



Edition June 2023

This is a statement of the General Terms and Conditions, which shall apply to and be incorporated into contracts for the sale of Marine Fuels entered into by XPower Trading A/S.

Unless otherwise agreed in writing, the General Terms shall apply to every sale of marine products including marine fuels, lubricants and other non-fuel products (“Products”) entered into between any XPower Trading A/S as seller (“Seller”) and any buyer (“Buyer”) of such Products.

## 1. DEFINITIONS

- 1.1 “**Product**” or “**Products**” means the Seller’s fuel, grades, gasolines and/or any other products and/or services offered for sale by the Seller.
- 1.2 “**Buyer**” means the Vessel and any party requesting quotations, placing orders, purchasing or otherwise contracting to receive the Products from the Seller, including but not limited to the Vessel’s owners, disponent owners, charterers, operators, managers, masters, agents and brokers. Buyer also means any all parties named in the Order Confirmation, including their assignees or successors.
- 1.3 “**Terms**” means these general terms and conditions of sale.
- 1.4 “**Contract**” means these Terms together with an Order Confirmation and provides for an agreement between the Seller and the Buyer for the supply of Products. A Contract may be formed, even if no Order Confirmation is issued by the Seller.
- 1.5 “**End User**” means the party who ultimately purchases, uses, receives or consumes the Products.
- 1.6 “**Intermediary**” means bunker traders and other companies, entities or persons that enter into an agreement as a Buyer of the Products with the purpose of reselling the Products to an End User or to another Intermediary or party.
- 1.7 “**Order Confirmation**” means a written confirmation issued by the Seller to the Buyer in respect of an order placed by the Buyer and/or confirmation of a similar agreement.
- 1.8 “**Owner**” means the party or parties registered as the owner(s) of the vessel and any party or parties with actual ownership of the Vessel, in the absence of registration of such ownership.
- 1.9 “**Physical Supplier**” means a third party appointed by the Seller to deliver the Products to the Vessel.
- 1.10 “**Sanctions Regulations**” means any export or import controls, embargos or economic sanctions regulations including but not limited to those issued by the United Nations, European Union or any Member State of the European Union, Switzerland, Norway, Iceland, the United Kingdom or the United States of America.
- 1.11 “**Seller**” means [] and any of its servants, officers, agents, brokers, designated representatives and its subsidiaries or affiliates.
- 1.12 “**Vessel**” is the ship, rig, platform, storage unit or other installation or unit whether floating or not to which the Products are delivered under the Contract.

## 2. SCOPE

- 2.1 Integral part. These Terms shall apply to any and all supplies of Products made by the Seller and constitute an integral part of any offers, quotations, orders, agreements, services, Order Confirmations and/or Contracts of whatever nature, relating to the Seller’s supply of Products, and shall apply thereto whether or not express reference to the Terms is made in the Order Confirmation. Subject to clause 2.2 below, these Terms and the



Order Confirmation embody all the terms and conditions applicable to the Contract and supersede and cancel in all respects any previous conditions by the Seller.

- 2.2 No deviation from these Terms. The Seller shall not be bound by, and the Buyer may not rely on, any statement, representation or warranty, collateral or other piece of communication to the extent that would amount to a deviation from these Terms, unless and always provided (i) the Seller confirms in writing which part of these Terms the Parties have agreed to deviate from, (ii) the Seller states explicitly that the agreement to deviate is made in pursuance of this clause 2.2, and (iii) a senior officer or member of management of the Seller (who cannot be a bunker trader), or the Seller's legal desk, confirms and authorizes the agreement to deviate in writing.
- 2.3 Severability. Any variance or invalidity of any part(s) of these Terms shall not prejudice or limit in any way the validity of the remaining Terms of any Contract made between the Seller and the Buyer. If any provision of the Contract is held to be invalid, void or unenforceable that will not affect the validity, legality or enforceability of any other provision of the Terms or any other rights of the Seller under the Contract.
- 2.4 No waiver. Failure by either party at any time to enforce any of these Terms shall not be considered as a waiver by such party of such provisions or in any way affect the validity of these Terms.
- 2.5 Whole agreement. Together with the Order Confirmation, these Terms constitute the whole agreement made between the Seller and the Buyer, and the Buyer may not rely on any pre-contractual or post-contractual statement, representation or warranty, collateral or other piece of communication to the extent that prejudices the Seller's rights under these Terms. No variation of these Terms shall be binding on the Seller unless confirmed in writing by the Seller pursuant to clause 2.2.
- 2.6 Amendments. The Seller reserves the right to include, at its discretion, any additional or substitute terms and conditions. Any such additional or substitute terms and conditions shall prior to the time of concluding the Contract be advised by the Seller to the Buyer, either, via written notice, or, in the form set out in clause **Error! Reference source not found.**

