / latest version and/or any other specifications agreed to between Buyer and Seller in writing within the Confirmation Agreement. Unless otherwise agreed, should the independent laboratory's analysis confirm that on-specification fuel has been delivered the expenses of the analysis by the independent laboratory shall be borne by the Buyer. Should the independent laboratory's analysis confirm that off-specification fuel has been delivered the expenses of the analysis by the independent laboratory shall be borne by the Seller. Any cost associated with the Buyer appointing a representative to witness the sample seal-breaking and/or analysis at the independent laboratory shall be the sole responsibility of Buyer.

(f) Buyer shall take all reasonable measures, including retention and burning of Marine Fuels in accordance with Seller's instructions, to eliminate or minimize any costs associated with an off- specification or suspected off-specification supply. Subject to and not to exceed the maximum liability of \$150,000 as stated in Section 14, Seller will be responsible ONLY for direct expenses incurred for removal and replacement of Marine Fuels. If Buyer removes such Marine Fuels without the consent of Seller, then all such removal and related costs shall be for Buyer's sole account. Seller shall not be liable for, and Buyer shall not bring, any claims less than \$5,000.

(g) Seller shall not be responsible for any claim whatsoever arising in circumstances where there is or has been commingling of Marine Fuels delivered by Seller with other fuel aboard the Vessel or Buyer's Delivery Vessel.

(h) If Seller responds to the Buyer regarding any complaint or claim and Buyer does not acknowledge such response within fifteen (15) days, then the complaint or claim shall be considered closed unless otherwise agreed to in writing by the Seller.

(i) Nothing in this Section 12 shall relieve the Buyer of its obligation to make payments in full when due without offset or deduction as provided herein. It is a condition precedent to any obligation or liability whatsoever for payment by the Seller that all sums due to it from the Buyer shall have first been paid.

(j) Notwithstanding the foregoing provisions of this Section 12, if the Marine Fuels supplied to Buyer from Seller was done on a



back-to-back basis such that the physical supplier of the Marine Fuels was a third party, Buyer's recovery from Seller for claims against Seller shall be limited to the funds received by Seller from the third party supplier.

(k) In certain locations, Seller utilizes third-party independent operators to provide barging, trucking and towage services in connection with the delivery of the Marine Fuels. Seller is not liable for the acts or omission of such operators but, to the extent that Buyer has a claim against such operator, Seller (at the request of Buyer) shall provide the contact information of such operator so that Buyer can pursue a claim directly against such operator.

13. Tax. To the extent that Marine Fuel is sold on a duty or tax exempt basis, Buyer shall comply with all local requirements and shall execute all such documents necessary to permit the sale on such basis, including any declarations on use of the Marine Fuel. To the extent that a claim is made by any authorities against Seller on the basis that such Marine Fuel was subject to any duty or taxes and such claim arose partly or wholly due to the action, omission or fault of Buyer (including any use of Marine Fuel in domestic waters), then Buyer shall reimburse Seller for any claims, losses, costs (including costs as between attorney or solicitor and client), damages, liabilities, fines, penalties and expenses attributable to such action, omission or fault of Buyer.

14. Indemnity/Liability. Buyer shall indemnify Seller and its representatives against any claims, losses, costs (including costs as between attorney and client), damages, liabilities, fines, penalties and expenses incurred or sustained arising out of or in connection with the delivery of Marine Fuel except to the extent that such claims, losses, costs, damages, liabilities and expenses arise through the negligent act or omission of Seller. NEITHER SELLER NOR ITS REPRESENTATIVES SHALL HAVE ANY LIABILITY TO BUYER HEREUNDER OR OTHERWISE IN THE CONNECTION WITH THE SALE OR DELIVERY OF MARINE FUELS FOR (A) LOSS OF ACTUAL OR ANTICIPATED PROFIT; (B) LOSSES CAUSED BY BUSINESS INTERRUPTION; (C) LOSS OF GOODWILL OR REPUTATION; OR (D) ANY INDIRECT, SPECIAL OR CONSEQUENTIAL COST, EXPENSE, LOSS OR DAMAGE, EVEN IF SUCH COST, EXPENSE, LOSS OR DAMAGE WAS REASONABLY FORESEEABLE OR MIGHT REASONABLY HAVE BEEN CONTEMPLATED BY SELLER OR ITS REPRESENTATIVES AND WHETHER ARISING FROM BREACH OF CONTRACT, TORT, NEGLIGENCE, BREACH OF STATUTORY DUTY OR OTHERWISE. Without prejudice to the above provisions, Seller's maximum aggregate liability to Buyer under or in connection with any delivery howsoever arising shall not exceed the lesser of (i) in aggregate the price payable by Buyer for such delivery and (ii) US \$150,000.

