

## **General Terms & Conditions for Sale of Bunker**

Except as may otherwise be negotiated by the parties and agreed to in writing in the Contract (defined below), the following terms and conditions (the “Conditions”) shall apply to all sales of Bunker by Gulf Petrol Supplies LLC (hereinafter referred as GPS Bunkers). Each delivery shall constitute a separate contract. In the event of any conflict between the provisions hereof and of the Contract, the provisions of the Contract shall prevail. Unless a challenge to the Sales Agreement is made by the Buyer to the Seller within one Working Day of the Sales Confirmation being sent to the Buyer, then it shall be deemed that the Buyer has accepted the Sales Agreement in its entirety.

### **1. Definitions**

- 1.1** “Bare Boat Charter” means a charter in which the charterer is given control and possession with legal, technical and financial responsibility during the agreement period and incurs cost in relation to crew, operating expenses, insurance, port expenses and/or other expenses, on its own account, required for plying the vessel during the relevant period.
- 1.2** “Bunker” or “Marine Fuels” means any petroleum based product currently offered by the Seller for similar use at the time and place of delivery and includes “Marine Fuel”.
- 1.3** “Buyer” means the jointly and severally, the master, chief engineer (s), registered owner, managers, charterers, operator, disponent owners and time charterers of the Vessel supplied and shall include but not limited to any party requesting the supply of Bunkers or ordering the supply of Bunkers and any party on whose behalf the said offer or order to supply Bunkers and agreements or contracts or other arrangements have been made pursuant to the Contract.
- 1.4** “Contract” means an agreement between Seller and Buyer for the sale of Bunker subject to these conditions.
- 1.5** “Prohibition of Lien Clause” means the protection given by the charterers to the owner of the vessel wherein the charterers have provided indemnity (under charter party) to the owners that they will not suffer nor permit continuance of any lien or encumbrance incurred by them or their agents in relation to the vessel, which might have priority over the title and interest of the owners in the vessel.
- 1.6** “Seller” means Gulf Petrol Supplies LLC (GPS Bunkers) including its agents and suppliers wherever applicable.

1.7 “Supplier” means the party supplying the Bunkers for and on behalf of the Seller, which Seller shall not be responsible for Supplier’s actions.

1.8 “Vessel” means the vessel to which the Bunkers are delivered by Seller to Buyer.

## 2. Price

2.1 The price to be paid for Bunker shall be as quoted and intimated by the Seller in reference to each transaction (the “Purchase Price”), at the time thereof, and shall represent only the purchase price thereof. Prices shall be designated in the currency as may be mutually agreed between the Seller and the Buyer, exclusive of taxes and duties ex-wharf in metric tons corrected to 60 degrees F, 15 degrees C. All charges additional to purchase price, such as, without limitation thereto, demurrage, wharfage, dues, taxes, levies, duties, port charges and delivery charges, and all other costs imposed by government and local authorities are to the account of Buyer.

2.2 If the party requesting the Bunker is not the Owner or Bareboat Charterers of the Vessel, the Seller shall have the right to insist as a precondition of sale that a payment guarantee in the form of an irrevocable bank guarantee in a format and from a bank acceptable to the Seller is provided by the Owner or Bareboat Charterer. The Seller has the right to cancel any Contract with the Buyer at any time, if such payment guarantee is not received upon request thereof from Seller to Owner or Bareboat Charterer.

2.3 Payment shall be made by Buyer in full as directed by the Seller, within the time specified in the Contract. Seller shall be entitled absolutely to the full payment without discount, reduction or set off which shall be made to the Seller’s bank account.

2.4 Buyer shall not be entitled without Seller’s written consent to offset any amounts for claims against Seller, whether or not these claims are connected and whether or not they arise out of the Contract.

## 3. Credit to the Vessel.

3.1 Bunker delivered hereunder is sold and delivered on the financial credit of the Vessel, as well as on the promise of the Buyer to pay. Buyer agrees and warrants that Seller shall have the right to assert a maritime lien, attachment or claim against the Vessel to which Bunker is delivered for the purchase price, any extra charges incurred in accordance herewith, any taxes billed on the delivery of Bunker or otherwise, any interest due thereon including on overdue payments and all associated recovery costs should Buyer fail to pay for Bunker on time. Such remedy shall be in addition to, and not in limitation of, any other remedies available to Seller whether under law, contract or equity.

In particular and without limitation to the foregoing, as the Seller acts in the capacity of a bailee for the Buyer in relation to the transit of the Bunker (post the transfer of title in the Bunker and up till the point of Delivery), the Seller shall be entitled to exercise its right of unpaid seller's lien. Buyer warrants that the Bunker purchased hereunder is for the operation of the receiving Vessel and that Vessel only.

- 3.2** Buyer shall provide the full contact details of owners, managers and the Master of the Vessel (the "Vessel Interests"), to which Bunkers are to be supplied before the issuance of a Confirmation Agreement and/or Nomination by Seller. Buyer authorizes Seller to contact Vessel Interests at Seller's sole option, in advance of delivery of Bunkers to put the Vessel on notice that the sale and delivery is made on the basis of the financial credit of the Vessel as well as Buyer and on the terms and conditions of the Contract and these Conditions. Even if Seller fails to contact the Vessel Interests, Seller's rights shall not be limited. Should the Vessel Interests give notice to Seller that financial credit of the Vessel is denied before delivery of Marine Fuels to the Vessel is made, no credit can be granted to Buyer and the Marine Fuels shall be paid for in cash or equivalent by buyer prior to delivery.
- 3.3** Any notice by Buyer that a maritime lien on the Vessel may not be created because of the existence in Buyer's charter party of a Prohibition Of Lien clause or similar clause, or for any other reason, must be given to Seller in the initial order for Bunkers (hereinafter defined as the Nomination). In the event Buyer provides notice of such restriction, no credit can be granted to Buyer and the Bunkers shall be paid for in cash or equivalent prior to delivery. Any notice of such restriction given by Buyer, its agents, Vessel Interest, the Vessel's personnel or other person later than in the Confirmation Agreement and/or Nomination shall not modify the terms of sale except that any granting of credit by Seller is rescinded on receipt of the notice, with full payment due forthwith from Buyer.