### 3. OWNER'S ACCEPTANCE

- 3.1.1.1 Acceptance. All orders of Products are deemed to have been made by the Master of the Vessel and supplied for account of the Buyer. If the legal entity to whom the Order Confirmation is issued is not the Owner of the Vessel, the Owner shall be deemed a Buyer under the Contract and bound by these Terms as a consequence of the Vessel taking delivery of the Products and the Master (or any other officer or representative of the Vessel), signing for receipt of the Products. The Buyer warrants that these Terms are communicated to the Owner of the Vessel, that the Buyer it is authorized as agent to order the Products for the Vessel and that the Seller has a lien on the Vessel for any Products supplied under the Contract in accordance with the applicable law (see clause 19.1 below).
- 3.2 "No-lien stamps". The Buyer expressly undertakes not to make any endorsement, complaint or comment (such as the insertion of "No-lien" clausung) on the bunker delivery note when presented for signature by the Buyer's representative(s). Any such inclusion shall be invalid and of no effect whatsoever. This clause 3.2 reflects the principle embodied under clause 3.1.1.1, i.e. that the Products are received with full authority from the Owner of the Vessel.

### 4. TERMS OF OFFERS AND CONTRACTS

- 4.1 Formation of Contract. The Contract is binding on the Buyer when Seller sends an Order Confirmation to the Buyer.
- 4.2 Notwithstanding clause 1.4 and 4.1, if, for any reason, the Buyer takes delivery of any Products without having been provided with an Order Confirmation, a Contract shall be deemed to have been formed, incorporating these Terms, when the Buyer takes delivery of said Products.
- 4.3 Quotations, offers and estimates. The Seller's offers, quotations and estimates of prices and other costs are to be understood as being conditional and subject to availability and alteration.

- 4.4 Approximate values and information. Unless otherwise expressly provided for in the Order Confirmation, all particulars notified to the Buyer (e.g. analytical data, delivery times, names of delivery vessels, or specifications of the Product) and all documents to which access has been given shall be deemed to contain only approximate values customary in the trade and do not constitute undertakings or warranties. The Seller further reserves the right to alter such particulars or documents.
- 4.5 FOB and Incoterms. The supply of Products is always made on FOB terms, unless another Incoterm is expressly stated in the Order Confirmation. References to FOB or other Incoterms shall be deemed to have the meaning contained in the most recent edition of Incoterms. This Clause and any applicable Incoterms shall always be subject to, and be deemed varied in accordance with, clause 8.13 below.
- 5. PRICES, INVOICING, PAYMENT, INTEREST, COLLECTION COSTS, ALLOCATION**
- 5.1 Prices. The Buyer shall pay the agreed prices as set out in the Order Confirmation. If a Contract is formed without an Order Confirmation being sent to the Buyer, the Buyer is obligated to pay the price stipulated in the invoice(s) sent by the Seller; however never exceeding the prices communicated to the Buyer through those quotations which gave rise to the order and delivery of the Products.
- 5.2 Additional expenses and costs. In addition to prices pursuant to clause 5.1 and, the Buyer shall pay any additional expenses and costs such as barging, overtime, demurrage, wharfage, dockage, port/harbor/agency fees, dues, duties, taxes, levies and other costs, including those imposed by governments and local authorities. The Seller shall endeavor to include, by way of estimates, such additional expenses and costs in the Order Confirmation, however, the Buyer's obligation to pay for such additional expenses and costs shall be decided at the time of supply and stated in the Seller's invoice(s). If any price is quoted as "Delivered", the price includes transportation to the Buyer's Vessel, but does not include demurrage or any other expenses or costs as indicated above.
- 5.3 Customs, VAT and other taxes. All quoted prices and the prices mentioned in the Order Confirmation are exclusive of Customs, VAT and other taxes. Customs, VAT and other taxes and similar charges shall always be promptly paid by the Buyer upon receiving the Seller's invoice.
- 5.4 Due date for payment. Payment shall be received by the Seller in full no later than on the due date stated in the Seller's invoice, free of bank charges and other cost, into the Seller's nominated bank account.
- 5.5 Currency. Unless otherwise specified in the Order Confirmation or in the Seller's invoice, prices shall be in United States dollars and shall represent only the purchase price for the Bunkers (typically quoted in USD per metric ton). Payment shall always be made in the invoiced currency.
- 5.6 No set-off. Payment shall be made in full, without any set-off, deduction and/or discount, unless agreed in writing prior to payment being made. The Buyer's submission of any claim does not relieve the Buyer of its obligation to make full payments as required under the Contract and the Buyer shall not be entitled to set-off any claim from sums due to the Seller.
- 5.7 Interest and administration charges. In the event that payment is not received by the Seller by the due date the Seller is entitled to interest at the rate of 3 (three) percent per month pro rata compounded each month without prejudice to any other rights or remedies available to the Seller. The Seller shall also be entitled to charge a delayed payment administration fee of USD 1.50 per metric ton supplied with a minimum administration fee of USD 500.00.
- 5.8 Collection costs. The Seller's collection costs shall be solely for the Buyer's account. If the Buyer fails to make payment in full on the due date for payment, the Seller may without notice take legal action (such as ship arrest and/or arbitration) to collect the overdue payment. The Seller's costs and expenses incurred in connection with the collection of such overdue payments shall be indemnified by the Buyer upon demand from the Seller. These costs and expenses include, but are not limited to, interest charges, internal costs, and external costs such as expenses to lawyers, debt collectors or other consultants, court fees, costs for translating documents, bailiff's or Marshall's fees and any collection costs of whatsoever nature. The Seller shall be entitled to invoice those costs from time to time.

