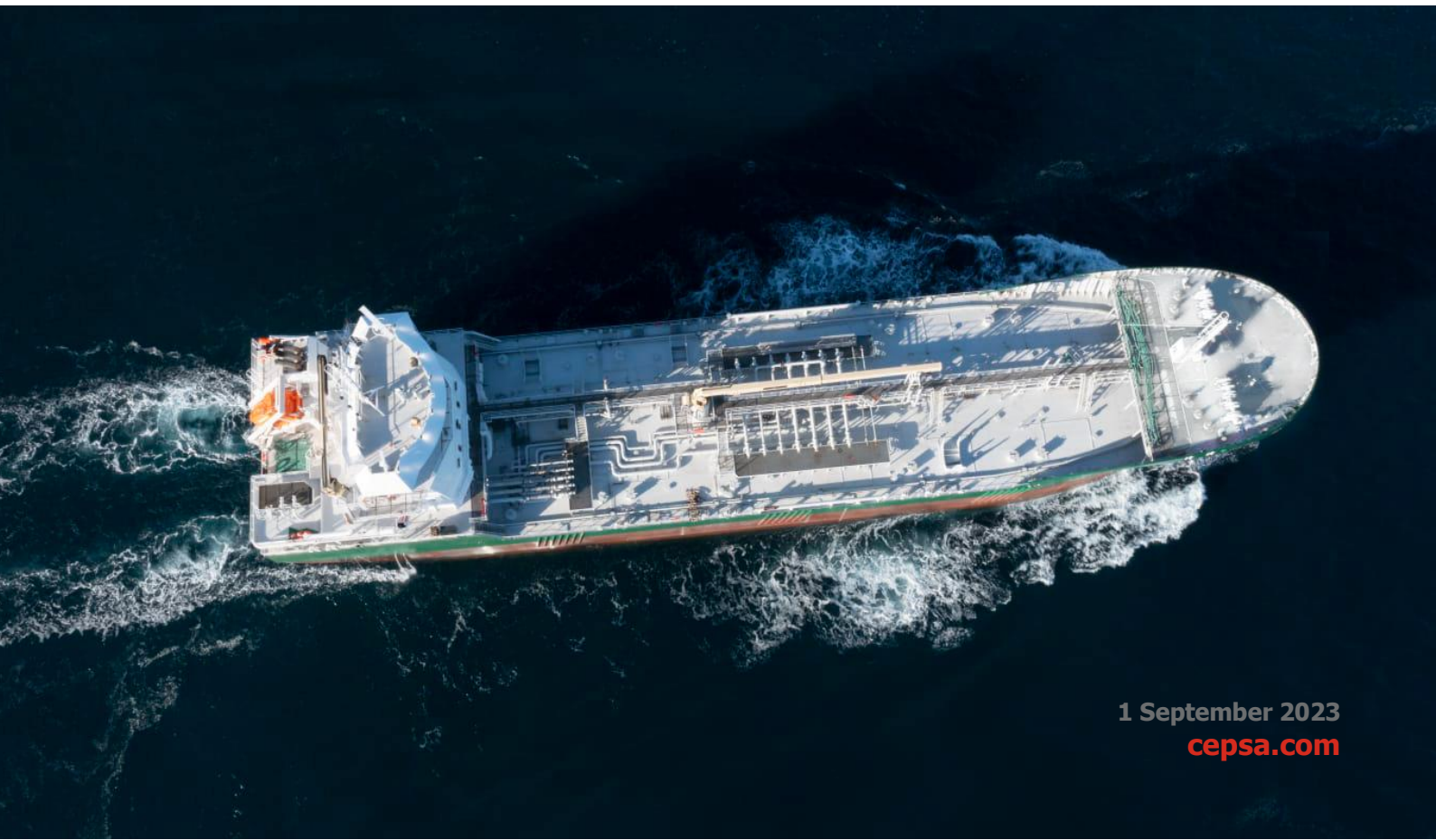




## CEPSA Marine Fuel Solutions

### 2023 General Terms & Conditions for Marine Fuels sales



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## 1. APPLICABILITY AND SCOPE

These General Terms and Conditions constitute an integral part and govern the Marine Fuels Contracts that are entered into between the Seller and the Buyer (each as defined below) with regard to everything related to requests, quotations, offers, nomination, delivery, services, price and payment of the Marine Fuel sold, and all subsequent contracts of whatever nature. In the event of any discrepancy between these General Terms and Conditions and the Special Terms agreed by the Parties, if any, in each case, the latter shall prevail.

Unless otherwise expressly agreed in writing between the Seller and the Buyer, as set out below in Clause 27.5. (*Incorporation*), these General Terms and Conditions, as amended from time to time, supersede any earlier versions of the terms and conditions and shall override any terms and conditions stipulated, incorporated in, or referred to by the Buyer whether in its order, stamping of documentation or elsewhere, unless amended in the Specific Terms.

Any statements made outside the Contract in any manner whatsoever, such as but not limited to brochures, catalogues and commercial literature, as well as any form of correspondence (whether electronic or hard copy) or oral communications are not intended to, and will not have, contractual effect unless expressly mentioned in these General Terms and Conditions or in the relevant Contract. Any offer, counteroffer or amendment proposed by the Buyer shall not be deemed to be impliedly accepted by the Seller and incorporated in the Contract unless expressly accepted in writing by the Seller.

## 2. DEFINITIONS AND INTERPRETATION

Headings in these General Terms and Conditions are for identification purposes only and shall not be deemed to be part of, or taken into consideration in the interpretation or construction of, these GT&Cs. Unless the Contract expressly requires otherwise, any words denoting the singular shall also include the plural and vice-versa, and the words "include" and "including" are to be construed without limitation.

The order or priority set out below, from first to last, shall be given to the following documents comprising a Contract:

- (i) the Final Supply Order as accepted by the Seller as amended, if applicable, by the Bunker Supply Document (as defined in Clause 4.2. below);
- (ii) any Special Terms, if agreed; and
- (iii) these General Terms and Conditions.

Unless the context otherwise demands the following terms shall have the meaning given herein:

**"Affiliate"** means, with respect to a Party, any person, natural or legal which i) controls, either directly or indirectly, such Party; is controlled, directly or indirectly, by such Party; or iii) is, directly or indirectly, controlled by a person, company or entity which, directly or indirectly, controls such Party.

For the purposes of this definition, "control" and its derivations means the power to direct or cause the direction of the management and policies of such person, directly or indirectly, whether through the ownership of a majority of voting securities by contract or otherwise and, in respect of a corporate, limited liability company or partnership, "control" shall include direct or indirect ownership of more than fifty per cent. (50%) of the voting stock or limited liability company interest or general partnership interest or voting interest in any such corporation, limited liability company or partnership.

**"Agent"** means any company other than a Seller's subsidiary or the Buyer that acts on behalf of the Seller or the Buyer whether by contract or *de facto* with regard to the actual delivery, or ordering, of the Marine

Fuels. All and any Marine Fuels sales made by the Seller are made in reliance upon the implied or express representation and warranty of a Buyer's Agent that is acting with full and unlimited authority of the Buyer for directly binding the Buyer and the Vessel.

**"Applicable Laws"** means any laws, regulations, rules, decrees and/or official government orders and requirements applicable to the Parties and any related person with significant control over that Party, including to those issued by the United Nations, the European Union, the United Kingdom, Canada and the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury (the **"Authorities"**).

**"Buyer"** means the Party requesting the Seller either to sell and deliver to it, or to arrange for the sale and delivery to it, of Marine Fuels. If the Buyer is acting as trader, broker, agent, manager, purchasing office or in any other similar capacity, the Buyer represents and warrants to the Seller and its Agents that it has received full authority to appoint the Seller as physical or final supplier for the Vessel under the final authority of her Owners and/or Disponent Owners. "Buyer" shall include the Vessel Owner and/or charterer and/or operator to which the Products have been delivered and/or any other party benefiting from the consumption of the Products.

**"Cepsa Party"** means (i) Compañía Española de Petróleos, S.A. ("**Cepsa**"); (ii) any Affiliate of Cepsa; or (iii) any entity acting as its Agent.

**"Confirmed Nomination"** shall have the meaning defined in Clause 3.4. (*Final Supply Order*) below.

**"Commitment"** means a Contract plus any other written agreements governed by these Terms and Conditions.

**"Contract"** means, collectively, the Final Supply Order if accepted by the Seller (as amended, if applicable, by the Bunker Supply Document (as described in Clause 4.2. (*Bunker Supply Document and invitation to witness measurements*)), the Special Terms, if agreed, and these General Terms and Conditions.

**"Delivering Company"** means the entity which has Marine Fuels available for sale at a port, as requested by the Seller to deliver such Marine Fuels to the Buyer. Where the Seller itself has Marine Fuels available for sale at the specified port it shall act both in its role as a party to these General Terms and Conditions and as a Delivering Company, as defined herein.

**"Delivery Port"** means the port or place at which Marine Fuels are delivered under a Commitment.

**"Delivery range"** means the date range designated in the Contract (as applicable), which shall begin on the ETA and end on the ETD. The Delivery range will not exceed four (4) days.

**"Equipment"** means the Buyer's equipment at the Delivery Port.

**"ETA"** means the estimated date of arrival of the Buyer's vessel requiring the delivery of Marine Fuels.

**"ETD"** means the estimated date of departure of the Buyer's vessel requiring the delivery of Marine Fuels, such date not to be more than four (4) days after the ETA.

**"Financial Event"** means a significant negative financial event or impairment affecting the Buyer and/or its Affiliates, including but not limited to: a credit rating downgrade, credit being placed on a negative watch list by a ratings agency, a credit alert being issued, or the commencement or impending commencement of proceedings for the winding up, bankruptcy, dissolution, liquidation, scheme of arrangement, judicial management, restructuring, administration, reorganization or other similar process.

**“Final Supply Order”** means the written confirmation by the Buyer that it accepts the terms of the Sale Offer of the Seller.