#### **4. Quality**

- 4.1** Bunker to be supplied shall be the quality offered generally by Seller at the time and place of delivery for the particular grade or grades ordered by Buyer. Buyer shall have the sole responsibility for the selection of the proper grade or grades of Bunker for use in the Vessel nominated. Any information provided to Buyer regarding the characteristics of Bunker at any delivery location shall not be construed as specifications of the Bunker to be delivered hereunder, but only as indications of the general characteristics of the Bunker available at that location from time to time.

Except for this clause, bunker is 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 the absence of bio-components in the marine fuels are expressly excluded.

- 4.2** Buyer shall have the sole responsibility for the selection of suitable Bunker for use in the Vessel. Buyer warrants that it has not relied upon any representations made by or on behalf of the Seller but has relied exclusively on its own knowledge and judgment in determining whether the Bunker selected by Buyer for the Vessel are suitable for the Vessel. Buyer warrants that the Vessel nominated by Buyer to receive Bunker 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.
- 4.3** With respect to the quality of the Product supplied, sampling shall be accomplished throughout the Marine Fuel delivery process. Sample shall be drawn from a point and in a manner as set by the seller / supplier , at the port of delivery of the Marine fuel, until unless, expressly agreed otherwise , by the seller and buyer , in written, prior to entering the contract of sale and purchase of Marine fuel.

The seller / supplier shall draw a minimum of three (3) samples of each grade of Marine Fuels being delivered from the Vessel, Bunker Barge, Road Vehicle or any other delivery facility manifold; unless the seller/physical supplier elects otherwise (always subject to safety and practicality at the time of supply at sole discretion of Seller). It is the Buyer’s responsibility to ensure that the marine fuel/s is/are properly sampled, sealed and signed by the buyer’s ship’s master. Two (2) samples, out of which, one (1) commercial sample and one (1) MARPOL sample, shall be passed to the Buyer, the Vessel or the buyers representatives for its retention; and one (1) commercial sample out of these samples shall be retained by the seller / supplier as per agreed procedure, following the date of delivery for a period, in a safe place for subsequent verification of the quality thereof, if required.

However, any quality claims to be informed to the seller / supplier within Fourteen (14) days following the date of supply. Any claim received after Fourteen (14) days, from the date of supply, shall not be entertained. If the buyer issues a claim regarding the quality of the Marine Fuel in accordance with the clause 8.2 of this contract, and provide the claim is legitimate in accordance with ISO, Seller’s retained commercial samples shall be submitted by the Seller for relevant analysis to a mutually agreed, independent laboratory in Fujairah. The independent laboratory’s analysis shall be conclusive and binding on agreement, and the fees of independent laboratory shall be shared equally by the Buyers and Sellers. In the event that Seller proposes an independent laboratory and Buyer takes no action to either accept this proposal or to suggest an alternative laboratory, then Seller’s choice of laboratory shall be binding and any tests performed by such laboratory shall be similarly binding, regardless of whether or not, Buyer chooses to send a representative to such testing.

**4.4** The claim must include the results of a test carried out in accordance with the relevant test method in ISO 8217 by a qualified independent laboratory on one of the buyer's retained commercial sample, drawn by seller as per clause 4.3 ; within Fourteen (14) days from (and including) the date of Completion, failing which any such claim shall be waived and absolutely barred.

Any Sample/s drawn by buyer's personal, other than those drawn by the seller / supplier, either at the time of bunkering or at any date after the bunkering shall not be valid and admissible as indicator of the quality supplied. The fact that, even if such samples bear the signature of personal aboard the delivery conveyance, shall have no legal significance whatsoever, as these local personnel have no authority to bind the Seller to different contractual terms.

Seller shall have no liability for any claims arising in circumstances where the Buyer has commingled the Product/s on board the Vessel with other fuel.

## **5. Title, Nomination and Deliveries**

**5.1** Buyer shall nominate a Vessel in writing in advance of the Vessel's Estimated Time of Arrival (the "ETA"). Buyer shall specify the delivery port, ETA and grades, specifications and quantities of Bunker required (the "Nomination"). Buyer shall also advise the Seller of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of, and particular to, the Vessel which might adversely affect the delivery of the Bunker. If such Nomination is accepted and confirmed in writing by Seller through the issuance of a Confirmation, the ETA proposed by Buyer shall become the "Accepted Delivery Date" unless otherwise agreed in writing by Seller. Unless advised in writing by Buyer and accepted in writing by Seller, amendments to the Accepted Delivery Date will not be recognized. Seller may cancel any Nomination without liability and without prejudice to any rights Seller may have against Buyer if the Vessel does not present itself for delivery on the Accepted Delivery Date. The Vessel is subject to Seller's acceptance and Seller may refuse to supply Marine Fuels to the Vessel. The 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.