- 5.9 Allocation of payments. All payments received by the Seller shall be applied to settle, first, any overdue interest and administration charges (accrued in accordance with clause 5.7 above), then, to any collection costs incurred (such costs to be indemnified by the Buyer as set out in clause 5.8 above), and, then, to principal.
- 5.9.1 Anticipatory breach. If the Buyer's right to possession of the Products ceases as provided for in clause 16.4, the Seller shall be entitled to demand all payments settled immediately, whether or not such payments have fallen due under the Seller's invoice.
- 5.10 Security. The Seller shall at all times be entitled to require that the Buyer provides security for the due and proper performance of all of the Buyer's payment obligations. Security shall be given to the satisfaction as deemed sufficient by the Seller. Failure to immediately provide such security shall entitle the Seller, inter alia, to suspend further performance of any and all Contracts and to assert any other right and remedy available under the Contract and under the law applicable.
6. **QUALITY AND SAMPLES – CLAIMS**
- 6.1 Quality. The Products shall be of the quality set out in the Order Confirmation. If the Order Confirmation does not contain such specification, the Products shall be of the quality that is generally offered by the Seller to its customers at the time and place of delivery and subject to being available for delivery at the agreed place of delivery.
- 6.2 The conformity of the Products shall be determined in accordance with ISO 4259 and to the extent that the components/parameters detected during testing in accordance with clause 6.5 are within the allowed tolerances in respect of reproducibility or repeatability as set out in ISO 4259 the Product shall be deemed to be on-specification and conforming to the Contract.
- 6.3 No implied warranties. Any implied conditions, obligations and warranties – including warranties of merchantability, fitness for a particular purpose and/or any similar warranty or implied condition – are expressly excluded and disclaimed and shall not apply.
- 6.4 The Buyer's responsibility. The Buyer, having greater knowledge than the Seller of the Buyer's own requirements and needs, shall have the sole responsibility for the prior selection of the particular grade(s) and acceptance thereof. The Order Confirmation is deemed to describe the type of Product requested by the Buyer, and the Buyer shall immediately upon receipt of the Order Confirmation notify the Seller of any wrongful description in the Order Confirmation compared to the Buyer's demand. Unless such notice is provided to the Seller immediately upon receipt of the Order Confirmation, the Order Confirmation's description of quality shall be deemed to be binding, as shall all other terms and descriptions set out in the Order Confirmation.
- 6.5 Agreed procedure for sampling and testing of samples. The following clauses shall exclusively govern the taking of samples and the analysis (testing) of such samples:
- i. During delivery, The Seller (typically through its physical supplier) shall arrange for a primary sample of each grade to be drawn continuously throughout the bunker delivery period at a point as close as possible to the bunker barges/the delivery facility's manifold and in accordance with the rules and procedures of IMO resolution MEPC.182(59) (2009 guidelines for the sampling of fuel oil for determination of compliance with the revised MARPOL Annex VI) or any subsequent amendments thereto. The primary sample must be thoroughly mixed and divided into at least four (4) identical samples.
  - ii. If drip sampling is not available onboard the bunker barge/delivery facility that is used for delivery, samples shall be taken as a composite of each tank from which supplies are made, onboard the barge/delivery facility divided with 1/3 from each the top, mid and bottom of the tanks.

