

## **General Terms and Conditions for sale of Marine Bunkers**

### **A. GENERAL INTRODUCTION**

A.1 This is a statement of the terms and conditions according to which the Partners Petroleum Co Ltd (hereinafter called "PPC") will sell marine bunkers.

A.2 These conditions apply to all offers, quotations, orders, agreements, services and all subsequent contracts of whatever nature, except where otherwise is expressly agreed in writing by PPC.

A.3 General trading conditions of another party will not apply, unless expressly accepted in writing by PPC.

A.4 If for whatever reason, the term(s) and/or provision(s) of these general conditions are invalid, the other terms and/or provisions hereof shall remain valid and be binding upon the parties.

### **B. DEFINITIONS**

B.1 Throughout this document the following definitions shall apply:

"Seller" means PPC; any office, branch office, affiliate or associate of the PPC Group; being the legal entity within the PPC Group, whose name is included in the Order Confirmation, sent to the Buyer.

"Buyer" means the vessel supplied and jointly and severally her Master, Owners, Managers/Operators, Disponent Owners, Time Charterers, Bareboat Charterers and Charterers or any party requesting offers or quotations for or ordering Bunkers and/or Services and any party on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made;

"Bunkers" means the commercial grades of bunker oils as generally offered to the Seller's customers for similar use at the time and place of delivery and/or services connected thereto;

"Owner" means the registered Owner or Bareboat Charterer of the vessel;

"Vessel" means the Buyer's Vessel, Ship, Barge or Off-Shore Unit that receives the supply/bunkers; either as end-user or as transfer unit to a third party;

"Nomination" means the written request/requirement by the Buyer to the Seller, for the supply of the Bunkers;

"Order Confirmation" means the written confirmation as issued by the Seller and forwarded to the Buyer to conclude the conclusion of the negotiated sale/purchase of the Bunkers. In case of conflict between the Nomination and the Order Confirmation, unless the Seller otherwise agrees in writing, the wording and content of the Order Confirmation is deemed contain the prevailing terms of the Agreement;

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“Agreement” means the concluded terms between Buyer and Seller for the sale/purchase of the Bunkers;

“Supplier” means any party instructed by or on behalf of the Seller to supply or deliver the Bunkers;

“GTC” means these General Terms and Conditions which shall govern the contractual regulations between the Seller and the Buyer

### **C. OFFERS, QUOTATIONS AND PRICES**

C.1 An Agreement shall only be concluded and binding on Seller when Seller sends the Order Confirmation to the Buyer. These GTC are incorporated by reference in each and every Order Confirmation.

C.2 Agreements entered into via brokers, or any other authorized representative on behalf of the Seller, shall only bind the Seller upon Seller’s written confirmation that the broker acting on behalf of the Seller or other representative is authorized to send Seller’s Order Confirmation to the Buyer or the Buyer’s broker as the case may be.

C.3 The Seller’s offer is based on the applicable taxes, duties, costs, charges and price levels for Bunkers existing at the time of the conclusion of the Agreement. Any later or additional tax, assessment, duty or other charge of whatever nature and however named, or any increase in the price levels for the Bunkers or any additional costs borne by the Seller whatsoever caused by any change in the Seller’s contemplated source of supply or otherwise, coming into existence after the Agreement has been concluded, shall be added to the agreed purchase price, provided that the Seller shall give the Buyer prior notice of such changes within a reasonable time after the Seller becomes aware of them.

C.4 All prices and/or tariffs are exclusive VAT, GST or any other applicable tax, unless specifically stated otherwise.

C.5 If the party requesting Bunkers is not the Owner of the Vessel, the Seller shall have the right to condition the sale on a payment guarantee provided by the Owner. If such payment guarantee is not promptly received upon the Seller’s request and in any event before the Bunkers are supplied, the Seller shall have the right to refuse to proceed with the sale and/or may cancel any Agreement with the Buyer at any time.