**5.2** In addition to the Nomination, Buyer's vessel shall give Seller firm and consistent notices of 96/72/48/24/12 hour's written notice on ETA updates of the vessel as mentioned in Calling Instructions, confirming the delivery date, type and quantities of Bunker and providing other delivery details. If such proposed delivery date is a date other than the Accepted Delivery Date, Buyer shall be in breach of the Contract, however, Seller may waive such breach and accept the proposed revised delivery date (the "Revised Delivery Date") and Seller may, at its option, accept such proposed revised delivery date and change the price to reflect current market prices. If Buyer objects to the price change, Seller shall have the right to cancel the order without any further obligation or liability on the part of Seller and Seller may consider Buyer in breach of the Contract. If Buyer

fails to provide 96/72/48/24/12 hour's written notice on ETA updates, Buyer will be in breach of this Contract.

- 5.3** When delivery is required other than during normal business hours, and is permitted by applicable port regulations, Buyer shall be fully responsible for and pay all overtime and other associated extra expenses incurred by Seller.
- 5.4** When delivery is made by barge, truck or coastal tanker (hereinafter collectively "Delivery Vessel"), all delivery charges, including overtime and associated charges, shall be for the account of Buyer. For delay caused by Buyer in the use of Delivery Vessel, Buyer shall pay any demurrage or detention charges at such rate as may be invoiced by Seller.
- 5.5** Buyer shall notify Seller; in writing 96/72/48/24/12 hour's written notice on ETA updates prior to delivery of the maximum allowable pumping rate and pressure for the Vessel and Buyer and Seller shall agree on communication and emergency shutdown procedures. If the Vessel's actual receiving rate for Bunker falls below the minimum level set forth in the Confirmation Agreement and the barging company imposes demurrage or other costs due to the slow delivery, all such costs shall be for the Buyer's account.
- 5.6** Buyer shall notify Seller, in writing 96/72/48/24/12 hour's written notice on ETA updates, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of or particular to the Vessel that might adversely affect the delivery of Bunker. Buyer shall be responsible for any increased costs incurred by Seller in connection therewith. If such special conditions, difficulties, peculiarities, deficiencies or defects exist, Seller may, at its option, cancel the nomination without liability.
- 5.7** When delivery is to be made by the Delivery Vessel, the Vessel shall provide a free and safe berth for the Delivery Vessel alongside the Vessel to receive Bunker and render all necessary assistance that may reasonably be required to safely moor and unmoor the Delivery Vessel.
- 5.8** Buyer shall be responsible for connection of the loading hose to the intake of the Vessel from the Delivery Vessel and shall monitor and direct safe receipt of the Marine Fuels by the Vessel.
- 5.9** If Buyer cancels, terminates or otherwise fails to take delivery, in whole or in part, of the quantities nominated, Buyer shall be responsible for any costs resulting from such failure, including without limitation, lost profits, breakage costs and any costs and expenses incurred by Seller to downgrade Bunker or return unaccepted quantities of Bunker. In such instance, Seller shall not be responsible for any costs resulting from such failure, including without limitation, replacement costs and expenses incurred by Buyer.
- 5.10** Seller shall not be responsible for demurrage on the Vessel if Seller is prepared to commence delivery at any time on the Accepted Delivery Date or the Revised

Delivery Date. Seller shall exercise reasonable efforts to adjust to changes in Buyer's schedule.

The Seller shall not be in breach of its obligations under any Transaction in the event that performance is prevented, delayed, or made substantially more expensive as a result of any one or more of the below contingencies, whether or not such contingency may have been foreseen or foreseeable at the time of contracting and regardless of whether such contingency is direct or indirect. The Seller and/or Seller's supplier shall also not be liable for demurrage paid or incurred by Buyer due to any delay in delivery of Bunker if:

- (i) the delivery date, which is defined as the date on which hoses are disconnected, was not within the Accepted Delivery Date or was not otherwise accepted by Seller as outlined in Sub-clauses 5.1 and 5.2;
- (ii) 96/72/48/24/12 hours written notice on ETA updates or as specified in the Calling Instructions, as defined in Sub-clause 5.2, was not given;
- (iii) Seller's Delivery Vessel arrived in a timely fashion and performed according to accepted practice;
- (iv) conditions as set forth in Clause 20 & Sub-clause 5.16 & 5.17 existed;
- (v) Seller was ready and able to perform;
- (vi) conditions onboard the Vessel resulted in failure to receive Bunker;
- (vii) conditions beyond control of Seller, their barge, terminal, vehicle, machinery, plants, equipment's, etc. resulted in failure to received Bunker;
- (viii) Buyers and/or his Vessel/agent fail to provide exact arrival, berthing, unberthing, sailing and/or any other detail, information, document as required by sellers to perform delivery; or
- (ix) Sellers have informed Buyers and/or their vessel/agent about anticipated delays (if any), twenty-four (24) hours prior to delivery period.
- (x) Any cause beyond the reasonable control of the Seller, whether or not foreseeable.
- (xi) Any determination, at Seller's sole discretion, that proceeding with a delivery would be a violation of the sanctions laws or regulations of the United States or any other jurisdiction to which Seller may be subject.
- (xii) Compliance with applicable law or a change, request or order of any governmental authority or agent;
- (xiii) Labor disturbance, whether involving the employees of the Seller, Supplier or otherwise, and regardless of whether the disturbance could be settled by acceding to the demands of the labor group;

**5.11** Should Seller fail to deliver Bunker on the Accepted Delivery Date or the Revised Delivery Date, any claim involving demurrage incurred by the Buyer's Vessel must be submitted by Buyer to Seller in writing within fourteen (14) days of the date of delivery. If Buyer fails to submit a demurrage claim within fourteen (14) days after the date of delivery, any such claim shall be deemed to be waived and absolutely barred.