15. Termination. In addition to any rights and remedies set forth in the Agreement or as otherwise allowed by law, Seller shall be entitled to terminate the Agreement upon notice and with immediate effect :

- (a) upon breach by Buyer of any payment obligations hereunder or failure by Buyer to provide security within two days of Seller's request as provided for in Section 6;
- (b) if, except as otherwise provided for in Section 15(a), Buyer breaches any terms of the Agreement and fails to remedy such breach within five days of receipt of notice of such breach;
- (c) on any application being made or any proceedings being commenced, or any order or judgment being given by any court, for the liquidation, winding up, bankruptcy, insolvency, dissolution, administration or reorganization or similar of Buyer; or
- (d) on any suspension of payment, necessary to carry on business or compounding or making any special arrangement with creditors by Buyer.

Upon termination, all sums owed to Seller shall become immediately due and payable.

16. Force Majeure; Performance Excused. (a) Neither party shall be responsible for any failure to fulfill its respective obligations under the Agreement (other than the payment of money) if fulfillment has been delayed, hindered, interfered with, curtailed or prevented by the occurrence of a Force Majeure event. If either the availability from any of Seller's sources of supply of Marine Fuels, whether deliverable under any Confirmation or not, or the normal means of transport or delivery of such Marine Fuels is delayed, hindered, interfered with, curtailed or prevented, then Seller shall be at liberty to withhold, reduce, suspend or cancel deliveries under any Confirmation to such extent as Seller may in its absolute discretion think fit and Seller shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers. Any additional quantities which Seller does acquire from other suppliers or from alternative sources may be used by Seller at its complete discretion and need not be taken into account by Seller for the purpose of determining the extent to which it is to withhold, reduce or suspend deliveries under any Confirmation. Buyer shall be free to purchase from other suppliers any deficiencies of deliveries of Marine Fuel caused by the operation of this section but Seller shall not be responsible for any additional cost thereby incurred by Buyer.

(b) Seller reserves the right to increase the price charged for any Marine Fuel (whether the price was originally determined by reference to Seller's prices or separately agreed in writing) if there is any increase in the costs incurred or to be incurred by Seller in



making the relevant supply due to factors which are beyond the control of Seller, including without limitation any increased taxes, duties, the making of any law, order, bylaw or other regulation, the occurrence of any currency fluctuation affecting the cost of any imported items.

17. Trade Controls; General Savings Clause. (a) Seller abides by international trade sanctions regulations, including those of the USA, UK and European Union and expressly reserves the right at any time, without liability, to terminate the Agreement and/or not to fuel or deliver to Vessels or persons which are subject to or carrying flags of any country subject to US or international trade sanctions

(b) Notwithstanding anything to the contrary herein, nothing in this Agreement is intended, and nothing herein should be interpreted or construed, to induce or require either Party hereto to act in any manner (including failing to take any actions in connection with a transaction) which is inconsistent with, penalized or prohibited under any laws of the United States of America which relate to foreign trade controls, export controls, embargoes or international boycotts of any type.

18. Facilitation Payments and Anti-Corruption. (a) Buyer and Seller each agree and undertake that in connection with the Agreement, they will each respectively comply with all applicable laws, rules, regulations, decrees and/or official government orders of the USA and any other relevant jurisdiction relating to anti-bribery and anti-money laundering.