### **D. SPECIFICATIONS (QUALITY – QUANTITY)**

D.1 The Buyer shall be solely responsible for nominating the quantity and quality of the Bunkers and for determining the potential compatibility with any Bunkers already on board the Vessel. Buyer also shall assume sole responsibility for the selection and fitness for purpose of its choice of Bunkers for any particular use or purpose, and the Seller shall assume no responsibility whatsoever for the compliance or fitness for purpose of the Bunkers for a specific type of engine or equipment. This includes, but is not

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limited to, the quality, sulphur content and any other specific characteristics of the Bunkers whatsoever. Any and all warranties regarding the satisfactory quality, merchantability, fitness for purpose, description or otherwise, whether express or implied, are hereby excluded and disclaimed.

Unless expressly stated in the Order Confirmation, where specifications designate a maximum value, no minimum value is guaranteed; conversely, where minimum values are provided in a specification, no maximum values are guaranteed.

D.2 Subject to the provisions in these paragraphs D.1 to D.5, the quality and quantity delivered shall be as expressly stated in the Order Confirmation.

D.3 Where standard specifications are referenced in the Order Confirmation, tolerances in accordance with ISO 4259 for Reproducibility/Repeatability shall apply to the quality of the bunkers supplied by Seller and shall be accepted by the Buyer as bunkers within specification and Buyer shall not be entitled to any claim, discount, compensation, withholding of payment or other consequences whatsoever.

D.4 Seller will supply the quantity agreed within 5%, plus or minus, of the quantity stated in the Bunker Confirmation, which lesser or greater quantity Buyer accepts as full performance under the Agreement with no consequence other than a corresponding adjustment in the invoice price to reflect the actual quantity supplied.

D.5 Information regarding the typical characteristics of the Bunkers at any delivery location shall only be indicative of the Bunkers that have been made available at that location and shall not form a part of the specification of the Bunkers to be delivered. All grades of bunkers may contain petroleum industry allowed bio-derived components.

## **E. MEASUREMENTS – QUANTITY DISPUTE**

E.1 The quantities of bunkers shall be determined from the official gauge or meter of the bunkering barge, tank truck or of the shore tank in case of delivery ex-wharf.

E.2 The Buyer's representative shall have the right to attend together with the Seller's representative to measure and verify the quantities of Bunkers delivered as provided in E.1. When supplied by bunkering barge/tanker the particular barge/tanker will present its tank calibration and ullage sounding records, which shall be the sole valid and binding document(s) to determine the quantity or quantities supplied. Quantities calculated from soundings taken on the Receiving Vessel shall not be considered in determining the quantities supplied.

E.3 Should the Buyer's representative not verify the quantities, the measurements of quantities made by the Seller or Supplier shall be final, conclusive and binding, and the Buyer shall be deemed to have waived any and all claims in regard to any variance.

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E.4 Buyer undertakes not to make any endorsement, complaint/ comment on the Bunker Delivery Receipt when presented for signature. If there is any dispute concerning the quantity of Bunkers delivered, the following procedure must be adopted by Buyer:

Any complaint or disagreement concerning the quantity of Bunkers delivered, shall be presented as follows: (i) the Buyer or the Master of the Vessel must present a letter of protest to the Seller/Supplier immediately upon completion of bunkering; (ii) Buyer must within seven (7) days of the delivery provide to the Seller in writing a detailed description of its complaint or disagreement, with full supporting documentation/vouchers. Time is of the essence with respect to these notices. If Buyer fails to strictly comply with the requirements herein, Buyer's claim against the Seller/Supplier shall be extinguished, and/or waived, and the Seller/Supplier's measurements shall be conclusive evidence of the quantity of Bunkers delivered.

## **F. SAMPLING – QUALITY DISPUTES**

F.1 The Supplier shall arrange for four (4) representative samples of each grade of Bunkers to be drawn throughout the entire bunkering operation. The Buyer's representative shall witness the sampling and shall insure that such samples are correctly drawn and sealed and that the sample bottle is correctly labelled. Buyer's representative shall sign each sample label, which signature is conclusive on the Buyer that the sampling and labelling was done properly.

F.2 In case that drip sampling is not available on board a barge, tank truck or shore tank, samples shall be taken as a composite of each tank from which deliveries to the Vessel are made. All composite samples shall be taken 1/3 from each the top, middle and bottom of such tanks.