- 5.12** All deliveries to Seller's customers will be made on a first come first served basis.
- 5.13** Where delivery is required during other than regular business hours (0930 Hrs to 1800 Hrs) at the port of supply, Buyer shall pay all overtime and extra expenses incurred by Seller or its agents or contractors, if applicable.
- 5.14** Where lighterage is employed, lighterage charges shall be for the account of Buyer. Lighterage will be charged on the quantity delivered to the Buyer's vessel in accordance with the rates and charges of the fuel barge contractor. Deliveries of light diesel, gas oil and other grade of Bunker on two or more barges will be subject to separate charges.
- 5.15** Seller shall not be liable for demurrage or for loss, damage or expense of any nature whatsoever incurred by Buyer due to any delay in delivery, or failure to make delivery, of Bunker, occasioned by the fuel barge contractor. Seller further shall not be liable for such demurrage, loss, damage or expense incurred by Buyer due to delays in furnishing a berth. In any situation not included above, Seller shall not be liable for delay in delivery, or failure to make delivery, of Bunker unless Buyer proves that the delay or failure was solely caused by gross negligence on the part of the Seller. In any case, damages recoverable from Seller for delay in delivery or failure to make delivery shall be limited to direct damages for additional time in port and shall not include any consequential damages whatsoever, including, without limitation thereto, detention, demurrage, charter hire, crew wages, towage, pilotage, lost profits, barge delivery charges and increased costs or expenses in obtaining replacement fuel.
- 5.16** Delivery into Buyer's vessel at terminal need not be made whenever, in Seller's opinion, clear and safe berth for the vessel is not available, or when, for any other reason, delivery would, in Seller's opinion, be unsafe or inadvisable.
- 5.17** Delivery into Buyer's vessel by barge need not be made whenever, in the opinion of Seller or the fuel barge contractor, safe passage or clear and safe berth for the barge, whether alongside Buyer's vessel or otherwise, is not available, or when, for any other reason, in the opinion of Seller or the fuel barge contractor, delivery would be unsafe or inadvisable.
- 5.18** The Seller reserves the right to have the delivery made by a third party supplier if for any reason delivery cannot be made from its own supply, however, the Seller shall remain responsible for the performance of the Contract

- 5.19** The Buyer shall be responsible for all demurrage or additional expenses incurred by the Seller if the Buyer, its vessel or its port agent causes delay to the barge, truck or delivery facilities. The Buyer shall also pay any charges for mooring, unmooring and port dues, if incurred. In addition, the Buyer shall be liable for any expenses incurred by the Seller resulting from the Buyer's failure to accept the full quantity of Products ordered by the Buyer.
- 5.20** In the event that performance is prevented or delayed by such a contingency, the Seller may reduce deliveries in any manner as it may determine in its sole discretion.
- 5.21** If performance is made substantially more expensive by such a contingency, the Seller shall have the option either to reduce or stop deliveries or to continue deliveries and increase prices in fair proportion to the increased cost of operation under such a contingency.
- 5.22** Quantities not sold or purchased due to the occurrence of such a contingency may be reduced or eliminated from the contractual amount at the discretion of the Seller.
- 5.23** The quantity of Marine Fuel delivered shall be the quantity specified in the Confirmed Nomination with an operational tolerance at Seller's option.

## **6. Delivery and Cancellation**

- 6.1** Delivery shall be deemed completed by the Seller to the Buyer at the permanent intake connection of Buyer's Vessel, whether product is delivered ex-wharf or by fuel barge. At either location, however, pumping shall be performed under the direction of Buyer or Buyer's Vessel personnel. If full payment of any amount due to the Seller has not been made by the Buyer, the Seller has the right to attach or assert a maritime lien or claim against the vessel and/or sister ship and/or any other asset of the Buyer (or the owner of the vessel) whereby situated in the world without prior notice.
- 6.2** Buyer shall be responsible for connection of the loading hose to the intake of the Vessel from the Delivery vessel and shall monitor and direct safe receipt of the Bunker by the Vessel.
- 6.3** If buyer cancels or fails to take, in whole or in part, the delivery of Marine Fuels as specified in the Nomination and/or Confirmation Agreement, within the agreed delivery period for whatsoever reason other than a Force Majeure event, Buyer shall pay Seller a cancellation fee equal to the greater of

- (a) US \$ 5 (Five United State Dollars) per metric tonnes and/or amount equivalent to currency of transaction mentioned in Nomination and/or Confirmation Agreement, as liquidated damages, and
- (b) all losses and liabilities incurred by Sellers as a result of such cancellation or failure to take full delivery, including without limitation (i) the difference in price as 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) port dues (v) and/or any other expenses associated in relation with cancellation.

## **7. Inspection and Measurements**

The quantity of Bunker delivered shall be determined by measurements of gauges of the delivery vehicle / barge tanks (as the case may be), at Seller's sole option and Buyer will be charged on the basis of these measurements, regardless of quantities received in buyer's vessel tanks. Buyer has a right to have its representative present during measurement to verify the same, but in the event no such representative attends, determination of quantity shall be made solely by Seller, and such determination shall be conclusive and binding.

## **8. Claims**

- 8.1** Any claim by Buyer as to shortage in quantity must be noted on the Letter of Protest (LOP) signed by Master or Chief Engineer at time of delivery. Quantity determination shall be made on the basis of Seller's barge tanks or Seller's Delivery Vehicle. Quantity calculations and quantity claims made on the basis of Buyer's Vessel's measurements shall not be applicable. Quantity claims made on the basis of alleged incorrect density used for Seller's quantity determination shall be addressed by means of analysis of a Seller's sample at a mutually agreed independent laboratory. Should the independent laboratory's determination of density fall within the established test precision range (repeatability and reproducibility) for density, no adjustment to the invoice quantity shall be made and the costs for the analysis of the independent inspector shall be borne by the Buyer. Should the independent laboratory's determination of density fall outside the established test precision range (repeatability and reproducibility) for density the invoiced quantity shall be adjusted, either higher or lower, accordingly and the costs for the analysis of the independent inspector shall be borne by the Seller.
- 8.2** Any claim by Buyer with respect to deficiency in quality of Bunker delivered by Seller, or claim by Buyer that Seller delivered improper or the wrong kind of Bunker must be made as soon as possible, and in no event more than fourteen (14) days from date of delivery to the Buyer's vessel.