**“Government Official”** means a government official or an officer or employee of a government or any department, agency or instrumentality of any government including any public sector company or an enterprise in which a government owns a majority or controlling interest or an officer or employee of a public international organization or any person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality of such government or of any public international organization or any political party or official thereof, or any candidate for political office or any other person, individual or entity acting at the suggestion, request or direction, or for the benefit, of the aforementioned persons or entities.

**“GT&Cs”** means these General Terms and Conditions.

**“Marine Fuels” or “Products”** means any marine fuel oil, marine diesel fuel, marine gas oil, LNG, biofuels, and/or any blend of such products and any other product that may be included/excluded from time to time on the Seller’s Website: <https://bunker.cepsa.com>. The Marine Fuels supplied to the Vessel shall be considered as provided necessities whether supplied directly or by subcontractor.

**“BDN”** means Marine Fuels Delivery Note.

**“Marine Fuel Tanker”** means the supplying Marine Fuels barge or tanker or tank truck supplying Marine Fuels to the Vessel.

**“Marine Fuel Tanker Safety Checklist”** means the safety checklist signed and stamped by the Master of the Vessel and by the Seller or the supplier before the commencement of bunkering operations in accordance with Clause 4.1.4.

**“Owner/Disponent Owner/Vessel Owner”** means the company or person owning the Vessel or having the final full legal and contractual authority and capacity to buy the Marine Fuels under the Contract and to bind the Vessel *in rem*, whether directly or through an Agent.

**“Party”** means the Seller or the Buyer.

**“Pre-delivery Checklist”** means the checklist prepared by the Seller and signed by or on behalf of the Seller and the Buyer to confirm agreement on the conditions and procedures under which physical delivery of the Marine Fuels shall take place.

**“Port Services Guide”** means the port services guide as amended, varied or supplemented from time to time, the current version of which can be found on <https://bunker.cepsa.com>

**“Seller”** means the Cepsa Party entering into the Contract with the Buyer.

**“Special Terms”** means any specific agreement entered into between the Seller and the Buyer amending or complementing these General Terms and Conditions (see Clauses 3.2 and 3.4).

**“Vessel”** means the vessel nominated by the Buyer to receive Marine Fuels. For the purposes of these General Terms and Conditions the word “Vessel” includes non-vessels from a legal point of view such as marine platforms, hovercrafts, and any other propelled or not floating objects as well as leisure and fishing boats and yachts.

“**Working days**” means the working days according to the official calendar of the relevant Seller’s premises in Spain.

“**Working hours**” means the working hours in the Seller’s premises in Madrid, i.e. from 09:00 to 18:00 each working day (Spanish local time).

### 3. OFFERS, QUOTATIONS AND PRICES

#### 3.1. Request for supply

3.1.1. The Buyer will provide the Seller written notice of a request for supply, that must contain at least the detailed description of the type of Marine Fuel to be supplied by the Seller to the Vessel nominated by the Buyer, as well as an approximate indication of the volume of Marine Fuel (in Metric Tons or Cubic Meters) to be supplied and of the location(s) and date(s) on which the supply is to be received.

3.1.2. The Buyer has absolute and exclusive responsibility for the choice and description of the Marine Fuel to be supplied, which must be suitable for the Vessel. The Buyer shall also be solely and exclusively liable as to the compatibility between the Marine Fuel stated in the request for supply and the fuels that are on board the Vessel prior to the supply.

3.1.3. Unless otherwise specifically agreed in the Contract, the quality of the Marine Fuels shall be determined in accordance with ISO 8217, latest version, or otherwise as determined in the Sale Offer.

3.1.4. Material Safety Data Sheets (“**MSDS**”) and Reach Regulation: The MSDS are transmitted to the Buyer and may be consulted on <https://www.cepsa.es/es/fichas-de-seguridad>. The delivered products subject to Regulation EC No. 1907/2006 of 18 December 2006 (“**REACH Regulation**”) comply with the REACH Regulation in force on the date of their delivery, for those uses and under those conditions stated in the MSDS and/or in the Seller’s specifications. The Seller makes no representation or warranty and shall bear no liability for any other use, even if notified by the Buyer, or for any use not provided for in the MSDS and/or in the Seller’s specifications, or which does not comply with the provisions of the MSDS. In addition, no indemnity may be charged to the Seller or the supplier due to the implementation of the REACH Regulation.

#### 3.2. Sale Offer

The Seller will draw up a “Sale Offer”, which shall establish the terms of the Delivery Port or other location (only if admitted by the applicable law) and the Delivery range on which it is willing to provide the supply requested. In the Sale Offer, the Seller will also state the price (or pricing formula) and the terms of payment of the supply, as well as, when appropriate, the maximum quantity of Marine Fuels it is willing to supply, and the means it has available to provide the supply at the port or location requested.

#### 3.3. Completion of the Sale

The Sale Offer shall be binding on the Seller for twenty (20) minutes from the hour and minute in which the Sale Offer is sent, except if otherwise stated therein, and shall expire if a Final Supply Order (see Clause 3.4. (*Final Supply Order*) below) in writing from the Buyer has not been received by the Seller within such twenty (20) minute period. If the Buyer is still interested in buying the Marine Fuels from the Seller, a new updated Sale Offer must be requested and the whole process will re-start. The Seller can, at its sole discretion, extend the validity period of any Sale Offer.

In the Final Supply Order, in addition to unconditionally confirming its decision to acquire the Marine Fuels at the price and under the conditions set forth in the Sale Offer, the Buyer shall provide to the Seller the following information in writing:

- (i) the Buyer's full legal name, personal or corporate T.I.N. (Tax Identity Number: VAT Number or equivalent) or equivalent complete tax identification number issued under the laws of the Buyer, registered address and commercial registry;
- (ii) the name, IMO number and flag of the Vessel (in the case of Vessels registered under a non-Spanish flag, also the name and T.I.N. of the Agent);
- (iii) the Vessel Owner's and/or Disponent Owner's full legal name, personal or corporate T.I.N. or equivalent complete tax identification number issued under the relevant laws, registered address and commercial registry;
- (iv) the location or port of supply of the Marine Fuel;
- (v) the date and estimated or approximate time of arrival (ETA) of the Vessel at that location or port;
- (vi) the description and quantity of the Marine Fuel to be supplied;
- (vii) specific and unconditional acceptance of the price (or pricing formula), and of the terms of payment established in the Sale Offer, as well as the means of supply and specific acceptance of its respective cost;
- (viii) the estimated date of supply of the Marine Fuel;
- (ix) the name and address of the person or company that is expressly assigned as the Agent of the Vessel to be supplied at the location or port of supply;
- (x) any information that may be necessary or useful for adequate performance of the supply operation, including but not limited to the technical information and updated drawings of the Vessel to be supplied; and
- (xi) its, and the Owner/Disponent Owner's (as applicable), knowledge and unconditional acceptance of these General Terms and Conditions and any Special Terms that may have been agreed for the relevant supply.

### 3.4. Final Supply Order

3.4.1. The Buyer shall fill-in the information requested by the Seller in its Sale Offer and will send its Final Supply Order in writing to the Seller. The Final Supply Order can be issued by the Buyer by either:

- (i) sending to the Seller its own form of Final Supply Order or confirmation e-mail; or
- (ii) duly signing and stamping and sending to the Seller the Confirmed Nomination (that is the document sent by the Seller to the Buyer confirming all the binding terms and conditions of the Commitment),

in each case by e-mail sent exclusively to the e-mail address: bunker@cepsa.com.

3.4.2. The Final Supply Order (or signed Confirmed Nomination, as applicable), that implies specific acceptance without alteration of any of the terms set forth in the Sale Offer by the Seller, shall only be valid and binding upon the Seller if:

- (i) in addition to providing the information requested in the Final Supply Order, such information is received by the Seller within the term of validity of the Sale Offer and in any case during the Working Hours of the same Working Day on which the Sale Offer was sent by the Seller; and
- (ii) expressly accepted by the Seller.

3.4.3. Should the Buyer wish to request a variation of the terms of the Final Supply Order (or the Confirmed Nomination, as applicable) as to the final quantities of Marine Fuels to be supplied, the Delivery Port or location and/or Delivery range for the supply and/or the price (or pricing formula) and/or the terms of payment of that supply:

- (i) the Buyer must expressly inform the Seller in writing (as specified in Clause 3.3. (*Completion of the Sale*) above);



- (ii) the Seller shall not be bound by any new terms proposed by the Buyer unless and until such terms are expressly accepted in writing in a new Confirmed Nomination issued by the Seller; and
- (iii) if such specific acceptance is not given, or if the Seller specifically rejects the new terms proposed by the Buyer, the Final Supply Order and/or the Confirmed Nomination (as applicable) shall be deemed completely null and void and the Seller shall not be obliged to provide any supply of Marine Fuels to the Buyer, unless the latter reconsiders its position and specifically and unconditionally accepts the terms of the original Supply Order from the Seller.

3.4.4. The issuance by the Buyer of the Final Supply Order and its acceptance by the Seller shall complete the Contract between both Parties. If the Buyer does not take actual delivery of the Marine Fuels within the agreed Delivery range, the Commitment to supply shall be considered definitively cancelled, null and void and without any effect whatsoever, notwithstanding the Parties being able to enter into a new Contract amending the original terms, and without prejudice to all and any Seller's rights and remedies against the Buyer and its Agents for breach of contract, except if specifically waived in writing, if and when entering into a new contract. Such rights shall not be deemed waived in any case by a new Commitment between the Seller and the Buyer, except if specifically agreed in writing.

3.4.5. In case of a unilateral total or partial cancellation of the Commitment, whether in whole or in part, made by the Buyer, the Seller shall in any case be entitled to charge a cancellation fee equal to the greater of:

- (i) five thousand US Dollars (US\$ 5,000.00) as liquidated damages, or
- (ii) all losses and liabilities incurred by the Seller as a result of that cancellation or failure to take delivery (together, the "**Actual Losses**"), including, without limitation
  - (a) the difference in price between that set out in the Confirmation and the 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;
  - (b) losses, costs and damages associated with terminating, liquidating, obtaining or re-establishing any hedging arrangement or related trading position;
  - (c) costs to sell;
  - (d) storage;
  - (e) pump-back fees;
  - (f) fuel oil downgrade expense;
  - (g) inspection charges; and
  - (h) demurrage.