- iii. Two (2) samples shall be retained by the Seller and/or the Physical Supplier. The other two (2) samples shall be retained by the Vessel, one of which shall be dedicated as the MARPOL sample in accordance with the relevant rules and regulations in force at the time of supply.
- iv. The four (4) samples drawn and retained pursuant to this clause shall be conclusive and final evidence of the quality of the Product delivered to and received by the Vessel and any additional sample(s) that the Buyer may draw are not representative of the quality of the Product and can only be used for the Buyer's own purposes, which are irrelevant to the Seller.
- v. Sampling may be witnessed by both the Buyer and the Seller, or their representatives. Failure of the Buyer to attend the sampling process shall not prejudice the validity of the samples.
- vi. In the event of a dispute regarding the quality of the Products, one of these samples taken as described in subsections i-v and kept by the Seller or the Physical Supplier shall be forwarded to an independent laboratory for testing. The result of such testing shall be deemed final and binding conclusive evidence of the quality of the Products. The test results of any other sample shall not have any evidentiary value, unless expressly agreed upon in writing by the Buyer and the Seller.

6.6 Quality claims – notification. Any claims relating to the quality of the Product, shall be notified by the Buyer to the Seller within 15 days after completion of delivery. The notice shall be accompanied by full supporting documentation evidencing the nature of the claim. If the Buyer fails to give notice to the Seller within this deadline, or any other notification deadline expressly agreed by the Seller, then the quality claim shall be deemed late and time-barred. In such event, the Buyer shall neither be entitled to damages of any kind in relation to the quality claim, nor any reduction of purchase price, nor any other remedy.

6.7

6.8 Quality claims - time-bar. In any event, all claims of the Buyer against the Seller shall become time-barred unless arbitration has been commenced as per clause 18 below and served on the Seller within 12 (twelve) months from the date of delivery.

6.9

6.10 Determination of quality – evidence. Any claims relating to quality shall be solved amicably or in arbitration in accordance with clause 18 below. The evidence obtained under the exclusive procedure that governs the taking of samples and the testing of such samples (the full procedure is detailed in clause 6.5 above) shall be final and binding on the parties and shall accordingly be conclusive for the arbitral tribunal's decision in respect of the evidence relied on by the tribunal to assess quality.

6.11 No liability for commingling. The Seller's potential liability ceases if circumstances indicate that the Buyer has commingled the Products on board the Vessel with other fuels or similar products.

6.12 Quality claims – duty of mitigation. The Buyer shall take all reasonable steps and actions to mitigate any damages, losses, costs and expenses related to any claim of alleged off-specification or defects in the Products, including where possible consuming the Products with use of purification tools, recommended dilution or other appropriate measures. The Buyer shall inform the Seller before any mitigating measures are performed.

## 7. QUANTITY – CLAIMS

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

7.2 Determination of quantity – evidence. The quantity of the Bunkers delivered shall be determined solely from the information on quantity inserted into the bunker delivery note, or, if the bunker delivery note has not been signed, the official gauge/sounding of the delivering barge, road wagon, or rail tank car, delivery note for drum deliveries, or by gauging in the Seller's shore tank or by the Seller's oil meter, at the Seller's election. The Buyer is entitled to be present or represented by a properly accredited agent or surveyor when quantity measurements are taken. If the Buyer is not present or represented, the Seller's determination of quantities

shall be deemed to be final and binding on the parties. quantities calculated from the vessel's soundings shall not be considered.