(b) No director, employee or agent of Buyer, its subcontractors or vendors, shall (i) give or receive from any director, employee or agent of Seller or any affiliate, any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Agreement, (ii) enter into any business arrangement with any director, employee, or agent of Seller or any affiliate who is not acting as a representative of Seller or its affiliate without prior written notification thereof.

(c) Buyer shall not, directly or indirectly (1) pay, offer, give or promise to pay or authorize the payment of any monies or other things of value to (i) a government official or an officer or employee of a government or any department, agency or instrumentality of any government; (ii) an officer or employee of a public international organization; (iii) any person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality of such government or of any public international organization; (iv) any political party or official thereof, or any candidate for political office; and (v) any other person, individual, entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities; or (2) engage in other acts or transactions, in each case if it is in violation of or inconsistent with the anti-bribery or anti-money laundering legislation of any relevant jurisdiction.

19. New and Changed Regulations. (a) The parties are entering into a Confirmation in reliance on the laws, rules, regulations, decrees, agreements, concessions and arrangements ("Regulations") in effect on the date hereof with governments, government instrumentalities or public authorities affecting the Marine Fuels sold hereunder including, but without limitation to the generality of the foregoing, those relating to the production, acquisition, gathering, manufacturing, transportation, storage, trading or delivery thereof, insofar as such Regulations affect Seller.

(b) In the event that at any time and from time to time during the term of a Confirmation any Regulations are changed or new Regulations become effective, and the effect of such changed or new Regulations (i) is not covered by any other provision of these terms and conditions, and (ii) has a material adverse economic effect on Seller, then Seller shall have the option to request renegotiations of the prices or other pertinent terms provided for in these terms and conditions. Said option may be exercised at any time after such changed or new Regulation is promulgated, by written notice of desire to renegotiate, such notice to contain the new prices or terms desired by that party. If the parties do not agree upon new prices or terms within thirty (30) days after such notice Seller shall have the right to terminate any Confirmation at the end of such 30-day period. Any Marine Fuels lifted during such 30-day period shall be sold and purchased at the price and on the terms applying hereunder without any adjustment in respect of the new or changed Regulations concerned.

20. Notices. Except where expressly stated otherwise, a notice, demand, request, statement, or other communication under or in connection with the Agreement shall only be effective if it is in writing. E-mail communication is permitted provided however that any notice of breach or an event of default sent by email must be followed by a fax or letter sent via courier if the recipient does not respond or otherwise expressly acknowledge receipt of such e-mail notice within two business days of such e-mail notice being sent. Unless otherwise provided herein, notice shall be deemed to have been given on the day on which such communications ought to have been delivered in due course or postal, courier or email communication. Any notice received outside of the recipient's normal business hours shall be deemed received on the next business day. Unless otherwise specified in writing, notices shall be sent to each party at the addresses set forth in the Confirmation.



21. Waiver. Failure by any party to enforce any provision of the Agreement shall not in the absence of a written confirmation of a waiver be construed as a waiver of such a provision. No waiver by either party of any provision of the Agreement shall be construed as a waiver of any succeeding breach of the same or any other provision of the Agreement.

22. Severability. The validity of the provisions of an Agreement shall not be affected if any particular provision or provisions of the Agreement is or are declared illegal, unenforceable, or contrary to law or public policy. If as a result of a specified declaration any of the rights or obligations of a party are materially affected, then the parties shall meet and negotiate in good faith in order to arrive at an amendment of the provision(s) of the Agreement so affected, in such manner as will most closely and accurately reflect the intents and purposes of the Agreement.

23. Assignment. The Agreement shall inure to the benefit of and be binding upon the parties and their respective permitted successors and assigns. Seller may assign and transfer any of its rights and obligations under the Agreement without consent. Buyer shall not assign all or any part of the benefit of, or any rights or benefits under, the Agreement without the prior written consent of Seller.