If the cancellation fee as set forth in Clause 3.4.5.(i) is in fact higher than any Actual Losses, the Parties agree that it was nevertheless, at the time of contracting, a genuine pre-estimate of the losses which will be sustained as a result of Buyer's cancellation or failure to take full delivery.

If no cancellation is notified to the Seller, and the Vessel does not arrive at the agreed Delivery Port or location, the Seller will be entitled to twice the relevant damage amount.

3.4.6. All notices regarding this Clause 3 (*Offers, Quotations and Prices*) shall be made in writing via e-mail and will only be deemed received by the other Party when receipt has been acknowledged by the same means.

3.4.7. In case of discrepancies between the different documents referred to in this Clause 3 (*Offers, Quotations and Prices*), the Confirmed Nomination shall prevail. Any terms proposed by the Buyer in its Request for Supply, Final Supply Order or elsewhere that are not expressly accepted by the Seller shall have no effect and will not bind the Seller. Any terms proposed by the Seller in its Sale Offer or Confirmed

Nomination shall be binding upon both Parties if not expressly objected to or refused in writing by the Buyer. If objected to or refused, the sale shall not be deemed to be completed.

## 4. SUPPLY

### 4.1. Prior Notice of Supply

4.1.1. The Buyer and the Vessel's Agent shall notify her estimated time of arrival (ETA) to the Seller and to its local representative at the Delivery Port or location seventy-two (72), forty-eight (48), twenty-four (24) and twelve (12) working hours prior to arrival of the Vessel and shall also notify the Seller and its local representative about any change in the ETA of the Vessel exceeding three (3) hours (one (1) hour in the case of supplies by tanker truck), and will report the exact actual position of the Vessel and time at which the supply is required. The Seller may refuse to supply if any of such notices is not timely made by the Buyer and/or the Vessel's Agent. If the Supply is delayed due to Buyer's misinformation about the Vessel's ETA, the Seller may charge the Buyer a lumpsum per hour of delay plus any additional costs and damages as the Seller may incur.

4.1.2. The prior notice to be provided in accordance with Clause 4.1.1. will include the following information:

- (i) the estimated place of mooring / anchoring of the Vessel to be supplied;
- (ii) written notification to the Seller – at least forty-eight (48) hours prior to the date of supply – of all the special conditions, difficulties, peculiarities, deficiencies or defects concerning the Vessel, or that are specific to the Vessel and might adversely affect the supply of the Marine Fuel;
- (iii) all information that might be necessary or useful for the smooth running of the supply operation; and
- (iv) any other information that the Seller may reasonably request in writing in order to safely perform the supply operations to the Vessel.

4.1.3. All additional costs, damages and expenses that arise from a change in the supply conditions shall be borne by the Buyer.

4.1.4. Before commencement of delivery operations, the Seller or the supplier shall present to the Master of the Vessel, a Marine Fuel Tanker Safety Checklist or similar document, which shall be signed by the Seller or the supplier and by the Master of the Vessel, which shall enable the Buyer to check that all the safety requirements have been met. Execution of this document by the Seller or the supplier does not relieve the Buyer from its primary obligation and sole responsibility to ensure safety on board its Vessel and the bunkering operation when receiving the Marine Fuels. The Buyer shall exercise continuous vigilance and adhere to the relevant safety procedures throughout the whole supply operation.

### 4.2. Bunker Supply Document and invitation to witness measurements

Prior to the delivery of Marine Fuels, the Master, First Officer or Chief Engineer (as may be applicable, but always implied that they have full authority binding upon the Vessel Owner and/or Disponent Owner) of the Vessel to be supplied will confirm the quantity and description of the Marine Fuel, and indicate whether or not he intends to be present, or represented, at the time of measuring the quantity supplied and the taking of the sample, by signing and stamping with the Vessel Owner's seal (or seal of the Vessel) a "Bunker Supply Document", to be delivered to him by the Seller.

The actual supply will only commence if the Bunker Supply Document is delivered to the Seller signed and sealed as aforementioned.

### 4.3. Supply

The supply of Marine Fuel will take place according to the Final Supply Order as previously accepted by the Seller. The Marine Fuels shall be supplied to the Vessel at the location or port of supply. The supply shall be performed according to the laws in force and applicable at the moment and in the location or port of supply and, in particular, in accordance with the regulations of the port or location of supply.

However, the Seller can reject (at no cost), to effect the Supply if there could be, in the Seller's reasonable discretion, any technical and/or safety problems or extra-costs not paid or guaranteed in advance by the Buyer, such as but not limited to any obstructions preventing the supply means and specifically the barge to perform the Marine Fuels supply operation in safe conditions, considering also the existing port waters and weather.

Any decision of the Marine Fuels Barge Master not to supply based on technical and/or safety problems will be final and binding.

4.3.1. The supply shall be delivered:

- (i) at the Seller's terminal;
  - (ii) by tank trucks; or
  - (iii) by bunkering barge,
- ((i), (ii) and (iii) being alternatives according to the means of supply agreed upon in the Commitment).

4.3.2. The Seller shall deliver the supplies to the Vessels strictly in the order of arrival of the Vessels, and the Seller will not be liable for delays caused by congestion, bad weather, or any other cause beyond the Seller's control (including, but not limited to, Force Majeure and Acts of God) at the terminal, or due to commitments previously contracted by the available barges or tanker trucks.

Vessels that do not meet their estimated or approximate time of arrival (ETA) will not be supplied until other Vessels that have met their ETA have been supplied, unless decided otherwise by the port authority, and the Seller will be entitled to reject any complaints or claims for delays lodged by the Buyer for such reason.

If the Vessel arrives earlier than the agreed Delivery range, Seller may exercise reasonable efforts to supply the Vessel upon request but will not in any case be bound to do so until the commencement of the agreed Delivery range.

In any case, passenger Vessels have absolute priority to be supplied.

4.3.3. Delivery conditions:

- (a) The Seller shall be entitled to deliver the Marine Fuels in part deliveries, in which case each part delivery shall be construed as a separate delivery.
- (b) The Seller shall not be required to deliver any Marine Fuels for export, if any government permit required has not been obtained in due time before the delivery.
- (c) If the Seller at any time, for any reason, believes that there may be a shortage of supply at any place and that, as a result thereof, it may be unable to meet the demands of all of its customers, the Seller may allocate its available and anticipated supply amongst its customers in such a manner as it may determine, in its sole discretion, to be the most reasonable.
- (d) The Vessel in question shall be supplied as promptly as the circumstances permit (save when Clause 4.3.2. applies). The Seller shall not be liable for any demurrage paid or incurred by the Buyer or for any off-hire or any other loss, damage or delay of the Vessel of any nature whatsoever due to congestion at the loading terminal, bad weather, prior commitments of available

- barges, seller's terminal or tank-trucks, or any other reason beyond the Seller's control (including, but not limited to Force Majeure and Act of God).
- (e) The Buyer shall ensure that the Vessel provides a free, safe and always afloat and accessible side for the delivery of Marine Fuels, and that all necessary assistance as required by the Seller or the Seller's representative is rendered in connection with the delivery.
  - (f) The receiving Vessel shall moor, unmoor, hoist supply hose(s) from the terminal, tanker truck or barge(s) respectively hose(s) whenever required by the Seller or the Seller's representative, free of expenses, and in any way requested to assist barge equipment for a smooth supply. The Buyer shall make and be responsible for all connections and disconnections between the delivery hose(s) and the Vessel's Marine Fuels intake manifold/pipe and ensure that the hose(s) are properly secured to the Vessel's manifold prior to commencement of delivery.
  - (g) During the supply operation the Vessel's scuppers must be safely blocked, such blocking to be made by the Vessel's own crew. Furthermore, the Vessel must ensure that all pipes and manifolds and receiving tanks are completely checked and are ready to receive the Marine Fuels, including but not limited to ensuring proper opening/closing of relevant valves, without any risk of spillages, etc., during the supply operation.
  - (h) In the case that the Buyer's Vessel is not able to receive the delivery promptly, the Buyer shall pay any applicable demurrage claim(s) to the barging/supplying facilities and/or other costs resulting from the delay.
  - (i) Delivery shall be deemed completed and all risk, including loss, damage, deterioration, depreciation, evaporation, or shrinkage as to the Marine Fuels delivered shall pass to the Buyer from the time the Marine Fuels reach the flange connecting pipelines/delivery hoses provided by the Seller as set out in Clause 8.2. (*Risk*) below.
  - (j) If the Buyer for whatever reason is unable to receive the full quantity ordered and rendered, the Seller shall have the right to invoice the Buyer for a lumpsum per day plus the loss incurred for transportation of the Marine Fuels back to the storage or for any sale of the Marine Fuels in a degraded form at a lower price than that applicable to the grade originally nominated by the Buyer, without prejudice to any other rights the Seller may have in accordance with these General Terms and Conditions.
  - (k) The Buyer shall provide all the necessary services for adequate performance of the supply operation and guarantees that the Vessel to be supplied has sufficient tank capacity and bears equipment allowing the supply to be carried out at the required rate.
  - (l) Barge supplies will not be carried out at a rate under 200 m<sup>3</sup>/h, except if otherwise previously accepted by the Seller or when the Product to be supplied cannot be supplied at a higher rate (such, as, for instance, Gasoil). Seller's Terminal supplies will not be carried out at a rate under 100 m<sup>3</sup>/h, except if previously accepted in writing by the Seller.  
Should the supplied Vessel delay the supply by not reaching the above-mentioned rates, the Seller shall have the right to charge five US Dollars (US\$ 5) per Metric Ton supplied as liquidated damages for this specific delay, with a minimum of five thousand US Dollars (US\$ 5,000.00), without prejudice to any other rights the Seller may have in accordance with these General Terms and Conditions.
  - (m) The Buyer guarantees that the Vessel holds all the necessary certificates to comply with the regulations applicable to supplies of Marine Fuels at the moment, location or port of supply, and shall instruct the Vessel's Master so that:
    - (i) he fulfils the applicable legislation, that is, in particular, the regulations of the port or place of supply, as it is always the Vessel and the Buyer that remain solely responsible for the awareness of such eventual additional requirements for safety reasons;
    - (ii) he reports the maximum pumping capacity and pressure admitted by the Vessel to the Seller in writing prior to the supply. He must also report on the communication procedures and emergency measures to be followed in the event of a situation of risk or hazard arising during the supply operation;

- (iii) he provides a free side to receive the supply and all the necessary assistance that may be required to fasten and/or cast off the supply barge, tank truck or Seller's terminal pipe from alongside the Vessel;
- (iv) he provides and guarantees that the Vessel has sufficient tank space and equipment available to receive the Marine Fuel swiftly and safely; and
- (v) if possible, for the Vessel to have segregated tanks to receive the quantity of Marine Fuel ordered.