- 7.3 Quantity claims – notification and time-barring. Unless the Buyer or the Master of the Vessel immediately and prior to the signing of the bunker delivery note raises a claim for quantity deficiency of the delivered Products, any claim by the Buyer concerning or relating to the quantity delivered Products shall be extinguished as non-existent and the Buyer shall be deemed to have expressly waived any such claim against the seller. In addition, any and all claims of the Buyer that have been notified to the Seller in due time shall become time-barred unless arbitration has been commenced as per clause 18 below and served on the Seller within 12 (twelve) months from the date of delivery.
- 8. DELIVERY AND RISK OF DELAY**
- 8.1 Approximate times. The time of delivery, as given by the Seller, is an approximate time.
- 8.2 72 hours' notice. The Buyer shall always notify the Seller at least 72 hours (Saturday, Sunday and local holidays excluded) in advance of the Vessel's readiness to take delivery of the exact quantity of Bunkers to be delivered to enable the Seller to make the necessary arrangements for the delivery.
- 8.3 Range for delivery. The Order Confirmation includes the earliest estimated time of the Vessel's arrival (ETA) as advised by the Buyer. The Vessel shall always begin to take delivery within the ETA provided for in the Order Confirmation, and, if the ETA listed in the Order Confirmation exceeds 3 (three) calendar days, the Vessel shall always begin to take delivery of the Product within the first 3 (three) calendar days. The Contract price shall be valid only for deliveries begun within the ETA stated in the Order Confirmation, or, within the 3 (three) calendar day-period if such period applies as provided for in this clause. If the Buyer begins to take delivery or requests delivery to begin beyond these periods, as applicable, the Seller shall – without prejudice to the Seller's potential claim against the Buyer – be entitled to amend the agreed price(s) under the Contract.
- 8.4 Failure to take delivery. If the Buyer fails to take delivery of the Products, or any part thereof, as provided for under clause 8.3 above, the Seller shall be entitled, at the Buyer's risk and expense, either, to transport the Products back to storage, and/or, to sell the Products at the price available in the market and claim damages against the Buyer, without prejudice to the Seller's other rights and remedies. The Seller shall also be entitled to charge a minimum cancellation fee of 5% (five) of the agreed prices.
- 8.5 Delivery circumstances permitting. The Vessel shall be bunkered as promptly as the prevailing circumstances permit, having regard to circumstances such as weather, ship traffic, congestion and bunker barge/delivery facility's accessibility and other delays caused by local authorities and other local conditions. The Seller and/or the Physical Supplier shall not be liable for any time lost or other consequences caused by circumstances preventing the commencement or completion of the bunkering operation. The Seller shall not be obligated to deliver prior to the nominated date or spread of dates.
- 8.6 Shortage of supply. If the Seller, for any reason and in its sole discretion, anticipates that there may be such a shortage of Product at any port or place that it may be unable to meet the demands of all its customers, the Seller may allocate its available and anticipated supply among its Buyers in such a manner as it may in its sole discretion determine. The Buyer may raise no claim against the Seller in these circumstances.
- 8.7 Buyer's cause of delay. If the Buyer causes delay to the Seller's and/or the Physical Supplier's delivery when receiving the Products, the Buyer shall be deemed to be in breach of contract and be liable accordingly.
- 8.8 Permitted tanks only. The Seller shall not be required to deliver the Products into any of the Vessel's tanks which are not permitted for use with such product and/or which are not normally used for such product.
- 8.9 Port Licenses and permits. The Buyer and the Vessel shall, at its own risk and cost, comply with requirements of local authorities and facilitate a smooth delivery. If the Buyer fails to comply with such requirements, the Buyer shall be deemed to have breached the Contract. The Seller is entitled to cancel and/or stay delivery if any customary requirements, or requirements/permit by local authorities, are not met or obtained in due time before delivery.

- 8.10 Modes for delivery. Delivery shall be made either from a shore terminal or by barge or by any other accredited methods of delivery, where such deliveries are available from time to time. In the case of more than one method of delivery being available, The Seller shall at its sole discretion select one, provided that it does not breach any other conditions of the Contract.
- 8.11 The Buyer's obligation to provide a near and safe berth, position or anchorage. The Buyer shall provide a clear and safe berth, position or anchorage alongside the Vessel's receiving lines from where the Seller and the Physical Supplier may deliver the agreed quantity at no extra costs. The Seller shall be under no obligation to make deliveries when a clear and safe berth, position or anchorage is not available, which shall be solely at the discretion of the Seller and/or the Physical Supplier to determine. The Buyer shall indemnify the Seller against all claims and expenses for any loss, damage, demurrage or delay caused to the Seller's delivery equipment, irrespective of whether the circumstance causing the loss, damage, demurrage or delay was within the control of the Buyer, its agents and employees, or his local representative.
- 8.12 Assistance from the Buyer. The Buyer shall make all connections and disconnections between pipelines or delivery hoses and Vessel's intake lines and shall render all other necessary assistance and ensure that the Vessel has sufficient tankage and equipment to receive promptly the agreed quantity of Products.
- 8.13 Transfer of risk. Delivery shall be deemed completed and all risk and liabilities, including without limitation loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage to the Product delivered and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties, shall pass to the Buyer as the Product pass the flange connecting the pipelines or delivery hoses with the intake lines of the Vessel. Product supplied by any other methods shall be considered to be delivered on these terms when passing the Vessel's rail.
- 8.14 Bunker delivery note. The master, or other authorized representative of the Vessel, shall confirm the delivery on behalf of the Vessel and the Buyer by signing a bunker delivery note provided by the Physical Supplier. The Seller shall not be deemed to have any constructive knowledge of the authority or lack of authority of any purported local representative of the Buyer. The Seller may assume that such purported representative is authorized to sign the bunker delivery note on behalf of the Buyer and shall be under no duty to verify such authority.
- 8.15 Normal working hours. Delivery shall be made during normal working hours. Unless otherwise agreed, deliveries outside normal working hours shall be subject to additional costs, which shall be borne by the Buyer.