F.3 The samples shall be securely sealed and labels affixed showing the Vessel's name, identity of delivery facility, product name, delivery date, place and seal number, and shall be authenticated with the Vessel's stamp and signed by the Seller's representative and the Master of the Vessel or his representative. The seal numbers shall be inserted into the BDR/Bunker Delivery Receipts, and by signing the BDR both parties agree that the samples referred to therein are representative of the Bunkers supplied, valid, and taken in accordance with the requirements specified in this Article F. In the event the Buyer or the Master of the Vessel is not satisfied with the sampling procedure or any other matter relating to the delivery of Bunkers to the Vessel, they must notify the Seller or Supplier immediately by email or telephone at the number/address stated in the Order Confirmation or the BDR, but no later than 24 hours from the time of delivery.

F.4 Two (2) samples shall be retained by the Seller for ninety (90) days after delivery of the Bunkers, or if requested by the Buyer in writing, for as long as the Buyer reasonably requires, but in no event longer than the time limits for making claims under this Agreement. The other two (2) samples shall be retained by the receiving Vessel, one of which being designated as the MARPOL sample.

F.5 Buyer shall notify the Seller in writing of any complaints or claims with respect to the quality of the Bunkers and provide supporting documentation within fifteen (15) days after delivery. Failure to strictly

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comply with the timing of the notice requirements herein shall result in any quality claims being extinguished and waived.

The samples drawn pursuant to this Article F, shall be conclusive and final evidence of the quality of the product delivered in any dispute regarding the quality of the Bunkers delivered, One, and only one, of the samples retained by Sellers shall be forwarded to an independent laboratory for testing, the result of which will be made available to both parties. Those test results shall be final and binding upon both Buyer and Seller as to the parameters tested. The parties shall use best efforts to agree the independent laboratory to perform the tests. If no agreement can be reached on the choice of laboratory within 3 days of Seller receiving Buyer's claim, the Seller is at liberty to send the sample to a reputable and independent laboratory of its choice for testing and those test results will be final and binding upon Buyer and Seller.

F.6 Both Buyer and Seller shall have the right to appoint independent person(s) or institute(s) to witness breaking the seal(s) on the samples, but in no event shall any sample seal(s) be breached without the presence of the Seller, unless Seller declares in writing that it will not be present. Samples with seals that have been removed or tampered with by an unauthorised person shall not be used for testing and shall have no value as evidence.

F.7 Any samples drawn by Buyer's personnel either during bunkering or at any later date after bunkering shall not be evidence of the quality supplied and may not be used to support any claim or in any proceeding against Seller, regardless of whether they bear signatures of Supplier's personnel or those acting on the Supplier's behalf. Seller shall have no liability for quality claims arising in circumstances where the Bunkers delivered may have commingled with other products/fuels on board the Vessel.

## **G. DELIVERY**

G.1 The time of delivery given by the Seller is an approximate time, unless otherwise specifically agreed in writing between the parties.

G.2 The time of delivery will only be binding upon the Seller when all information necessary for the Seller to comply with its obligations hereunder, have been properly delivered to the Seller in reasonable time before the delivery. In the event the Nomination provides a spread of dates for delivery, the Seller has the sole discretion to commence the delivery within any time, day/night/sshinc of these dates, always subject to the circumstances set out below in Article G.3.

G.3 Vessel shall under all circumstances be bunkered as promptly as the prevailing circumstances permit, having regard to congestion affecting the delivery facilities of Seller, its Suppliers or Agents and to prior commitments of barges. Seller shall not be liable for any consequences or any time lost due to Buyer's Vessel having to wait for berth for bunkering or for completion of bunkering, and unless otherwise agreed in writing, Seller shall not be obligated to deliver prior to the nominated date or by the first day of any specified spread of dates.

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G.4 In any case the Buyer, unless otherwise agreed in writing, must give not less than 72 (seventy two) hours notice of delivery, which is to be followed by 48 (forty eight) hours and 24 (twenty four) hours notice, where the last notice must specify the exact place of delivery. The notices of delivery must be given to Seller and the Seller's representatives/agents.

G.5 The Seller shall not be required to deliver any bunkers outside of Singapore if any required government permit or authorization has not been obtained in due time before the delivery.