4.3.4. The Buyer shall compensate the Seller and maintain its indemnity before third-parties for all and any damages and losses whatsoever resulting from or related to any act or omission by the Buyer, its Agents, employees, representatives, Vessel's Master, officers or crew, and/or any other person on board the Vessel and/or representatives or Agents of the Vessel in relation to the supply of Marine Fuel.

The Seller shall not be held responsible, in any case, for damages or losses of any nature whatsoever suffered by the Buyer as a result of:

- (i) exceeding, for reasons due to the Vessel, the time foreseen to commence or conclude the supply operation;
- (ii) any port fees related to supplies or delays arising from congestion in the port facilities, or difficulties in providing services of the supply alternatives described in Clause 4.3.1.;
- (iii) lack of capacity of the tanks of the Vessel to be supplied to receive the supply as agreed by the Parties;
- (iv) inadequacy and/or insufficiency of the receiving equipment or fuel storage tanks, or incorrect identification of the tanks on board the Vessel to be supplied;
- (v) non-compliance by the Vessel's Master, officers or crew, and/or any other person on board the Vessel and/or representatives or Agents of the Vessel, of the regulations for safety and protection of the environment applicable at the moment the operation takes place to supply Marine Fuel to the Vessel; and/or
- (vi) failure of Vessel's Master and/or crew to give the order to stop the supply operations prior to the full capacity of the Marine Fuels tanks of the Vessel, resulting or not in pollution.

4.3.5. Each supply constitutes a separate Contract in case of Term Agreements.

4.3.6. The Buyer shall be liable for the total lumpsum referred to under Clause 3.4.5. above plus any expenses, damages and losses caused to the Seller due to any delay exceeding two (2) hours or more in the arrival of the Vessel to be supplied at the location or port of supply, compared with the estimated time of arrival (ETA) notified in accordance with this Clause 4.

4.3.7. A delay exceeding four (4) days in the arrival of the Vessel to be supplied at the location or port of supply, compared with the estimated date and time of arrival (ETA) notified in accordance with Clause 1 (*Applicability and Scope*) above, will be considered a breach by the Buyer, and the Seller may at its sole discretion automatically cancel the Contract, and all the rights and remedies of the Seller will be automatically reserved without further notice to the Buyer or its Agents.

4.3.8. Should there be any delay due to failure by the Buyer to duly provide notice, and/or breach of the notifications according to this Clause 4.3. (*Supply*), and/or the Vessel, during the reception of the Marine Fuels, does not comply with the pumping capacity mentioned in Clause 4.3.4. above, the Seller shall receive compensation from the Buyer for any such delay.

#### **4.4. Bunker Delivery Note (BDN)**

Once the supply is completed and the measurement of the quantity supplied has been performed and the

applicable samples taken, the Seller shall present the Vessel a BDN that must be signed by the Vessel's Master or any other person acting in his name and on his behalf, and it will bear the Vessel's seal, confirming satisfactory delivery of the Marine Fuel on board the Vessel. Where the person signing the BDN is not the Vessel's Master, the Buyer represents and warrants to the Seller that the person executing the BDN has full authority to bind the Vessel *in rem*.

The Seller will keep the original signed BDN and will deliver a copy of the BDN to the Vessel's Master or to her representative or Agent.

The BDN will remain "clean" in all cases and shall not include any kind of protest or remarks whatsoever. Any remarks and specifically any "no lien" or equivalent mention will not be accepted and will be null and void if written or inserted by any other means in a BDN.

The signature of the Master of the Vessel or of any other person acting in his name and on his behalf of the BDN shall amount to a ratification of the Contract in the name of the Vessel Owner. If, for any reasons whatsoever, the BDN is not personally signed and stamped by the Master of the Vessel, the person signing it undertakes, represents and guarantees that he has authority to sign on behalf of the Master and/or the Owner, Disponent Owner or operator of the Vessel so as to bind the Vessel *in rem*. Should the BDN not include the Owner's name in the applicable box due to lack of information from the Buyer and/or its agents for any other reason, the Owner will be determined as per the Master or the seal of its representative stamped in the BDN.

The BDN shall include all and any regulatory mentions as may be requested from time to time under MARPOL Annex VI and its Appendixes, but under no circumstances may it create an implied term that the Seller has a duty to inspect the Vessel's compliance with any IMO's Conventions and Regulations on her fitness to comply with any sulphur emissions or any other applicable cap. The Seller's responsibilities under the BDN are limited to the declarations of conformity of the Marine Fuels incorporated to the BDN.

#### **4.5. Supply through Coriolis Mass Flow Meter**

The Seller shall inform the Vessel's Representative in writing prior to the delivery if the supply of Marine Fuel will take place through a Coriolis Mass Flow Meter (MFM) System in accordance with the CEPSA Mass Flow Meter Operative Procedure in force at the time of delivery.

Where the MFM is used, the quantity of the Product delivered shall be determined solely based on the bunkering barge's MFM system and calculation as per the Marine Fuels metering ticket that will be final and binding evidence.

## **5. MEASUREMENT AND SAMPLING**

### **5.1. Measurement**

5.1.1. The amount of Marine Fuel to be supplied in accordance with the Final Supply Order and the Supply Offer will be measured, determined and calculated according to generally accepted methods, using the supply equipment and measurement appliances of the Seller.

5.1.2. The measurements taken on board the Vessel supplied shall not be binding on the Seller, and any claim concerning the amount of Marine Fuel supplied based on measurements taken on board the Vessel shall be inadmissible and irrelevant.

5.1.3. Should the Buyer require independent inspection with regard to measurement of the Supply, such inspection must be requested in writing in the Request of Supply to the Seller, proposing at the same time the independent inspector to be named, subject to the specific agreement by the Seller in

the Sale Offer. Unless specifically accepted in the Sale Offer, the outcome of that independent inspection shall not be binding upon the Seller. The expenses arising from supervision of measurement of the Supply will, in all cases, be exclusively borne by the Buyer. The Buyer and the named inspector shall cooperate with the Seller to perform the inspection in a swift manner saving as much time as possible.

5.1.4. The Buyer and/or the Master of the Vessel supplied shall be entitled to be personally present at the measurements or shall be present through a representative specifically appointed for that purpose. The total or partial absence of the Buyer and/or the Vessel's Master, or their respective representatives during the measurement taking operation is irrelevant. The measurement taken by the Seller shall be conclusive and binding evidence for the Parties of the amount of Marine Fuel supplied, and no claim to the Seller concerning the quantity supplied will be considered.

5.1.5. The provisions of the above Clause are without prejudice to the rights and obligations that might be established in the laws in force at any Delivery Port as to measurement of Marine Fuels supplies.

## **5.2. Sampling**

5.2.1. The Seller shall take three (3) commercial samples of each degree of Marine Fuel supplied during the supply operation, in the presence of the Buyer or the Vessel's Master, or their respective representatives.

Such commercial samples shall be the only authentic, conclusive and binding proof for the Parties, to determine the quality of the Marine Fuel supplied to the Vessel, and the absence of the Buyer or the Vessel's Master or their respective representatives during the sample taking process shall be considered irrelevant for such purposes.

5.2.2. The samples taken will be duly sealed and bear labels showing the name of the Vessel, identifying the means of supply of the Marine Fuel, name of the product, date and place of supply, and they will also bear the seal of the Vessel's or the Vessel Owner company and be signed by the Seller and the Vessel's Master or his representative.

5.2.3. The Seller shall deliver one (1) of the commercial samples to the Master of the supplied Vessel or his representative, who shall acknowledge receipt of the same at the time of delivery. The other two (2) commercial samples shall remain in the possession of the Seller for thirty (30) days from the date of the Supply. The Seller will hold one (1) of those samples in custody.

When the aforementioned thirty (30) days have elapsed, and if no written claim has been lodged, the Seller may destroy the commercial sample or samples held by it.

In supplies under thirty (30) Metric Tons, as well as in all supplies by tanker truck, the Seller will not take commercial samples, except when asked to do so by the Buyer in writing and at least forty-eight (48) Working Hours before the supply, and the Buyer shall accept and pay for the cost of the same.

5.2.4. Pursuant to the terms and conditions set forth in Addendum VI of Marpol Convention 73/78, for all Vessels with a GT of more than 400, the Seller shall take two (2) samples of each grade of Marine Fuel supplied during each supply operation, in the presence of the Buyer or the Vessel's Master, or their respective representatives.

The samples taken will be duly sealed and bear labels identifying them specifically as "Marpol Sample", showing the name of the Vessel, identifying the means of supply of the Marine Fuel, name of the product, date and place of supply, and they will bear the seal of the Vessel Owner company and be signed by the Seller and the Vessel's Master or her representative.

The Seller shall give one (1) of these samples to the Vessel's Master or his representative, who will acknowledge BDN of the aforementioned sample at the time of receipt.

Any further amendments of the Addendum VI of Marpol Convention that may enter into force once approved by the IMO shall be deemed automatically incorporated to these General Terms and Conditions, unless otherwise specified in the Special Terms of the Contract.

5.2.5. The commercial samples will be taken, according to the supply method used, at the following points:

- (i) at the manifold of the supply barge;
- (ii) at the manifold of the land terminal from which the supply is made; or
- (iii) at the manifold of the tanker truck, if the delivery of samples is necessary according to Clause 5.2.4. above.