24. No Partnership. Nothing in the Agreement and no action taken by the parties in connection with the Agreement shall constitute a partnership, association, joint venture or other co-operative entity between any of the parties.

25. Third Party Beneficiaries. Except as otherwise set forth in Section 14, the Agreement is intended solely for the benefit of the parties and nothing in the Agreement shall be construed to create any rights in favor of, any duty to or standard of care with reference to, or any liability to any third party.

26. Agent Jointly and Severally Responsible. If Buyer enters into a Confirmation through an agent, such agent shall be liable not only as agent but also jointly and severally liable as principal for the performance of all obligations hereunder.

27. Warranty Disclaimers. EACH PARTY ACKNOWLEDGES THAT IT HAS ENTERED INTO THE AGREEMENT AND IS CONTRACTING FOR THE SALE AND PURCHASE OF MARINE FUELS AS DESCRIBED IN THE CONFIRMATION. THE PARTIES NEGATE ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE MARINE FUELS DELIVERED UNDER THE AGREEMENT, WHETHER WRITTEN OR ORAL, EXPRESSED OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

28. Governing Law; Jurisdiction. (a) This Agreement shall be governed by and construed in all particulars by the laws of the State of New York (excluding its conflict of law rules which may result in the application of the laws of another jurisdiction) applying the principles of maritime law as applied in the federal District Courts of the United States of America. The maritime laws of the United States shall apply to any determination of the existence of a maritime lien, regardless of the country in which Seller takes legal action.

(b) In the event of the potential application of both, or a conflict between, admiralty and bankruptcy jurisdiction, the Parties expressly agree that admiralty jurisdiction pre-empts bankruptcy jurisdiction with respect to the rights and obligations of the Parties under this Agreement, and with respect to enforcing maritime lien or attachment rights.

(c) The United Nations Convention on Contracts for the International Sale of Goods shall not apply and shall be expressly excluded from the Agreement.

(d) Except as otherwise provided herein, each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York or, if such court does not have jurisdiction or shall not accept jurisdiction, to any court of general jurisdiction in and for the County of New York in the State of New York for the resolution and determination of any dispute between the Parties relating to the construction, meaning or effect of this Agreement, or the rights and liabilities of the Parties hereunder, or any matter arising therefrom or connected therewith. Each of the Parties hereby irrevocably waives objection to such suit based upon forum non conveniens and venue. Each of the Parties hereby irrevocably waives actual personal service of process in connection with any action initiated in any court to whose jurisdiction the Parties have by contract submitted, and agrees to accept, in lieu of such personal service, written notice of such action given by hand delivery or by certified or registered pre-paid mail (provided that notice shall also be given by telex, facsimile, or other written communication that such mailed notice has been sent, no later than the second day following the date of mailing) to its address as set out in the Confirmation or otherwise notified pursuant to this Agreement, or to its



**principal place of business, and addressed to the Party in question, provided that either Party may cause service of process to be effected in any other lawful manner rather than by use of the aforesaid procedure. The United Nations Convention on Contracts for the International Sale of Goods 1980 shall not apply to this Agreement. Notwithstanding the foregoing, Seller is free to bring suit in any jurisdiction and shall be entitled to avail itself of all remedies under maritime or other law to obtain jurisdiction and/or security for its claims against Buyer, its agents or Affiliates, the Vessel, her owners and charterers and any of their respective agents, servants or assigns, including but not limited to vessel arrest and attachment procedures under the Supplemental Rules of Civil Procedure for Certain Admiralty and Maritime Claims or any similar laws, rules or statutes in any jurisdiction.**

(e) Without derogating from the specific time limits set forth herein, and any other provisions requiring compliance within a given period, all of which shall remain in full force and effect, any claim arising under the Agreement shall be commenced within two (2) years of the date on which Seller delivered or should have delivered the Marine Fuels to Buyer, failing which the claim shall be time barred and any liability or alleged liability of the other party shall be extinguished.