G.6 If the Seller at any time for any reason believes that there may be a shortage of supply at any place and that as a result thereof it may be unable to meet the demands of all its customers (whether or not such shortage in fact occurs), the Seller may allocate its available and anticipated supply among its customers in such a manner as it determines in its sole discretion.

G.7 The Vessel to be supplied with Bunkers by Seller shall be accessible at all times to Seller and Supplier for the purpose of bunkering operations and shall be bunkered as promptly as the circumstances permit. The Seller shall not be liable for any demurrage paid or incurred by the Buyer or for any loss, damage or delay of the Vessel of any nature whatsoever, including delays due to congestion at the loading terminal, prior commitments of available barges or tank trucks, or any other reason.

G.8 The Buyer shall ensure that the Vessel provides a free, safe and always afloat and accessible side for the delivery of bunkers and that all necessary assistance as required by the Seller or the Seller's representative is rendered in connection with the delivery. If in the Supplier's opinion a clear and safe berth is unavailable, delivery might be delayed or, in Seller's option, cancelled. All costs related to above will be for account of the Buyer

G.9 The Buyer's Vessel shall moor, unmoor, hoist and lower bunkering hose(s) from the barge(s) whenever required by the Seller, Seller's representative or Supplier, free of expenses, and in any way requested to assist the barge equipment for a smooth supply. The Buyer shall make and be responsible for all connections and disconnections between the delivery hose(s) and the Vessel's bunker intake manifold/pipe and ensure that the hose(s) are properly secured to the Vessel's manifold prior to commencement of delivery.

During bunkering the Vessel's scuppers must be safely blocked, and such blocking must be made by the Vessel's own crew. Furthermore the Vessel must ensure that all pipes and manifolds and receiving tanks are completely checked and ready to receive the bunkers, including but not limited to ensuring proper opening/closing of relevant valves, without any risk for spillages, etc, during the bunkering.

Local further special requirements for receiving bunkers must be followed strictly by the receiving Vessel, whether advised or not by the Seller or the Seller's representative, as it is always the Vessel and the Buyer who remains solely responsible for the awareness of such eventual additional requirements for safety reasons.

G.10 In the event that the Buyer's Vessel is not able to receive the delivery promptly upon being tendered by Supplier, the Buyer is in breach of Article G.8 above and shall pay damages and/or any reasonable

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demurrage claim to the barging/supplying facilities and shall indemnify the Seller for all other losses, or delay incurred thereby.

G.11 Delivery shall be deemed completed when the Bunkers reach the flange/connecting pipe line(s)/delivery hoses on the barge/ tank truck/shore tank. All risk, including loss damage, deterioration, depreciation, evaporation or shrinkage to the Bunkers delivered shall pass to the Buyer at that time.

G.12 If the Buyer for whatever reason is unable or refuses to receive the full quantity ordered, the Seller shall have the right to invoice the Buyer for the loss incurred by having to transport the undelivered Bunkers back to the storage or by having to sell the Bunkers at a lower price than that agreed with Buyer. The Seller may use this right without prejudice to the Seller's other rights for damages or otherwise pursuant to these terms.

G.13 If delivery is required outside normal business hours or on local weekends, Saturday, Sunday, national religious or public holidays Buyer shall remit to Seller all extra expenses incidental to such delivery.

G.14 In the event the Bunker delivery is made by vessel or barge as a ship-to-ship transfer, Seller shall not be liable for any damage caused by contact and/or collision and/or swell and/or other weather or sea related condition or incident, and such damage shall be resolved/settled by the Buyer and/or the Owner directly with the owners of the involved units, and, Buyer will fully indemnify and hold Seller harmless in relation to any such damage or claims.

## **H. TITLE**

H.1 Title in and to the Bunkers delivered and/or property rights in and to such Bunkers shall remain vested in the Seller until full payment has been received by the Seller of all amounts due under the Agreement.

H.2 Until full payment of all amounts due to the Seller has been made and subject to Article G.14 hereof, the Buyer shall not be entitled to use the Bunkers other than for the propulsion of the Vessel, and Buyer warrants that neither it nor the Vessel will mix, blend, sell, encumber, pledge, alienate, or surrender the Bunkers to any third party or other Vessel.