On making claim, Buyer shall immediately give Seller reasonable opportunity to test the sample, as per clause no. 4.3, by the way of giving consent to sellers, on appointment of independent laboratory, in no event more than 7 days from date of lodging claim by buyers as same shall be required by Seller to satisfactorily evaluate the claim and reach to the conclusion. Quality claims made on the basis of alleged incorrect quality supplied shall be addressed by means of analysis of a Seller's sample at a mutually agreed independent laboratory. Should the independent laboratory's determination of quality fall within the established test precision range (repeatability and reproducibility except for Flash Point) for said parameter, no claim to the sellers shall be made 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. Buyer shall take all reasonable measures, including retention and burning of Bunker 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 Seller will be responsible only for direct expenses incurred for removal and replacement of Bunker. If Buyer removes such Bunker without the consent of Seller, then all such removal and related costs shall be for Buyer's sole account.

- 8.3** Buyer shall immediately give Seller all reasonable opportunity to inspect the vessel, including, without limitation, its engines, fuel tanks, equipment, logs, records and copies of communications, including communications between vessel and Buyer (and/or between vessel and owner or operator) as well as communications to and from fuel testing organizations consulted by Buyer or vessel interests and/or any other type of enquiry/investigation, which in sellers deemed fit to reach to the conclusion. If these conditions are not met within said Fourteen (14) day period, Buyer shall be time-barred from making claim. See further sub-clause 11.5
- 8.4** Failure to meet above conditions (as referred in clause 8.3) shall constitute a waiver of the Buyer's claim.

It is the duty of the Buyer to take all reasonable actions to eliminate or minimize any damages or costs associated with any off-specification or suspected off-specification Products. To this end Buyer shall cooperate with the Seller in achieving the most cost effective solution including the consumption of the Product after treatment and/or special handling. In the event that the Product is off-specification and cannot be consumed by the vessel; Buyer's remedies shall be limited exclusively and solely to replacement of the nonconforming products. If Buyer removes Product:

- (i) Without the express written consent of Seller and/or (ii) at the location where seller is not agreeable; then all such removal and related costs shall be solely for Buyer's account. No liability will be borne by seller for (1) any demurrage or other vessel delay or for indirect, special, incidental or consequential damages, including, but not limited to damages arising from the exercise of sellers right to suspend and/or terminate delivery of product, or (2) any acts or omissions of Agents and/or sub-contractors of seller including without limitation, fuel transporters or fuelling agents.
- 8.5** Seller shall not be responsible for any claim arising from the commingling of Bunker delivered by Seller with other fuel or substances aboard Buyer's vessel or aboard the fuel barge.
- 8.6** Claim of any nature does not relieve Buyer of responsibility to make full and timely payment of all amounts billed by Seller as provided in Clauses 2 and 10.
- 8.7** The parties shall endeavor to resolve the matter one way or the other within forty-five (45) days of receipt of claim. 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. Where Buyer and Seller cannot come to agreement on such claim within ninety (90) days from when it was made, either party may invoke the dispute resolution procedures in accordance with the provisions of Clause 14 below. However, nothing in this contract shall relieve the Buyer of its obligation to make payments in full when due without offset or deduction as provided herein.
- 8.8** In certain locations, Seller utilizes third-party independent operators to provide barging and towage services in connection with the delivery of the Bunker. 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.
- 8.9** 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.
- 8.10** In any case, claims of the Buyer shall be time barred unless legal proceedings have been initiated before the competent Court within twelve months after the date of delivery or the date that the delivery should have commenced pursuant to the written confirmation from the Seller.

## 9. Bonded Bunker

Bunker in Bond, when available to Seller, may be delivered, provided Buyer qualifies to receive such fuel. Buyer shall reimburse Seller for any tariff, tax, duty, penalty or other charges subsequently assessed for any reason, including the failure of Buyer to furnish the necessary qualifying proof within 30 days of delivery.

## 10. Payment

**10.1** Upon the transfer of title to the Bunker from Seller to Buyer, the Seller shall have a right to payment of the price by the Buyer for the Bunker sold. Payment of the price for the Bunker and all charges (including delivery charges) shall be made in full (without any abatement, deduction, set-off or counter claim whatsoever) in cleared funds in US dollars (or such other currency as may be stated in the Fuels Agreement). Unless otherwise established in the Fuels Agreement, payment shall be due with effect from the date of delivery and shall be made by means of telegraphic transfer, automated credit transfer or electronic transfer of same day funds quoting the Seller's invoice number and the Buyer's name to the account specified by the Seller in its invoice to the Buyer, value dated no later than thirty (30) calendar days (or such other period as is agreed by the Buyer and Seller) from completion of delivery of the Marine Fuels in question. If, however, the Seller's bank is closed for business on the last day of the applicable credit period, the Buyer shall make its payment by the last day within such credit period when the Seller's bank is open for business. All bank charges in respect of such payments shall be for the remitter's account. Should any claim or dispute arise between the Buyer and Seller in relation to any item on an invoice under this Contract, the Buyer shall make payment in full as set out above. The claim or dispute will be resolved separately and if appropriate, the Seller will issue a debit or credit note to the Buyer when the dispute is resolved.