5.2.6. The samples will be taken using the methods, as well as the appliances and devices to take samples, provided by the Seller.

## 6. AGENTS

**6.1.** If the Commitment is made by an Agent acting for or on behalf of the Buyer, whether such agency is disclosed or undisclosed, then such Agent shall be jointly and severally liable (as well as the Buyer) not only as Agent but also as principal for the performance of all the obligations of the Buyer.

**6.2.** The Buyer represents and warrants to the Seller when the Buyer is not the Owner and/or Disponent Owner of the Vessel that:

- (i) it is acting as duly named and appointed Agent of the Owner and/or the Disponent Owner of the Vessel;
- (ii) it has full authority to bind to the Owner and/or Disponent Owner of the Vessel;
- (iii) it has informed to the Owner and/or Disponent Owner of the Vessel about the Seller being the actual supplier of the Marine Fuels, that these General Terms and Conditions are in force and applicable to the delivery, and that the Owner and/or Disponent Owner of the Vessel has given the Buyer, Agent and Master, as applicable, express authority to purchase the Products; These General Terms and Conditions are incorporated into its own general terms and conditions of sale and have been duly notified to the Owner and/or Disponent Owner of the Vessel in writing;
- (iv) it has the authority of the Owner and/or Disponent Owner of the Vessel to pledge the Vessel's credit in accordance with Clause 15.1. below; and
- (v) that the Master/Owner or Disponent Owner have selected or authorized the Agent to select the Seller as supplier of the Marine Fuels to the Vessel.

## 7. THIRD PARTY PORTS

The Parties acknowledge that at certain Delivery Ports the Delivering Company may be a third-party which is not a Cepsa Party. The Seller shall notify the Buyer of such fact at the time of nomination. Where delivery at such Delivery Ports is requested by the Buyer, the terms and conditions on which the Marine Fuels are supplied (the "Alternative Terms and Conditions") may be different from these Terms and Conditions. Any differences in the Alternative Terms and Conditions shall apply to the sale in any event, with or without express agreement by the Buyer, except if otherwise stated in the Contract.



A copy of any such Alternative Terms and Conditions will be provided to the Buyer by the Seller at the Buyer's request.

## 8. TITLE AND RISK

### 8.1. Title

Title of the Marine Fuel is transferred to the Buyer once the Buyer has fully paid the purchase price to the Seller. Up to that moment, the Seller shall continue to be the owner of the Marine Fuel supplied. In the event of the Marine Fuel having been mixed with other fuel aboard the supplied Vessel, the Seller will be entitled to the part of the mixed fuel that is equivalent to the quantity and quality of the Marine Fuel supplied. The Seller will be entitled to request the return of the fuel remaining on board, as foreseen under the laws in force.

### 8.2. Risk

All risk, including loss, damage, deterioration, depreciation, evaporation, or shrinkage as to the Marine Fuels delivered shall pass to the Buyer from the time the Marine Fuels reach the flange connecting pipelines/delivery hoses provided by the Seller. At that moment, the Seller shall cease to be responsible for the damage suffered or caused by the Marine Fuel supplied. More precisely, the Seller shall not be held liable for the losses or damages caused by leakage, fire, spills, escapes, shrinkage and/or overflowing of the Marine Fuel or for the risk or damage of shrinkage, contamination or loss suffered by the latter.

## 9. QUANTITY AND QUALITY CLAIMS

### 9.1. Quantity claims

9.1.1. *Letter of Protest:* Should the Master of the Vessel supplied not agree with the quantity or any other circumstance related to the Marine Fuels or its supply, he must state these circumstances in a Letter of Protest, which must be delivered to the Seller within twenty-four (24) hours following the date of supply of the Marine Fuels. Failing receipt of such notification by the Seller, any quantity claim shall be finally time-barred, null and void.

9.1.2. *Term for documentation:* Any quantity claim that has been notified within the term provided in Clause 9.1.1. must also be notified to the Seller fully documented within thirty (30) days following the date of supply of the Marine Fuels. Claims on quantity that have not been documented within the term of this Clause, shall be considered finally time barred, null and void.

### 9.2. Specific rules for quality claim

9.2.1. The Parties expressly agree that the commercial sample retained in custody by the Seller, as established in Clause 5.2.3. above, shall be analyzed by a qualified independent laboratory of international prestige, specialized in performing analysis of marine fuels, appointed by mutual agreement between the Parties. The result of such analysis shall be conclusive and binding for both Parties. The expenses incurred in performing such analysis shall be borne by the losing Party. The analysis shall be performed according to the criteria and instructions agreed by the Parties, always with regard to the quality guaranteed by the Seller under the Sale Offer.

9.2.2. The analysis of the commercial sample retained by the Seller shall be done within three (3) months of the date of delivery. The Seller undertakes to cooperate with the Buyer to execute such analysis before the deadline.

In case the analysis of the commercial sample retained by the Seller is not executed for any reason attributable to the Buyer before the referred deadline, the Buyer's claim shall be automatically null and void without any further notification from the Seller.

9.2.3. The Seller is only answerable, responsible and/or liable for the quality of the Marine Fuels included in their technical description in the Sale Offer and not for any other implied quality standards.

9.2.4. Any quality claim shall be notified by the Buyer to the Seller and shall be finally time barred if the quality claim is not notified and duly documented within thirty (30) days of the date of delivery. Both parties shall be obliged to extend the maximum term to keep the commercial sample provided in Clause 9.2.3. above until the commercial sample or samples are analyzed.

Should such notice not be provided, any claim will be automatically time-barred and will be considered null and void.

### **9.3. Time is of the essence**

Time is of the essence in quantity and quality claims. Any claim not made in accordance with the terms stated in this Clause 9 (*Quantity and Quality Claims*) and any lack of documentation of the claim shall cause the claim to be time barred, null and void.

### **9.4. Documentation of quantity and quality claims**

To be regarded as fully documented any quantity/quality claim must include, but not limited to, the full report of the Buyer's accredited representative together with ullage reports for all the Marine Fuels tanks (including settling, service and storage tanks) on the Vessel both prior and subsequent to the delivery; an independent laboratory analysis report of the Buyer's retained quality sample as referred to in Clause 9.3. (*Time is of the essence*); the position, destination and ETA of the Vessel; all correspondence to/from the fuel testing organization used by the Buyer; the location of the Marine Fuel on board the Vessel and the rate and quantity of consumption since the delivery; details as to the three (3) previous Marine Fuel deliveries to the Vessel in terms of the quantity, quality and specification of the product supplied and the place and date of supply and name of supplier; and ullage reports for all the Marine Fuel tanks (including settling and service tanks) on the Vessel both prior and subsequent to the date of supply of the Marine Fuels and all and any evidence for any damages claimed (such as, but not limited to invoices, expert's reports, witnesses statements, videos and photos). In case of alleged damage to the engine, the Seller shall be notified well in advance of the date of the intended repair, and in any case with no less than thirty (30) days' notice, and will have the right to name a representative to attend the repairs, but such nominations shall not be regarded as an acceptance of responsibility or liability.

## **10. UTILISATION OF MARINE FUELS**

The Buyer guarantees to the Seller that the Marine Fuels supplied shall be used exclusively by the Vessel.

## **11. ORIGIN**

Except if otherwise agreed in the Contract, the Seller does not expressly or impliedly guarantee any specific custom's origin of the Marine Fuels, save that the Seller warrants that the Marine Fuels are not of an origin or have been exported as a product from a place that is subject to any of the sanctions, prohibitions, restrictions or designations referred to in Clause 22 (*Sanctions and Trade Restrictions*).

## **12. PRICE, PAYMENT AND SECURITY**

### **12.1. Price**

The price of the Marine Fuels shall be stipulated by the Seller in the Confirmed Nomination, or in its express acceptance of the new conditions proposed by the Buyer as per Clause 3 (*Offers, Quotations and*

Prices) above.

In addition to the provisions set out in Clause 13 (*Taxes and Assessments*) below, any taxes, duties or charges of any kind (other than taxes on income) imposed upon the Seller by any governmental and/or any regulatory authority, related to or due to the production, storage and supply, transport, distribution, sale or commercialization of the Marine Fuel, will be paid by the Buyer to the Seller.

## 12.2. Invoicing

12.2.1. All the invoices shall be issued in US Dollar (US\$) or Euro (€) (or any other currency specifically agreed by the Parties in the Specific Terms). The payment shall always be made in the currency agreed by the Parties.

12.2.2. The price of the Marine Fuels supplied shall be paid by the Buyer to the Seller in full, without any deduction, discount, compensation or withholding whatsoever, and without deductions due to differences in currency exchange indexes, free of bank charges to the Seller, on delivery of the invoice sent by the Seller to the Buyer, according to the terms of payment established in the Sale Offer.

## 12.3. Payment

12.3.1. The sale price is payable in all cases, notwithstanding any claim of any nature whatsoever that may be presented by the Buyer against the Seller.

12.3.2. If the Buyer fails to make any payment due to the Seller under the Contract on or before the due date for payment, then, without limiting the Seller's remedies under any termination clause, interest shall accrue on the overdue amount at the rate of three per cent. (3%) per annum (calculated on the basis of a 360-day year) above:

- (i) if the payment due is denominated in US Dollar (US\$), Term SOFR;
- (ii) if the payment due is denominated in Euro (€), EURIBOR; or
- (iii) if the payment due is denominated in any other currency, the rate confirmed by the Seller.

In each case, such interest shall accrue on a daily basis from (and including) the due date until (but excluding) the date of payment of the overdue amount to the Seller, whether before or after judgment, and will be immediately payable by the Buyer on demand by the Seller. If such rate or publication ceases to be available, the Seller will notify the Buyer of the applicable rate, publication or mechanism for calculating the rate, as per market standard practice.