H.3 The Seller shall have a security interest in and a maritime lien (where such jurisdiction recognises such a lien) on all Bunkers or part thereof for which payment has not been received, and Seller shall be entitled to repossess Bunkers for which payment has not been made without prior judicial intervention, all without prejudice to all other rights or remedies available to the Seller.

H.4 In the event that the Bunkers have been mixed with other bunkers onboard the Vessel, the Seller shall have the a lien on such part of the mixed Bunkers as corresponds to the quantity or net value of the Bunkers for which payment has not been made.

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H.5 The Seller has a maritime lien on the Vessel for any unpaid amounts under the Agreement and shall be entitled to arrest/attach the Vessel and/or sister ship and/or any other assets of the Buyer (or the Owner of the Vessel), cf. Clause C.5) wherever situated in the world without prior notice to obtain payment of the outstanding amounts.

H.6 Where, notwithstanding these GTCs, title to the Bunkers delivered has passed to the Buyer and/or any third party before full payment has been made to the Seller, the Buyer shall grant a pledge over such Bunkers to the Seller. The Buyer shall furthermore grant a pledge over any other Bunkers present in the respective Vessel, including any mixtures of the delivered Bunkers and other bunkers. Such pledge will be deemed to have been given for any and all claims, of whatever origin and of whatever nature that the Seller may have against the Buyer.

## **I. PAYMENT**

I.1 Payment shall be made by the Buyer within the period specified in the Agreement.

I.2 Payment shall be made in full, without set-off, withholding, counterclaim, deduction and/or discount, and free of bank charges to the bank account on the due date of payment stated on the respective invoice(s).

I.3 Notwithstanding any agreement to the contrary, payment will be due immediately in case of bankruptcy, liquidation or suspension of payment or comparable situation of the Buyer, or arrest of assets and/or claims of the Buyer, or in case of any other situation, which in the sole discretion of the Seller, is considered to adversely affect the financial position of the Buyer.

I.4 Payment shall be deemed to have been made on the date of which the Seller has received the full payment and such funds are available to the Seller. If the payment due date falls on a non-business day, the payment shall be made on or before the business day nearest to the due date.

I.5 Interest at the rate of 2 (two) per cent per month, compounded monthly for each month [or part thereof] of non-payment, shall be charged on all unpaid amounts after the due date, without prejudice to any rights or remedies available to the Seller. Furthermore the Seller is entitled to charge a delayed payment administration fee of USD 1.00 per mton supplied, or the equivalent thereof in local currency, with a minimum administration fee of USD 250.00 for each delivery made. Buyer also is liable for all legal costs and fees, internal to Seller as well as external, incurred by Seller to collect amounts due under the Agreement.

I.6 Payments made by the Buyer shall at all times be credited in the following order: (1) costs, (2) interest and administrative fee, and (3) invoices in their order of age. Seller retains sole discretion to credit a payment to any invoice as Seller sees fit, including to invoices where payment is not yet due.

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I.7 The Seller shall at all times, in its absolute discretion, be entitled to require the Buyer to provide the Seller with what the Seller deems to be sufficient and acceptable security for the performance of all of Buyer's obligations under the Agreement or under prior Agreements. The Seller shall be entitled to cease to perform any subsisting Agreement(s) between the parties until such time as the Buyer has provided the required security.

## **J. CLAIMS**

J.1 In addition to the obligations referred to in Article E.4 above, any claim in connection with the quantity of Bunkers delivered must be notified by the Buyer, or the Master of the Vessel, to the Seller or Supplier immediately after completion of delivery in the form of a letter of protest. If the Buyer or Vessel Master fails to present such immediate notice of protest to the Seller or Supplier, such claim shall be deemed to have been waived and shall be absolutely barred for all purposes.

, Any eventual changes or remarks made by Buyer or the Vessel's crew, including a "No Lien" stamp or remark on the Bunker Delivery Receipt shall have no effect or value whatsoever and shall suffer the consequences set out in Article E.4 above.