**10.2** If Seller considers Buyer's financial condition inadequate, or for any other reason, Seller may require cash payment in advance or security acceptable to Seller before transfer of title to the Buyer.

**10.3** Seller may, at its option, grant credit to Buyer on the following terms:

- (i) Credit can only be granted if it is secured by a maritime lien on the vessel in accordance with Clause 3.
- (ii) Buyer shall make full payment within 30 days (or such other period as is agreed by the Buyer and Seller) of date of transfer of title from the Seller to the Buyer, in accordance with this agreement.
- (iii) If full payment is not received within 30 days (or such other period as is agreed by the Buyer and Seller), the amount overdue shall be subject to interest charged at the rate of 18 percent per annum, 1 1/2% per month, or the maximum rate permitted under law, whichever is less. Interest shall be paid from the date of transfer of title until the date payment is received by Seller.

- (iv) If credit is granted to Buyer, Seller may withdraw such credit at any time, for any reason, and require full payment upon transfer of title or at any time after the transfer of title. If credit is withdrawn and payment is not made upon demand, interest shall be payable from date of transfer of title at the rate set forth in Clause 10.3(iii).
- (v) If payment is not made within 30 days (or such other period as is agreed by the Buyer and Seller), or if credit is withdrawn and payment not made upon demand, Buyer shall be liable for reasonable attorneys' fees and collection expenses whether or not suit is filed. If suit is filed, Buyer shall be liable for all court costs in addition to reasonable attorneys' fees and expenses. Said charges, together with interest, shall constitute a part of the Seller's maritime lien on the vessel under Clause 3.

**10.4** Should Bunker be ordered by an agent, then such agent, as well as the principal, shall be bound by, and liable for all obligations as fully and as completely as if he were himself the principal, whether such principal be disclosed or undisclosed, and whether or not such agent purports to contract as agent only.

**10.5** Goods once sold will not be taken back and no refund will be allowed.

**10.6** Without limitation to the foregoing or to the Seller's other rights under the Contract or otherwise the Seller shall have the right to require, in respect of any payment not made by the due date, the payment by the Buyer to the Seller of interest thereon at the rate of 18 percent per annum and pro rata for part thereof, such interest to run from the due date until the date payment is received in cleared funds by the Seller's bank.

**10.7** Nothing in this agreement, terms and conditions and provisions, shall be deemed to excuse the Buyer from its obligation to make payments for Products received.

## **11. Limitations of Seller's Liability**

**11.1** Seller contracts to supply Bunker only upon the basis of the liabilities as set forth below, unless otherwise negotiated by the parties and agreed to in writing. The Seller shall not be liable for damages of whatever nature, including physical injury, nor for delivery of bunkers or services, no matter whether or not such damages or delay has been caused by fault or negligence on the side of the Seller. The Seller shall furthermore not be liable for damages or delay as described above when such damages or delay has been caused by the fault or negligence of its personnel, representatives or sub-contractors.

Liability of the Seller for consequential damages is excluded. Buyer and its Vessel (inclusive her owners, charterers, managers and agents), shall be solely responsible for any loss or damage occurring on board or to the Vessel resulting from any incident arising out of or in connection with bad weather conditions and/or circumstances beyond control of sellers and/or their barge, terminal, plant, vehicle, pumps, equipment's, machineries etc.

- 11.2** Seller is not liable for any loss, damage, expense or delay resulting from strikes or labour difficulties whatsoever and wheresoever occurring or for stoppage or delay of work due to causes beyond its control.
- 11.3** Seller is not liable for supplying defective or improper Bunker, or Bunker other than as ordered by Buyer, unless the same is directly and solely caused by the negligence of Seller's own employees, which negligence must be affirmatively proved. In such event, Seller's liability, if any, is strictly limit to the cost of replacement of the defective or improper or wrong kind of Bunker at the date and port furnished. Buyer acknowledges and warrants that it is Buyer's responsibility to test the fuel provided and to insure that it is proper in all respects prior to the use of such fuel on Buyer's vessel. Accordingly, Seller shall not be responsible for any damage to Buyer's vessel, including, without limitation thereto, its machinery or tanks or their contents, caused by use of defective, improper or the wrong kind of Bunker. Under no circumstances will Seller be liable for any consequential damages whatsoever including, without limitation delay, detention, demurrage, charter hire, crew wages, towage, pilotage, port or wharf charges, lost profits, barge delivery charges and increased costs or expenses for obtaining replacement fuel.
- 11.4** Seller is not liable for damage to Buyer's vessel or other property, caused by acts other than the supplying of defective or improper fuel, or for any other loss sustained by the vessel, its owners, charterers, underwriters, or other parties in interest, in contract, tort or otherwise.
- 11.5** Seller shall be discharged from all liability for defective workmanship, material or Bunker, or for other loss or damage, unless the same is discovered and claim in writing made to Seller within fourteen (14) days after the Bunker was delivered to the vessel or the vessel damaged by Seller's employees as above described and litigation is commenced within one year after the Seller delivered the Bunker or Seller's employees otherwise damaged Buyer's vessel or other property.
- 11.6** Buyer shall indemnify and hold harmless Seller and their agents, terminal and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of services or the providing of Bunker under this contract, including claims, damages, losses, penalties, statutory liability or expenses arising under any law (whether UAE law or otherwise),

including but not limited to air, water quality or hazardous waste statute, regulation or ordinance, hereinafter referred to as “Claims”, providing that any such claim, damage, loss, penalty, statutory liability or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting there from, or due to the Claims, and (b) is caused in whole or in part by any negligent act or omission of Buyer, the vessel or vessel interests, their agents or employees or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not such claim, damage, loss, penalty, statutory liability or expense is also caused in part by the Seller, the fuel barge contractor, their agents, terminal or employees. (c) The foregoing is in lieu of all warranties and liabilities of Seller; express or implied. (d) Buyer shall indemnify and hold Seller and/or their appointed barge (inclusive barge – owners, charterers, managers and agents), terminal, vehicle and plant harmless as to any damages, injury, claims, expenses, losses, statutory liability or penalties arising due to bad weather condition and/or circumstances beyond Seller’s control.