## 9. HEALTH, SAFETY AND ENVIRONMENT

- 9.1 Health and safety requirements. It shall be the sole responsibility of the Buyer to comply, and advise its personnel, agents and/or customers to comply, with all health and safety requirements applicable to the Product supplied, both before, during and after delivery. The Seller accepts no responsibility or liability for any consequences arising from the Buyer's failure to comply with such requirements. The Buyer acknowledges familiarity with the hazards inherent in any petroleum products and shall protect, indemnify and hold the Seller harmless against any claims and liability incurred as a result of the Buyer's failure to comply with the aforementioned requirements.
- 9.2 Environment and duty of mitigation. The Seller and the Physical Supplier shall have no risk of harm to the environment. In the event of any leakage, spillage, overflow of bunker's causing or likely to cause pollution occurring at any stage, the Buyer shall, regardless as to whether the Buyer, the Seller or any third party is responsible, immediately take such action as is necessary to limit any damage or risk of damage and effectuate clean up or preventive measures. If the Buyer fails to take prompt action when damage or risk of damage occurs, the Buyer (who hereby warrants that it has been authorized by the Vessel's Owners) hereby authorizes the Seller to take whatever measure(s) the Seller deems necessary to efficiently execute preventive measures, clean-up and restore the environment at the Buyer's cost and expense. The Buyer accepts that any decision to execute preventive or mitigating measures by the Seller is at the Seller's sole discretion based on the principle of "better safe than sorry" and the Buyer is not entitled to reject indemnification or reimbursement of costs incurred by the Seller for such actions. The Buyer shall defend, indemnify and hold the Seller and/or the Physical Supplier harmless against any claim or liability arising out of any leakage,

spillage or overflow, unless such leakage, spillage or overflow shall be proven to be wholly caused by the Seller's and/or the Physical Supplier's gross negligence.

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

## 10. INDEMNITY

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

## 11. LIMITATION OF LIABILITY

11.1 Limitation of liability. The Seller's liability for any claim whatsoever, however arising under the Contract whether caused by negligence or not, whether based in tort or contract and including claims or pollution shall be limited to the value of the Bunkers Fuel as set out in the invoice.

11.2 The Seller shall under no circumstances be liable for any consequential losses whatsoever, whether direct or indirect and whether or not foreseeable at the time of formation, including, without limitation, cost and losses from delay, detention, demurrage, charter hire, loss of freight, crew wages, pilotage, towage, port charges, or any loss of profits or any increased cost or expenses for obtaining replacement fuel. In no event shall the Seller be liable for punitive damages.

## 12. SELLER'S RIGHT OF CANCELLATION

12.1 Cancellation. Without prejudice to any other remedies and rights and without any liability on the part of the Seller, the Seller shall have the option without notice to cancel the Contract, in whole or in part, or to store or procure the storage of the Product, in whole or in part, for the account and risk of the Buyer and charge the Buyer the expenses thereby incurred, or to hold the Buyer fully to the Contract, or take any other measures which the Seller deems appropriate, including claiming damages, in any one of (but not limited to) the following cases:

- i. if the Buyer, for whatever reason, fails to take timely delivery of the Product, in whole or in part, at the agreed place for delivery; or
- ii. if the Buyer fails, in whole or in part, to pay any amount due to the Seller and/or provide security as set out in clause 5.10; or
- iii. if, before the date of delivery, it is apparent in the Seller's discretionary opinion that the financial position of the Buyer entails a risk to the Seller; or
- iv. if, in case of force majeure (as defined in clause 14.1 below), the Seller is of the opinion that the execution of the agreement should be cancelled; or
- v. if the Seller, in its sole discretion, has reasonable grounds to believe that any Sanctions Regulations apply to the Buyer, the Vessel, the End-User, or any other party, entity or person connected to the receipt or use of the Product.
- vi. The Seller cannot be held liable for any loss, delays, claims or damage arising from cancellation made pursuant to this clause 13.

## 13. SANCTIONS, ANTI-CORRUPTION AND ANTI-BRIBERY



13.1 Compliance with international sanctions. The Buyer warrants, that at the date of entering into the Contract, and for the duration of said Contract;

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

13.2 is/are not covered by, subject to or the target of any Sanctions Regulations and that Product will not be used directly or indirectly for any purpose contrary thereto.

13.3 If the Buyer at any point becomes aware of a breach or possible breach of clause 13.1, the Buyer must immediately inform the Seller in writing.