J.2 Any and all claims concerning the quality of the bunkers delivered shall be submitted to the Seller in writing within 15 (fifteen) days after delivery with a clear statement as to the nature or the claim(s) along with supporting documentation in support, failing any which any rights to complain or claim compensation of whatever nature shall be deemed to have been waived and absolutely barred for all purposes. Also see Article G.14.

J.3 The Buyer shall make payment in full and fulfil all other obligations in accordance with the terms of the Agreement and these GTCs, without deduction or set-off, whether or not Buyer or the Vessel has any claims or complaints.

If Buyer submits a claim against Seller with respect to the quality or quantity of the products supplied, the Seller or the Seller's nominated representative shall be entitled to board the Vessel and investigate the Vessel's records, log books, engine logs, etc, and to make copies of any such document the Seller or the Seller's nominated representative may consider necessary for its investigations connected to the case. Where Buyer has chartered the Vessel, then the Buyer shall obtain authorization from Owner to allow the investigation and inspection outlined herein and to provide full assistance and support by the Vessel's officers and crew in any such manner the Seller or Seller's nominated representative may require. Failure to allow boarding and/or produce required copies of documents and/or lack of full cooperation by the Vessel's officers and crew shall constitute a waiver of the Buyer's claim.

J.4 Any and all claims of the Buyer shall be forever timebarred unless, within 12 (twelve) months from the date of delivery of the Bunkers or the date that delivery should have commenced pursuant to the written Order Confirmation from the Seller, Buyer commences arbitration/legal proceedings in a competent tribunal/court in accordance with Article P hereof and effects proper service of same on Seller.

## **K. LIABILITY**

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K.1 The Seller and/or Supplier shall not be liable for damages of whatever nature, including physical injury, nor for delay of delivery of Bunkers or services, no matter whether such damages or delay have been caused by fault or negligence of the Seller or Supplier, or those acting on their behalf.

K.2 In no event shall the Seller be liable for any indirect, consequential and/or liquidated damages whatsoever, including, but not limited to, loss of time, loss of cargo, missed charter cancelling date, or loss of income or profit/earnings. Notwithstanding anything to the contrary herein, liability of the Seller shall under no circumstances exceed the invoice value of the Bunkers supplied under the relevant Agreement.

K.3 The Buyer shall indemnify and hold harmless the Seller for any and all damages and/or costs and/or disadvantage whatsoever suffered or otherwise incurred by the Seller arising from or in connection with any breach of the Agreement or the terms and conditions herein and/or any act or omission of the Buyer or Buyer's supplier, agents, servants, (sub) contractors, representatives, employees and the officers, crews and/or other people whether or not onboard of the respective vessel(s). The Buyer furthermore undertakes to defend, indemnify, and hold the Seller harmless from all third party claims of whatever kind against the Seller, whether directly or indirectly related to any Agreement. Third party shall mean any physical or legal person/company other than the Buyer.

K.4 In addition to and without prejudice to the above, Seller and Sellers servants, agents and contractors shall have the benefit of any and all exemptions, limitations, conditions and liberties herein contained, and every right, exemption from liability, defence or immunity of whatever nature to which Seller is entitled under the governing law.

#### **L. EXEMPTIONS AND FORCE MAJEURE**

L.1 Neither the Seller nor the Supplier shall be liable for any loss, claim, damage or demurrage due to any delay or failure in their performance (a) by reason of compliance with any order or request of any government authority, or person purporting to act therefore, or (b) when supply of the Bunkers or any facility of production, manufacture, storage, transportation, distribution or delivery contemplated by the Seller or Supplier is interrupted, delayed by congestion or other event (also see Article G.3 above), or unavailability of product and/or barge equipment or inadequate for any cause whatsoever that is not within the immediate control of the Seller or the Supplier, including (without limitation) if such is caused by labour disputes, strikes, governmental intervention, wars, civil commotion, fire flood, earthquake, accident, storm, swell, ice, adverse weather or any act of God. Neither the Seller nor the Supplier shall be required to remove any such cause or replace any affected source or supply or facility if doing so shall involve additional expense or a deviation from the Seller's or the Supplier's normal practices. Neither the Seller, nor the Supplier shall be required to make any deliveries which fail in whole or in part as a result of the causes set out in this Article at any later time.