## **12. Environmental Protection**

- 12.1** In the event of a spill during fueling, Buyer and the vessel shall, at their own expense, immediately take whatsoever action is necessary to give prompt notice to the official bodies and to effect clean-up. Failing prompt action, Buyer and the vessel authorize Seller and/or the fuel barge contractor to conduct and/or contract for such clean-up at Buyer’s and vessel’s expense.
- 12.2** Buyer warrants that the Bunker purchased hereunder is for the operation of the receiving vessel and that vessel only. Buyer shall hold Seller harmless as to any claims, expenses, losses, taxes or penalties arising from Buyer’s breach of this warranty, including attorney fees.
- 12.3** Buyer warrants that the vessel fueled is in compliance with all national, state and local statutes, regulations and ordinances, including those requiring proof of financial ability in regard spills of oil and hazardous materials. Buyer shall hold Seller harmless as to any delays, claims, losses, expenses or penalties arising from breach by Buyer of this warranty, including attorney fees.
- 12.4** It is the responsibility of the master of the Vessel to notify the Seller, per written, before commencement of supply, of any conditions, difficulties, peculiarities, deficiencies or defects with respect to engines, boilers, fuel tanks, piping, navigation equipment, mooring lines, tackle, gear, and any other types of equipment of their own vessel and/or calibration chart, pipe lines and/or any other equipment, defect, conditions, deficiencies, peculiarities of Marine Fuel delivering resources used by the Sellers and/or Seller’s suppliers, which might jeopardize or impose hazards or problems in connection with handling, mooring, unmooring or bunkering of the vessel.

Buyer's vessel will not be moored at wharf or alongside any other marine loading facilities, or a fuel barge and/or any other Marine Fuel delivering resources brought alongside the Buyer's vessel, unless said vessel is free of the aforesaid conditions, difficulties, peculiarities, deficiencies or defects.

### **13. Disclaimer Warranties**

Any implied warranties whatsoever, whether statutory or otherwise, including the warranties of merchantability and fitness for a particular purpose or of condition and any oral or implied agreements inconsistent with this Agreement are expressly excluded and disclaimed.

### **14. Jurisdiction**

**14.1** Any controversy or claim between Buyer and Seller, or between Buyer and the fuel barge contractor, relating solely to the quality or quantity of Bunker delivered or to be delivered hereunder or to the sum payable for such fuel shall be submitted to the jurisdiction of the Courts at London, United Kingdom.

**14.2** The above shall not prevent the Sellers recourse to file an *in rem* suit in a jurisdiction of their choice to recover the unpaid bunker price along with the accrued interest.

### **15. Governing Law and Dispute Resolution**

**15.1** This Agreement shall be governed and construed in all particulars by the principles of the Law of England and Wales. 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.

**15.2** 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 Contract, and with respect to enforcing maritime lien or attachment rights.

**15.3** 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 Contract, 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 Special Terms or otherwise notified pursuant to this Contract, 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 Contract. 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.

## **16. General Shortage**

**16.1** If in Seller's opinion there is a shortage or there are shortages of supply of products, whether or not of the quality or grade designated by Buyer, at any of its present or future regular sources of supply or at any of those of its Supplier or Suppliers, with the result that Seller is unable to meet its requirements for sale to customers of all kinds, Seller may allocate, on any reasonable basis according to its own discretion, its available products among its customers both under this contract and, at Seller's option, regular customers not then under contract.

**16.2** Notwithstanding the provisions of sub-clause 16.1, Buyer shall not be relieved of any obligations under Clauses 2, 5 and 10 above to pay for the product delivered hereunder.

## **17. Force Majeure**

**17.1** Neither party shall be responsible for any loss, damage, delay or failure in performance under this Contract resulting from an act of God, or the port or area of delivery being affected by war, civil commotion, riot, quarantine, strike, stoppage, lock-out, arrest, restraint of princes, rulers and people, piracy, acts of terrorism or any event whatsoever which is beyond the control of Seller and cannot be avoided or guarded against the exercise of ordinary care.

- 17.2** Seller shall not be in breach of its obligations, or be responsible for any loss, damage, delay or failure, in the event that performance is prevented or delayed as a result of any one or more of the following events: (1) labor disturbance, strike, stoppage or lock-out, whether involving the employees of Buyer, Seller, its supplier, its barging contractor or otherwise, and regardless of whether the disturbance, strike, stoppage or lock-out could be settled by acceding to the demands of the labor group or laborers involved; (2) compliance with a change, request, direction, order, regulation or law of any governmental authority or agent; (3) shortage in raw material, marine or land transportation, manufacturing, blending or storage facilities or Bunker, whether in whole or in part from the Seller's source of supply; (4) war, civil war, insurrection, commotion or disturbance, acts of terrorism or piracy, tumult, riot, quarantine, arrest, restraint of princes, rulers or people (whether officially declared or not) affecting the port or place of delivery or access thereto; or (5) the effect of adverse weather (including but not limited to hurricanes, typhoons, gales, storms, snow, sleet, hail, lightening, wind, waves, flooding and landslides), mechanical breakdown, breakdown of or damage to facilities, plant, terminal, equipment, machinery, bunkering barge or any other form of vessel or vehicle or, act of God; or (6) any other cause whatsoever and howsoever arising which is beyond the reasonable control of the Sellers, its plant, terminal, vehicle and barge, whether or not foreseeable ("Force Majeure").
- 17.3** In the event that performance is prevented or delayed Force Majeure, the Seller may cease or reduce deliveries in any manner as it may determine in its sole discretion. Nothing in the provision shall be deemed to excuse Buyer from its obligation to make payments for Bunker delivered.
- 17.4** The Seller reserves the right to increase the price charged for any Marine Fuels if there is any increase in the costs incurred or to be incurred by the Seller in making the relevant supply due to factors which constitute a Force Majeure event.