For the purposes of this Clause:

**"Term SOFR"** means the Term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate); and

**"EURIBOR"** means the Euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate).

12.3.3. In the event of any invoice being unpaid five (5) calendar days after its due date, the Seller may:

- (i) refrain from providing new supplies pending delivery to the Buyer as well as to third parties on its behalf; and
- (ii) claim from the Buyer all expenses of recovery) of any of such unpaid sums (including, but not limited to, judicial expenses, taxes and lawyer's fees.

12.3.4. Partial payment of an invoice shall never be, nor deemed to be, equivalent to effective payment (even in the case of claims by the Buyer pending resolution) and the Seller is entitled to full collection of the sums it is owed. Any debit balance resulting from partial payment by the Buyer shall attract interest at the rate set out in Clause 12.3.2. above.

12.3.5. The Buyer and the Vessel Owner company shall be jointly and severally liable for payment of the price of the Marine Fuels supplied and the Seller may enforce his credit, in the manner and within the legal limits foreseen, on the supplied Vessel and on the chartered goods accrued thereon.

12.3.6. Any sum owed by the Buyer for payment of the price of the Marine Fuels supplied, plus the interest and expenses accrued, may be compensated with other debts that the Seller may have with the Buyer or any of its Affiliates, arising from other commercial transactions with the Buyer, with the exception of debts that do not allow for such compensation by mandatory legal provision.

#### **12.4. Security**

12.4.1. The Buyer shall provide the Seller with such security requested by the Seller in any Contract in the form, on the terms and at the time specified by the Seller in such Contract.

12.4.2. Without prejudice to the Seller's other rights as provided in the Contract, the Seller shall not be required to, and may suspend its obligations to, deliver Marine Fuels pursuant to a Contract until the Buyer has provided the security requested.

12.4.3. If, in the Seller's opinion acting in good faith, there is a Financial Event in the Buyer's financial condition or business or in the consolidated financial condition or business of the Buyer's group taken as a whole (if the Buyer is part of a group of companies), the Seller may, by written notice to the Buyer:

- (i) require the Buyer to provide acceptable security with respect to its obligations under any Contracts in the form, on the terms, and at the time required by the Seller;
- (ii) cancel or suspend any credit arrangements the Seller has with the Buyer;
- (iii) suspend delivery of Marine Fuel to the Buyer under any Contract between the Seller and the Buyer or any Affiliate of the Buyer until such time as the acceptable security requested pursuant to Clause 12.4.1. has been provided;
- (iv) require the Buyer to pay immediately on demand all sums due to the Seller and/or to any Cepsa Party in respect of Marine Fuel delivered under any contract (not limited to the Contract in question) between the Seller and/or its Affiliates and the Buyer and/or its Affiliates; or
- (v) set-off amounts owed by the Seller and/or its Affiliates to the Buyer and/or its Affiliates against any amounts owed by the Buyer and/or its Affiliates to the Seller and/or its Affiliates.

### **13. TAXES AND ASSESSMENTS**

**13.1.** The Buyer will pay the Seller the amount of all excise, gross delivery, import, motor fuel, superfund and spill taxes, and all other federal, state and local taxes (collectively, "**Taxes and Assessments**") or the foreign equivalent (other than taxes on income), and paid or incurred by the Seller directly or indirectly with respect to the Products and/or on the value thereof insofar as the same are not expressly included

in the price quoted. Any additional Taxes and Assessments incurred by Seller arising from any delivery and imposed by any governmental and/or any regulatory authority after delivery as a result of an audit, whether domestic and/or international, shall be borne solely by Buyer.

**13.2.** The Buyer will present the Seller with any required documentation, including but not limited to registrations, exemptions, certifications, claims, refunds, declarations or otherwise, in a form and format, and on or before whatever due date the Seller shall require, to satisfy the Seller's concerns in connection with any of the above taxes or assessments. Further, the Buyer shall indemnify and hold the Seller harmless for any damages, claims, liability or expense the Seller might incur due to the Buyer's failure to comply with this requirement.

**13.3.** The Buyer shall, upon written request of the Seller, send to the Seller a valid and updated certificate of tax residence issued by the applicable tax authority of the Vessel's flag state.

**13.4.** For the avoidance of doubt, all supplies agreed by the Seller imply the direct delivery to the Vessel without title and risk being passed onto any agent, broker, trader, or any other Buyer whatsoever prior to the delivery of the Marine Fuels to the Vessel.

**13.5.** Any claim that the Seller may have against the Buyer or any of its representatives for tax liabilities under this Clause 13 (*Taxes and Assessments*) will survive until the time-bar or term applicable to any tax assessment under the applicable tax laws and regulations.

## 14. CHARGES

In addition to the prices payable for Marine Fuels, the Buyer shall pay the following charges:

- (i) any expenses incurred as a result of the Master of the vessel rejecting the whole or any part of the delivery under a Commitment;
- (ii) any mooring or unmooring charges or port dues which may be incurred by the Seller in connection with any vessel to which Marine Fuels are delivered hereunder;
- (iii) any duties, taxes or charges (as set out in Clause 12.1. (*Price*) above), impositions, freights, premiums, or other costs incurred by the Seller, or for which the Seller is accountable, in respect of deliveries of Marine Fuels under a Commitment;
- (iv) if the Seller (not having duty-free stocks available, and the Buyer first having been advised that this is the case) delivers to the Buyer from duty paid stocks, the amount of such duty; and
- (v) any additional costs incurred by the Seller in respect of deliveries made under a Commitment including payments for overtime.

## 15. LIEN

**15.1.** Deliveries of Marine Fuel under the Contract are made not only to the credit of the Buyer but also on the reliance whether expressly or impliedly accepted by the Buyer, the Agents and the Master that they have full authority and capacity to engage the Vessel into the Contract and bound her *in rem*. It is hereby expressly agreed that the delivery of Marine Fuels/Products creates a maritime lien in accordance with article 46 US Code § 31342 of the United States Federal Maritime Lien Act so that the Seller will have, and may assert, such lien for the price of the Marine Fuel delivered and that the Buyer and its assignees or creditors shall have no lien against the Vessel except if and when they have paid in full to the Seller. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien

or liens attaching to a vessel.

The Buyer agrees and warrants that a lien of the Vessel is thereby created for the price of Products stipulated as per Clause 12 (*Price, Payment and Security*) above.

The Seller shall not be bound by any attempt by any person or entity to restrict, limit or prohibit its lien or liens attaching to a Vessel.

**15.2.** Products and services delivered under a Contract shall be made not only on the account of the Buyer, but also on the account of the receiving Vessel. When the Buyer is not the Owner of the Vessel, it represents and warrants to the Seller and its Agents that the Vessel Owner has given the Buyer, Agent and Master, as applicable, express authority to purchase the Products. The Buyer further warrants that the Seller has the right to assert and enforce a lien in accordance with Clause 15.1. herein against the receiving Vessel or any sister or associated Vessel for the amount of the Products and Services provided plus, without limitation, contractual interest pursuant to Clause 12.3.1. and any other expenses related to enforcement of the lien. The Buyer expressly warrants that it has the authority of the Vessel Owner to pledge the Vessel's credit as aforesaid. The Vessel is ultimately responsible for the debt incurred through the Contract. The Seller's right to apply and enforce a maritime lien will not be altered, waived or impaired by the application to the BDN of any disclaimer stamp.

**15.3.** In event of a breach of this Contract by the Buyer, the Seller will be entitled to start any such action or remedy as it shall in its absolute discretion consider necessary to enforce, safeguard or secure its right under this Contract in any court or tribunal of any state or country, including, but not limited to the action to enforce its rights of lien against Vessels, the existence and procedure of enforcement of such right of lien being determined by the local law of the place where enforcement is sought, or to otherwise obtain security by seizure, attachment or arrest of assets for any amount(s) owed to Seller.

**15.4.** Irrespective of any applicable law, the Buyer represents and warrants to the Seller that it will have the right to arrest the Vessel for any unpaid amount and that the Buyer, the Owner and its Agents shall not by any means oppose any arrest of the Vessel requested by the Seller except if the Marine Fuels have been duly and completely paid.

**15.5. Automatic assignment of rights, remedies and actions against the Vessel and the Vessel Owner**

Should the Buyer not timely pay the purchase price to the Seller, all and any actions and remedies whether in rem or *in personam* that the Buyer may have against the Vessel and the Vessel Owner and/or Disponent Owner (as applicable) shall be automatically assigned to the Seller that will be entitled, at its sole discretion and without need of any further notice, to start any such legal actions and remedies against the Vessel and her Owner and/or Disponent Owner (as applicable), including, but not limited any rights to arrest the Vessel in any jurisdiction. The Seller shall also be automatically subrogated in the contractual position of the Buyer against the Vessel Owner.

**16. LIABILITY AND INDEMNITY**

**16.1. Limitation on Liability**

16.1.1. Subject in all cases to the maximum liability amount set out in Clause 16.1.2. below, the liability of the Seller for any loss, damage, claim, or other expenditure arising out of or in connection with the failure by the Seller to perform its obligations under this Contract shall be limited to:

- (a) the removal, at a reasonable location to be agreed between the Seller and Buyer, of any Marine Fuels delivered which is not in accordance with the Contract and is unsuitable for use on board

the Vessel, and either (A) the replacement by the Seller of such Marine Fuel, or (B) reimbursement of the cost (as evidenced by invoice at market price) of such Marine Fuel.