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L.2 If the Buyer exercises reasonable diligence, the Buyer shall not be liable for failure to receive any particular delivery if prevented therefrom by force majeure. The Buyer, however, shall indemnify the Seller or the Seller's supplier for any costs incurred in attempting to supply the Vessel notwithstanding the force majeure event and shall remain liable for any damage caused by the Buyer, the Buyer's agent or employees in connection with deliveries hereunder.

L.3 Declaration of Force Majeure shall be given without undue delay once such event(s) have come to the knowledge of the respective party declaring same.

L.3 In the event that the Seller, as a result of force majeure, can only deliver a superior grade of bunkers, the Seller is entitled to offer the said grade, and the Buyer must accept delivery thereof and pay the Seller's prevailing price for the superior grade.

L.4 (a) These Terms and Conditions are subject to variation in circumstances where the physical supply of the fuel is being undertaken by a third party. In such circumstances, these terms and conditions shall be varied accordingly, and the Buyer shall be deemed to have read and accepted the terms and conditions imposed by the third party on the Seller.

(b) Without prejudice to the generality of the foregoing, in the event that the third party terms include:

(i) A shorter time limit for the doing of any act, or the making of any claim, then such shorter time limit shall be incorporated into these terms and conditions.

(ii) Any additional exclusion of liability clause contained in third party terms shall be incorporated mutatis mutandis into these terms and conditions.

The terms hereof shall be varied to apply any of the terms being imposed on Sellers by the third party supplier.

(c) It is acknowledged and agreed that the Buyer shall not have any rights against the Supplier which are greater or more extensive than the rights of the Supplier against the Third Party.

## **M. BREACH/CANCELLATION**

M.1 The Seller shall have the option immediately to cancel the Agreement in full or in part, or to store or procure the storage of the Bunkers in whole or in part, for the account and risk of the Buyer and to charge the Buyer the expenses thereby incurred, or to hold the Buyer fully to the agreement, or take any other measures which the Seller deems appropriate, without prejudice to its rights and remedies provided herein and under the law, and without any liability to it, in any one or more of the following cases:

a) when the Buyer, for whatever reason, fails to accept the Bunkers

in part or in full at the place and time designated for delivery;

b) when the Buyer fails in part or in full to comply with its obligations

to pay any amount due to the Seller and/or provide security as set out herein;

c) 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

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to the Seller;

d) when, in case of force majeure, the Seller is of the opinion that

the performance of any agreement with Buyer should cease.

M.2 The Seller also may terminate any agreement with the Buyer in whole or in part, in its sole discretion, upon the breach of any provisions hereof by the Buyer.

M.3 The Seller has the option to immediately cancel the Agreement for the account and risk of the Buyer if at any time the Seller, in its sole discretion, has reasonable grounds to believe that:

- A) The Vessel; or
- B) The Charterer of the Vessel; or
- C) The owner(s), who owns the Vessel whether partly or fully; or
- D) Any officers of the Vessel; or
- E) The Operator and/or Manager of the Vessel; or
- F) Any other person or entity in any way related to the Agreement or delivery is/are
  - 1) Iranian(s); or
  - 2) Related in any way to Iran or Iranians; or
  - 3) Listed on the US OFAC Specially Designated Nationals List; or
  - 4) Covered by any US, UN, EU sanctions; or
  - 5) Covered by any sanctions of any other jurisdiction and/or administration.

Under no circumstances can the Seller be held liable for any loss, delays, claims or damages of whatever kind suffered by the Buyer due to a cancellation under this clause.

The Buyer must inform the Seller immediately if the Buyer becomes aware of or has reasons to believe that any of the above items A) to F) in combination with any of the above items 1) to 5) are fulfilled.

Should the Buyer fail to notify the Seller as required herein, the Buyer shall indemnify and hold the Seller harmless for any damage or loss caused by such failure, including consequential, indirect, and/or liquidated damages.