## **18. Termination or Suspension in the event of liquidation**

- 18.1** Notwithstanding anything to the contrary express or implied herein, the Seller (without prejudice to its other rights) may at its sole discretion either terminate the Contract immediately or immediately suspend delivery under the Contract until further notice, on notifying the Buyer either orally (confirming such notification in writing) or by notice in writing, if a liquidator, administrator, trustee in bankruptcy, receiver, receiver or manager or equivalent officer is appointed in respect of the assets and/or undertaking of the Buyer, or the Buyer enters into an arrangement or composition with its creditors, or any similar appointment, arrangement or composition is made under any applicable law, or if the Seller has a reason to anticipate any such appointment, arrangement or composition.

**18.2** In the case of multiple deliveries under the Contract, notwithstanding anything else to the contrary express or implied elsewhere herein, (but always without prejudice to Seller's other rights at law and under the Contract) the Seller may at its sole discretion either terminate the Contract immediately or immediately suspend delivery under the Contract until further notice, on notifying the Buyer either orally (confirming such notification in writing) or by notice in writing, if the Buyer fails to make any payment due to the Seller under the Contract in full and punctually by the due date.

## **19. Assignability**

This Agreement is not assignable by Buyer except with the written consent of Seller. Seller may cause deliveries under this Agreement to be made to Buyer by others and may assign the duties, obligations, rights, benefits, and privileges of this Agreement in whole or in part, to others without notice to or consent from Buyer.

## **20. General Provisions**

**20.1** In the event Seller's capacity to perform becomes impracticable for any reason, including, but not limited to, a request or suggestion by any official body relating to supplies, priorities, rationing or allocations of any product, Seller may reduce or stop deliveries in such a manner as it may in its sole discretion determine and shall be relieved of its obligation to perform hereunder.

**20.2** All rights and remedies of Seller hereunder are cumulative, and election of one remedy shall not exclude another.

**20.3** This writing supersedes all previous Standard or General Terms and Conditions of Sale of Bunker by the Seller and sets forth the final and exclusive expression of the parties' agreement unless it is modified in writing, which modification must be signed by GPS Bunkers. It supersedes all oral or implied agreements. Any disclaimer, notice or other writing by Buyer or vessel interests or their agents on the Bunker delivery receipt, or any other document, seeking unilaterally to alter or amend any part of these Conditions or the Contract shall be ineffective.

**20.4** If any part of these Conditions or the Contract is declared invalid for any reason, this ruling shall not affect the validity of the rest of the Agreement or any other part thereof.

**20.5** Buyer may request modification of the terms of these Conditions no later than when placing its initial order for Bunker, but at Seller's discretion the prices offered by Seller may be raised in consideration of such modifications, including any increase in Seller's liabilities thereby.

- 20.6** Except as otherwise expressly provided herein, no director, employee or agent of Buyer, its subcontractors or vendors, shall 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 the Contract. In addition, no director, employee, or agent of Buyer, its subcontractors or vendors, shall 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 Buyer shall not pay or agree to pay, directly or indirectly, any funds or anything of value to any public official or official of a national or international organization for the purpose of influencing such person's official acts or decisions in violation of the applicable laws of the United States of America ("USA"), United Kingdom ("UK"), or the laws of the jurisdiction in which the delivery of Bunker was made.
- 20.7** Any representative(s) authorized by Seller may audit the applicable records of the last three years of Buyer for the sole purpose of determining whether there has been compliance with Clause 20.7.
- 20.8** Buyer may not assign its rights or obligations hereunder without the prior written consent of Seller, such consent not to be unreasonably withheld or delayed.
- 20.9** If any provision or portion of these Conditions or the Contract shall be adjudged invalid or unenforceable by a court or arbitral tribunal of competent jurisdiction or by operation of any applicable law, such provision or portion of these Conditions or the Contract shall be deemed omitted and the remaining provisions and portions shall remain in full force and effect.
- 20.10** Modifications or amendments to these Conditions shall be valid only when expressly agreed upon in signed writing by Seller and Buyer. The waiver or failure to require the performance of any covenant or obligation contained herein shall not be deemed to constitute a waiver of a similar later breach.
- 20.11** Notices under these Conditions shall be made and deemed duly given only when delivered in writing to the other party to the address set forth in the Confirmation Agreement, or such updated address as may be specified by a party from time to time.
- 20.12** 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 Contract and/or not to fuel or deliver to Vessels or persons which are subject to or are carrying flags of any country(s) subject to US or International Trade Sanctions.

**20.13** Where sales are concluded through a broker or an agent, commissions may be paid by Seller to such broker or agent. Any brokers' commission payable by Seller shall not be considered as making that agent or broker Seller's agent or broker and shall only be paid after confirmation of receipt of full outstanding invoice amounts without offset.

**20.14** The headings used herein are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting the General Terms and Conditions.

## **21. General Savings Clause**

**21.1** Notwithstanding anything to the contrary herein, nothing in this Contract 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 Kingdom which relate to foreign trade controls, export controls, embargoes or international boycotts of any type.