- (i) In the event that the Buyer were to consider a potential debunkering of the Marine Fuels based on full and undisputable written evidence that the Marine Fuels are unsuitable for use by the Vessel, the advice of the Seller must first be sought and obtained, and the Buyer must comply with reasonable mitigation proposals given by the Seller. The Buyer must closely work and cooperate with the Seller in relation to each specific action to be taken in respect of the debunkering operation. Unless proven by the Buyer to be operationally impossible, the Buyer shall accept that fuel intended for debunkering is carried on board the Vessel until the Vessel calls at a port with reasonable debunkering facilities and in which a reasonable price for the debunkered fuel can be obtained. All damages, losses, costs, and expenses which may result from any unilateral decision taken by the Buyer shall be solely and exclusively born by the Buyer. In case debunkering takes place, the Seller shall have the right but not the obligation to perform a replacement supply at the originally agreed price, quality and quantity.
  - (ii) The Buyer is obliged to mitigate their losses and minimize the consequences of having received off-specification or suspected off-specification Marine Fuels by treating the Marine Fuels (e.g., by using additives, extra heating or by diluting the Marine Fuels for the purposes of enhancing combustion or complying with regulatory requirements). For the avoidance of doubt, mitigation shall include dilution of fuel to comply with requirements concerning the sulphur content, unless it is proven by the Buyer that such dilution would be technically impossible or constitute a violation of the law of the flag state or coastal state to be called by the Vessel. The Seller shall be liable towards the Buyer for the costs of such mitigation, subject to all other defenses, limitations and exclusions contained in these General Terms and Conditions and otherwise, if such mitigation costs exceed one thousand US Dollars (US\$ 1,000.00) and up to a limit of ten thousand US Dollars (US\$ 10,000.00), or its equivalent in other currencies;
- (b) the reasonable repair costs of any components that are physically damaged as a direct result of using any Marine Fuel supplied by the Seller which is not in accordance with the Contract; and
  - (c) the losses, damages, claims or expenses arising from the death or personal injury to any person caused by the Seller's negligence.

The Seller shall have no obligation to make any payment to the Buyer under this Clause 16.1.1. unless and until the Seller has received full payment from the Buyer of all sums due in accordance with Clause 12 (*Price, Payment and Security*).

16.1.2. Notwithstanding any other provision in these General Terms and Conditions, the liability of the Seller and/or supplier shall be limited to the price of the Products supplied under the Contract.

16.1.3. The Seller and/or supplier shall not be liable for any special, indirect, consequential, punitive or exemplary damage of any kind including but not limited to loss of prospective profits, anticipated cost savings, contracts or financial or economic loss, claims in tort including negligence of the Seller and/or supplier, its agents, servants or sub-contractors, arising out of, or in connection with, the performance or non-performance under the Contract.

16.1.4. The Seller shall not be responsible for any claim arising from commingling the Marine Fuels delivered by the Seller with other fuel aboard the Vessel.

16.1.5. If the Buyer removes Marine Fuels without the consent of the Seller, all removal and related costs shall be for the Buyer's account.

16.1.6. Nothing in the Contract shall in any way limit the Buyer's obligations to mitigate any of its losses in accordance with this Clause 16 (*Liability and Indemnity*).

16.1.7. The Buyer shall indemnify and hold the Seller, Seller's Affiliates and the directors, employees and agents and Seller's Affiliates harmless against all claims, liabilities, loss, damage, costs fines, penalties and expenses whatsoever and by whomsoever brought arising in connection with any delivery of Marine Fuels except to the extent that such claims, liabilities, loss, damage, costs, fines, penalties and expenses are caused by the gross negligence of the Seller or Seller's Affiliates, or breach by the Seller of its obligations under the Contract.

16.1.8. Any claim that is not related to the quality and/or quantity of the Marine Fuels must be notified by the Buyer to the Seller in writing, including all the documentation available to prove and justify such a claim, within the term of thirty (30) days from the date of supply of the Marine Fuels.

16.1.9. The provisions of this Clause 16 (*Liability and Indemnity*) shall continue to apply notwithstanding the termination or expiry of the Contract for any reason whatsoever.

## 17. FORCE MAJEURE AND OTHER EXCEPTIONS

Neither of the Parties will be responsible in the event of breach or defective fulfilment of any of these Terms and Conditions due to an event of Force Majeure.

For the purposes of these General Terms and Conditions, Force Majeure is understood to be all foreseeable or unforeseeable events that, being beyond the control of the Parties, could not be avoided by the Parties by use of reasonable means, that have a direct effect on its execution, preventing or hindering, beyond what is reasonable, the fulfilment of the obligations arising under these General Terms and Conditions. This item expressly excludes the payment obligations of the Buyer with regard to the Marine Fuels supplied.

The Party that is prevented from performing the Contract, shall inform the other Party without delay and will take all measures reasonably available to it to eliminate the cause of hindrance, or to mitigate its effects on the Contract, it being duly understood that it will re-establish fulfilment of the Contract as soon as possible after elimination of that cause. If the situation persists for more than one (1) month, the Party not affected by the Force Majeure may decide to terminate this Contract.

Under no circumstance will Force Majeure cause obligations to pay money to be waived. Moreover, in the event of Force Majeure preventing or suspending the supply for a term exceeding fifteen (15) days, the Seller may terminate the Contract.

Force Majeure means, without limitation:

- (i) war, hostilities, blockades, riots, civil uprising, strike, lockout, labour or employment litigation, epidemics, fire, flooding, ice, hazards of the sea, other eventualities caused by nature;
- (ii) prohibition to import, export or on transit, or other executive or legislative action by any government in the country of origin, or within the territory to which it or its raw materials are to be supplied; and
- (iii) total or partial failure of the means of supply, problems in transport that affect the fuel that is to be supplied, or its raw materials, outage in the supply of energy or other causes



or circumstances that aggravate any existing difficulty at the time of the Contract and that affect the possibility of supplying the Marine Fuels ordered.

## 18. SUSPENSION, BREACH AND TERMINATION

**18.1.** Without prejudice to any other rights and remedies, the Seller may by notice either orally (confirming such notification in writing) or by written notice to the Buyer terminate or suspend delivery of any Commitment with immediate effect if:

- (i) the Buyer is in breach of any of its obligations under any other Commitment with the Seller or its Affiliates and fails to remedy such breach within thirty (30) days after written notice of the existence of such breach;
- (ii) there is a Change of Control of the Buyer;
- (iii) the Buyer or any guarantor of the Buyer should go into or have a petition presented for its liquidation, or should take any action or be subject to any similar act or thing under any applicable law, such as:
  - A. the making of a general assignment for the benefit of creditors by the Buyer;
  - B. the entering into any arrangement or composition with creditors (other than for the purposes of a solvent reconstruction or amalgamation);
  - C. the institution by the Buyer of proceedings seeking to adjudicate the Buyer as bankrupt or insolvent, or seeking protection or relief from creditors, or seeking liquidation, winding up, or rearrangement, reorganization or adjustment of the Buyer or its debts (other than for purposes of a solvent reconstruction or amalgamation), or seeking the entry of an order for the appointment of an administrator, a receiver, trustee or other similar official for the Buyer or for all or a substantial part of the Buyer's assets; or
  - D. the institution of any proceeding of the type described in (c) above against the Buyer; or
- (iv) anything analogous to any of the events described in paragraph (iii) happens to or in relation to the Buyer in any jurisdiction.

A Change of Control shall occur for the purposes of these terms and conditions where:

- (i) a person acquires Control of the Buyer where no person previously had Control of the Buyer;
- (ii) the ultimate parent company of the Buyer ceases to have Control of the Buyer;
- (iii) a person acquires Control of the ultimate parent company of the Buyer; or
- (iv) a person who is not under the Control of the ultimate parent company of the Buyer acquires Control of the Buyer.

For the purposes of these General Terms and Conditions, Control means, in relation to any company, having legal and beneficial ownership of not less than fifty per cent. (50%) of the voting rights attached to the issued share capital of that company.

**18.2.** On termination of any Commitment for any reason all sums owed to the Seller shall become immediately due and payable.

**18.3.** Without prejudice to any other rights or remedies, the Seller may suspend deliveries or vary the stipulated method of payment with immediate effect if the Buyer is in breach of any of its obligations under any Commitment.

**18.4.** 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. RESTRICTIONS

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

## 20. HEALTH AND THE ENVIRONMENT

**20.1.** If in the course of any delivery under a Marine Fuels supply operation made under any Contract there is any escape or spillage of Marine Fuels:

- (a) the Buyer agrees that, if a Pollution Event occurs before, during or after delivery of the Marine Fuels, the Seller or the Delivering Company may at its sole discretion take reasonable steps to control and terminate the Pollution Event, contain and remove the escaped Marine Fuels and clean the affected area. The Buyer must afford the Seller and the Delivering Company its reasonable co-operation in implementing steps under this Clause. If the Pollution Event is caused by an act or omission of the Buyer, its employees, or Agents (other than the Seller and the Delivering Company), the Buyer must indemnify the Seller and the Delivering Company for the cost of any steps taken under this Clause 20.1(a). If both Parties are at fault, all expenses, claims, losses, damages, liabilities and penalties shall be divided between the Parties in accordance with the respective degrees of fault. "**Pollution Event**" means any occurrence as a result of which the Marine Fuels escaped onto or into land or water; and
- (b) The Buyer shall supply the Seller with any documents and information concerning the Pollution Event or any programme for the prevention thereof as are requested by the Seller or are required by law or regulations applicable at the Delivery Port.

**20.2.** The Buyer shall be fully responsible for the proper use, maintenance and repair of the Equipment. The Buyer will immediately inform the Seller of any defects, ruptures, spills or other problems with or related to the Equipment which may occur during the delivery process.

**20.3.** The Buyer will provide ready and safe means of access to the Equipment for delivery of the Marine Fuels at the Delivery Port and shall not obstruct access to the Equipment for delivery. Delivery will not commence until such time as the Pre-delivery Checklist has been jointly and satisfactorily completed and signed by or on behalf of both the Seller and the Buyer.

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

## 21. NEW AND CHANGED REGULATIONS

**21.1.** It is understood by the Parties that they are entering into a Contract in reliance on the laws, rules, regulations, decrees, agreements, concessions and arrangements (hereinafter called "**Regulations**") in effect on the date hereof with governments, government instrumentalities or public authorities affecting the Marine Fuels sold hereunder including, but without limitation to the generality of the foregoing, those relating to the production, acquisition, gathering, manufacturing, transportation, storage, trading or delivery thereof, insofar as such Regulations affect the Seller.