N.1 If a spill occurs while the Bunkers are being delivered, the Buyer shall promptly take such action as is required by any local or national authority or as may be necessary to remove the spilled Bunkers and mitigate the effects of such spill. Without prejudice to the generality of the foregoing the Seller is hereby authorised in its full discretion, but at the expense of the Buyer, to take such measures and incur such expenses (whether by employing its own resources or by contraction with others) as are necessary in the judgment of the Seller to remove the spilled Bunkers and mitigate the effects of such spill. The Buyer shall cooperate and render such assistance as is required by the Seller in the course of the action. All expenses, claims, costs, losses, damages, liability and penalties arising from spills ultimately shall be borne by the party that caused the spill. If both parties have acted negligently, all expenses, claims, losses, damages, liability and penalties, shall be divided between the parties in accordance with the respective degree of negligence. The burden of proof to show the Seller's negligence shall be on the Buyer. The Buyer shall give the Seller all documents and other information concerning any spill or any programme for the prevention

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thereof that is required by the Seller, or are required by law or regulation applicable at the time and place of delivery.

The Buyers hereby warrant that they enforce a company drug and alcohol policy on board their vessels, whereby the Sellers' 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.

#### **O. DELAYS AND CANCELLATIONS**

O.1 Notwithstanding anything else to the contrary herein, and without prejudice to any rights or remedies otherwise available to it, the Seller has the sole discretion to cancel or to adjust prices in the event the Vessel is delayed more than 48 hours from the (last) nomination date.

O.2 If the Buyer for whatever reason (including circumstances entirely outside Buyer's control) cancels the Agreement after the Order Confirmation has been sent by Seller, the Buyer shall be liable for any and all losses suffered and liabilities incurred by the Seller/Supplier as a result of the cancellation, including, but not limited to, barge costs, re-storing of Bunkers, and Hedging costs, and also in Seller's sole option any difference between the contract price of the undelivered product and the amount received by the Seller upon resale to another party or, if another buyer cannot be found, any diminution in the market value of the product as reasonably determined from available market indexes. These losses and liabilities shall be indemnified in a minimum amount of USD 4,000 by way of agreed liquidated damages and shall be indemnified in full if they in total exceed USD 4,000.

#### **P. LAW AND JURISDICTION**

P.1 This Contract shall be governed by and construed in accordance with Singapore law.

P.2 Any dispute arising out of or in connection with this 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.

P.3 A party wishing to refer a dispute to arbitration shall serve on the other party a written Notice of Arbitration in accordance with SCMA Rule 4.

P.4 The reference shall be to three arbitrators, unless the parties have agreed to the appointment of a sole arbitrator. However, the reference shall be to a sole arbitrator if the SCMA Small Claims Procedure applies to the dispute, which is if the aggregate amount of the claim and/or counterclaim in dispute is less than USD50,000 or is unlikely to exceed USD50,000 or, despite the amount in dispute being greater than this sum, the parties agree in writing that the claim shall be dealt with under the SCMA Small Claims Procedure.

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P.5 If three arbitrators are to be appointed, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. Where a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the appointment of the third arbitrator within 30 days of their appointment, the appointment shall be made, upon the request of a party, by the Chairman of SCMA.

P.6 If a sole arbitrator is to be appointed, the parties may agree who shall be appointed the sole arbitrator and if the parties are unable to agree on the appointment within 30 days from the date of service of the Notice of Arbitration, the Chairman of SCMA shall appoint the sole arbitrator upon the application of any of the parties.

P.7 For the sole benefit of the Seller it is further agreed that without prejudice to any Seller's rights hereunder, Seller has the right to proceed against the Buyer, any third party or the Vessel in such jurisdiction as the Seller in its sole discretion sees fit *inter alia* for the purpose of securing payment of any amount due to the Seller from the Buyer or the Owner.

#### **Q. VALIDITY**

Q.1 These terms and conditions shall be valid and binding for all offers, quotations, prices and deliveries made by the PPC, any associated company, representative or agent.

Q.2 These terms and conditions are available at the website [www.ppc.com.hk](http://www.ppc.com.hk) on which site as well the Sellers may notify amendments, alterations, changes or verifications to same. Such amendments, alterations, changes or verifications are deemed to be a part of the entire terms once same have been advised on the website.

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