13.4 If the Seller at any point becomes aware of a breach or possible breach of clause 13.1, the Seller will be entitled to cancel the Contract and notify the relevant authorities, and/or comply with the laws and regulations of any government to which the seller is subject and follow any orders or directions which may be given by any regulatory or administrative body, acting with powers to compel compliance, and the Buyer shall indemnify the Seller against any claims, damages, costs, losses, liabilities, and expenses, including but not limited to fines and attorneys' fees, arising as a consequence of any breach of clause 13.1.

13.5 The Seller shall not under any circumstances be required to do anything which constitutes a violation of the laws and regulations of any state to which the Seller is subject.

13.6 Upon request from the Seller and without delay, the Buyer is obligated to provide any and all information and documentation to the Seller deemed necessary for the Seller to perform sanctions compliance screenings. Failure to comply with such requests entitles the Seller to cancel the Contract pursuant to clause 14.3.

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

## 14. **FORCE MAJEURE**

14.1 The Seller and the Physical Supplier. Neither the Seller nor the Physical Supplier shall be liable for any loss, claim, damage, delay, demurrage, etc., or any failure in their performance under the Contract caused by the following circumstances;

- i. compliance with any order, direction or request from any public authority or person acting or purporting to act on their behalf; or

- ii. failure in, or unavailability of, the production, manufacture, supply, storage, transportation, distribution or delivery of the Product, or if the delivery cannot be completed by the Seller or the Physical Supplier due to congestion, shipping traffic or for any other reason outside the Seller's control; or
- iii. any cause whatsoever not within the immediate control of the Seller, including (without limitation) if such is caused wholly or partly by labor disputes, strikes, stoppages, lock-out, governmental intervention, lockdown, wars, civil commotion, riot, quarantine, fire flood, earthquake, accident, storm, swell, ice, adverse weather, epidemic, pandemic or any act of God; or
- iv. any loss of, alteration of, or damage to, or any form of hacking of or reduction in the functionality, availability or operation of the internet, or other forms of telecommunication, or of a computer system, hardware, program, software, data, information repository, microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Seller, the Buyer, the Physical Supplier or any other third party (cyber risks); or
- v. any other similar circumstances;

14.2 any of which shall be considered force majeure. Neither the Seller nor the Physical Supplier shall be required to remove any such cause or replace any affected source or supply or facility if doing so shall involve additional expense.

14.3 The Buyer. If the Buyer exercises reasonable diligence, the Buyer shall not be liable for failure to receive any particular delivery of Product if prevented therefrom by force majeure (as set out in clause 14.1). The Buyer shall remain liable for failure to perform its other obligations under the Contract, even if caused by force majeure (as set out in clause 14.1).

## 15. ASSIGNMENTS

15.1 The Seller's right of assignment. The Seller may assign/transfer any/all of its rights and obligations under the Contract.

15.2 No assignment for the Buyer. The Buyer shall not assign/transfer any/all of its rights under the Contract, without written consent of the Seller.

## 16. TITLE

16.1 Retention of title. The Product shall remain the Seller's property and title therein shall not be transferred to the Buyer until the Seller has received payment in full in accordance with the Seller's invoice(s) and until the Seller has paid the Physical Supplier in full.

16.2 Until that time, the Buyer shall

- i. hold the Product as bailee for the Seller and shall not be entitled to use them other than for the propulsion of the Vessel; and
- ii. store them in such a way that they can be identified as the Seller's property and keep them separate from the Buyer's own property and the property of any third party; and
- iii. keep them at the Buyer's risk and expense from the time of delivery and until the time when the Seller takes redelivery or repossession (in case of default by the Buyer); and

- iv. insure them against any loss or damage, and in the event of such loss or damage it shall notify the relevant insurers that the insured property is owned by the Seller, and that any insurance proceeds are to be paid out to the Seller. If the Buyer receives any such insurance proceeds, the Buyer shall always hold such proceeds on behalf of the Seller as trustee and shall notify the Seller thereof and request the Seller to inform to which of the Seller's bank accounts the proceeds may be wired to.

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

16.4 Cessation of the Buyer's right of possession and usage. Notwithstanding clause 16.1 above, the Buyer's rights to possession and use of the Product shall cease if

- i. the Buyer defaults on its obligations towards the Seller when due, or the Seller has reason to believe that the Buyer will not fulfill its obligations; or
- ii. the Buyer is declared bankrupt; or
- iii. the Buyer enters into any other form of insolvency proceedings, such as US Chapter 11 proceedings or similar proceedings in other jurisdictions, such as rehabilitation or reconstruction proceedings, compulsory agreements with creditors, suspension of payment or any other form of proceedings in contemplation of a structural debt arrangement being made vis-à-vis the Buyer and its creditors; or
- iv. the Buyer makes any proposal to any of its creditor(s) for a reorganization, restructuring, rehabilitation or any other form of voluntary arrangement; or
- v. a receiver, liquidator, administrator or the like is appointed in respect of the Buyer's business; or
- vi. the Buyer breaches any of its financial covenants or warranties provided by the Buyer to its financiers.

16.5 Upon cessation of the Buyer's right to possession of the Product as provided for herein, the Buyer shall at his own expense make the Product available to the Seller and allow the Seller to repossess them. The Buyer hereby grants the Seller, his agents and employees an irrevocable license to enter any premises where the Product are stored in order to repossess them at any time.

## 17. **SPECIAL CLAUSES ONLY APPLICABLE TO SALES OF PRODUCT TO INTERMEDIARIES (TRADERS)**

17.1 The following clauses shall apply in each case where the Contract is made with an Intermediary as the Buyer and notwithstanding anything to the contrary contained in these Terms

- i. The Intermediary's claim against its customer is assigned to the Seller as security for the Intermediary's due payment of the Seller's claim for payment against the Intermediary. Until the Seller receives payment from the Intermediary, the Intermediary shall have no right to collect payment from its customer or from the End User. If the Intermediary in whole or in part receives payment from its customer or from the End User prior to the Intermediary's payment to the Seller, the payment to the Intermediary shall be held in trust by the Intermediary on behalf

of the Seller and the amount due to the Seller under the Contract shall be paid out to the Seller therefrom.

- ii. In the event of the Intermediary's bankruptcy or similar situation of insolvency as set out in clause 16.4, the Bunkers and the Seller's claim for payment shall not form part of the insolvency estate, and the Intermediary or insolvency estate must transfer any sum to the Seller that it has received from its customer or from the End User. If the Intermediary or its insolvency estate has not received payment yet for the Bunkers, its customer or the End User shall be entitled to pay the purchase price directly to the Seller. Such payment will constitute fulfillment of the customer or the End User's payment obligations towards the Intermediary, and the payment shall also constitute fulfillment of the Intermediary's payment obligations towards the Seller, to the extent that the amount received by the Seller covers the aforementioned payment obligations. Any remaining balance in favor of the Intermediary after fulfillment of its payment obligations towards the Seller shall be the Intermediary's sole entitlement.
- iii. The Intermediary must ensure that this clause is incorporated in every contract, concluded with or by other parties in the supply chain down to and including the contract that is concluded with the End User.

## 18. ELECTRONIC COMMUNICATION

- 18.1 Notices and any other message or communication between the Parties under this Contract may be made by email or other electronic means. Such electronic communication shall have equal value to hard-copy communication, such as letters, or fax/telex.

## 19. GOVERNING LAW AND ARBITRATION

- 19.1 Law. These Terms and any Contract shall be governed by and construed in accordance with Danish law, except with respect to the existence of the Seller's maritime lien. The General Maritime Law of the United States of America shall always apply with respect to the existence of the Seller's maritime lien, regardless of the country in which the Seller takes legal action. The Seller shall be entitled to assert its rights of lien or attachment or other rights, whether in law, in equity or otherwise, in any jurisdiction where the Vessel may be found.
- 19.2 Arbitration. Any dispute arising out of or in connection with a Contract, including any disputes regarding its existence, validity or termination, shall be finally settled by arbitration administered by the Danish Institute of Arbitration in accordance with the Rules of Arbitration adopted by the Board of the Danish Institute of Arbitration. The place of arbitration shall be Copenhagen, Denmark. The language to be used in the arbitral proceedings shall be English.
- 19.3 If the amount in dispute is less than USD 500,000, then the arbitral tribunal shall be composed of one arbitrator. In all other instances, the arbitral tribunal shall be composed of three arbitrators
- 19.4 The arbitrators, the parties, their attorneys, their representatives and all the persons accompanying them shall keep confidential the existence and contents of the arbitration including any arbitral award, written and oral pleadings and all documents produced for or arising from the arbitration. Nevertheless, nothing in the present clause shall prevent a party from disclosing such information as required by law or insurers, or to protect or pursue a legal right, or to legal advisers or accountants.
- 19.5 Enforcement of rights. Nothing in these clauses shall, in the event of failure to pay on the due date or in the event of any other form of breach by the Buyer, preclude the Seller from taking any such legal action as it shall in its sole discretion consider necessary to enforce, safeguard or secure its rights under the Contract. The Seller is entitled to take such action in any court or tribunal in any state or country, including but not be limited to actions taken to enforce the Seller's rights and/or to obtain security (such as the arrest of the Vessel or of other ships or attachment of other assets). Following any such legal action as mentioned herein, the Seller may bring substantive legal action in any competent court against the Buyer or against the owner of the arrested vessel or other attached asset.