**21.2.** In the event that at any time during the term of a Commitment any Regulations are changed or new Regulations become effective whether by law, decree or regulation or by response to the insistence or request of any governmental or public authority or any person purporting to act therefore, and the effect of such changed or new Regulations (a) is not covered by any other provision of these Terms and Conditions, and (b) has a material adverse economic effect upon either the Seller or the Buyer, then the Seller or the Buyer (as the case may be), shall have the option to request renegotiations of the prices or other pertinent terms provided for in these Terms and Conditions. Such option may be exercised by the relevant Party at any time after such changed or new Regulation is promulgated, by written notice of desire to renegotiate, such notice to contain the new prices or terms desired by that Party. If the Parties do not agree upon new prices or terms within thirty (30) days after the relevant Party has given such notice, the relevant Party shall have the right to terminate any Commitment at the end of the such thirty (30) day period. Any Marine Fuels lifted during this period shall be sold and purchased at the price and on the terms applying hereunder without any adjustment in respect of the new or changed Regulations concerned.

## 22. SANCTIONS AND TRADE RESTRICTIONS

**22.1.** Each of the Parties hereby represents, warrants and undertakes, in relation to the Applicable Laws and to the Authorities, that they will each comply with the economic, operational and legal sanctions administered or enforced by the Authorities and each Party undertakes to refrain from dealing directly (and, to the best of their knowledge, indirectly) with any sanctioned country (including the country of origin of the Product, the country or countries in which the Product may be supplied, loaded, transported, delivered, discharged, stored or transit during the performance of the Sales Contract, and its financing, payment and insurance), entity, group or person, including the designation of any specified vessels, in their relationships and activities in connection with the Contract and they shall each respectively take no action which would subject the other to fines or penalties under Applicable Laws;

**22.2.** Notwithstanding anything to the contrary herein:

- (i) nothing in the 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, penalised or prohibited under Applicable laws; and
- (ii) neither Party shall be obliged to perform any obligation otherwise required by this Agreement (including without limitation an obligation) to (a) perform, deliver, accept, sell, purchase, pay or receive monies to, from, or through a person or entity, or (b) engage in any other acts if this would be in violation of, inconsistent with, or expose such Party to punitive measures under Applicable Laws.

**22.3.** Where any performance by a Party would be in violation of, inconsistent with, or expose such Party to punitive measures under, Applicable Laws, such Party (the "**Affected Party**") shall, as soon as reasonably practicable give written notice to the other Party of its inability to perform. Once such notice has been given the Affected Party shall be entitled to:

- (i) immediately suspend the affected obligation (whether payment or performance) until such time as the Affected Party may lawfully discharge such obligation;
- (ii) if it is not possible to suspend the affected obligation and the inability to discharge the obligation continues (or is reasonably expected to continue) until the end of the contractual time for discharge thereof, to a full release from the affected obligation, provided that where the relevant obligation relates to payment for goods which have already been delivered, the affected payment obligation shall remain suspended (without prejudice to the accrual of any interest on an outstanding payment amount) until such time as the Affected Party may lawfully resume payment; and/or
- (iii) where the obligation affected is acceptance of the Vessel, to require the other Party to nominate an alternative Vessel,

in each case without any liability whatsoever (including but not limited to any damages for breach of contract, penalties, costs, fees and expenses).

**22.4.** From time to time, at the reasonable request of the Seller, the Buyer will confirm in writing that it has complied with its undertakings under this Clause and will provide any information reasonably requested by the Seller in support of such compliance.

**22.5** In the event of any breach, and notwithstanding the right to terminate the Contract defined hereunder, the Party in breach shall adopt any necessary or required measure by the other Party, in order to remediate or minimize its effects.

**22.6.** Each Party may terminate this contract forthwith upon written notice to the other Party at any time, if in its reasonable judgment the other Party is in breach of any of the representations, warranties or undertakings contained in this Clause.

## **23. ANTI-CORRUPTION**

The Parties will each comply with all Applicable Laws relating to anti-bribery and anti-money laundering; They Parties shall not, directly or indirectly,

- (i) pay, offer, give or promise to pay or authorize the payment of any monies or other things of value to:
  - A. a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
  - B. an officer or employee of a public international organization;
  - C. any person acting in an official capacity for or on behalf of any government or department, agency or instrumentality of such government or of any public international organization;
  - D. any political party or official thereof, or any candidate for political office;
  - E. any director, officer, employee, or agent/representative of an actual or prospective counterparty, supplier or customer of the Buyer or Seller; or
  - F. any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities, or
- (ii) engage in other acts or transactions,

in each case if this is in violation of or inconsistent with the applicable anti-bribery or anti-money laundering law, rule or regulation of any relevant government including without limitation the US Foreign Corrupt Practices Act, the UK Bribery Act 2010, the UK Anti-Terrorism, Crime and Security Act 2001, the Money Laundering Regulation 2007 and the Proceeds of Crime Act 2002 and the applicable country legislation implementing the Organisation for Economic Cooperation and Development ("OECD") Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The Parties shall implement and/or maintain those appropriate controls to reasonably be aware of any breach of any of the aforesaid.

In the event of any breach, and notwithstanding the right to terminate the Contract, the Party in breach shall adopt any necessary or required measure by the other Party, in order to remediate or minimize its effects.

Each Party may terminate this contract forthwith upon written notice to the other Party at any time, if in its reasonable judgment the other Party is in breach of any of the representations, warranties or undertakings contained in this Clause.

Notwithstanding anything to the contrary in this Clause, the Parties shall not be required to do anything which is inconsistent with, penalised or prohibited or may constitute a violation of the laws and regulations of any State to which either of them is subject.

#### **24. RECORDING, RETENTION AND MONITORING OF COMMUNICATIONS**

Each Party hereby acknowledges to the other Party and consents that such other Party may without any further notice and to the extent permitted by law:

- (i) record and retain electronic transmissions (including telephone conversations, e-mail, and instant messaging between the Parties' respective representatives in connection with the Agreement or other commercial matters between the Parties) on central and local databases for their respective legitimate purposes, including but not limited to be used as evidence; and
- (ii) monitor electronic transmissions through their internal and external networks for purposes of security and compliance with applicable laws, regulations and internal policies for their legitimate business purposes.

#### **25. APPLICABLE LAW AND DISPUTE RESOLUTION**

This Contract shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Contract shall be referred to three (3) persons at New York, Madrid or Singapore at the Seller exclusive option, one to be appointed by each of the Parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. In cases where neither the claim nor any counterclaim exceeds the sum of one hundred thousand US Dollars (US\$ 100,000.00) (or such other sum as the Parties may agree), the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc.

The United States Federal Maritime Lien Act will apply to any determination of the existence of a maritime lien, attachment or any other maritime claim regardless of where the Seller commences any legal action

against the Buyer.

## 26. MISCELLANEOUS

### 26.1. Amendments and variations

These Terms and Conditions may not be amended or modified orally, and no amendment or modification shall be effective unless it is in writing and signed by authorized representatives of each of the Seller and the Buyer.

### 26.2. Notices

Any Party giving notice under this Contract shall ensure that it is effectively given, and such notice shall be treated as received during the recipients' Working hours. If such notice is sent outside the recipients' Working hours it shall be treated as received during the recipients' next Working day.

26.2.1. Except where expressly stated otherwise, a notice, demand, request, statement, or other communication under or in connection with a Commitment shall only be effective if it is in writing.

26.2.2. Notices, demands, requests, statements or other communications under or in connection with a Commitment shall be sent to a Party at the e-mail addresses or numbers specified from time to time by the Party to whom the notice is addressed.

26.2.3. Any notice given under or in connection with a Commitment shall be effective only upon actual at the address specified in the Commitment.

26.2.4. No notice given under or in connection with a Commitment may be withdrawn or revoked except by notice given in accordance with this Clause.

26.2.5. Where a Commitment is made by an Agent acting for the Buyer then notice may be given either to the Agent or to the Buyer at the option of the Seller.

### 26.3. No waiver

The failure of either of the Parties to enforce any of the provisions of any Commitment at any time shall not be construed as a waiver of that provision unless specifically so notified by that Party in writing which expressly states it is a waiver. No waiver of any breach of a Commitment shall be held to be a waiver of any other breach or a continuing waiver of any further breach of a Commitment.

### 26.4. Waiver of immunities

Buyer expressly and irrevocably waives and agrees not to assert such a defense in an action or proceeding, which may be commenced or asserted against Buyer or Buyer's revenues and/or assets in connection with any Contract to the fullest extent permitted by applicable law, with respect to Buyer and Buyer's revenues and/or assets (irrespective of their use or intended use), all immunity on the grounds of sovereign immunity or other similar grounds, where Buyer is a State or Government owned or controlled entity, whether in whole or in part or otherwise, which status would otherwise entitle Buyer to assert or allege the defense of sovereign immunity in any claim against it from:

- (i) suit;
- (ii) jurisdiction of any court;
- (iii) relief by way of injunction, order for specific performance or for recovery of property;
- (iv) attachment of Buyer's assets (whether before or after judgment); and

- (v) execution or enforcement of any judgment to which Buyer or Buyer's revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any proceedings.

#### **26.5. Incorporation**

These General Terms and Conditions shall be deemed to have been incorporated to any Contract or Commitment entered into between the Seller and the Buyer since the effective date (1 September 2023) up to the date on which these General Terms and Conditions have been withdrawn by the Seller or substituted by amended or new general terms and conditions as may be published in the Seller's Website (<https://bunker.cepsa.com>) from time to time.

#### **26.6. Entire agreement**

The Contract constitutes the sole and entire agreement of the Parties to it with respect to the subject matter contained therein, and supersedes any previous agreement, written and/or oral, with respect to such matter. In the event of any inconsistencies between these General Terms and Conditions and agreed Special Terms, the latter shall prevail.

#### **26.7. Severability**

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

#### **26.8. Partial Validity**

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

#### **26.9. Rights of third-parties**

Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

#### **26.10. Reach compliance**

For deliveries where the loading terminal or the discharge port is located in the EEA, the Seller and the Buyer will comply with the provisions of Regulation (EC) no 1907/2006 ("**REACH**") (as amended from time to time), which are applicable to the sale of Products. Both Parties shall maintain a firm commitment in terms of safety, health, quality and respect for the environment.

To enable Buyer to meet its compliance obligations with regard to Regulation (EC) no 1907/2006 ("**REACH**") (as amended from time to time), Seller will provide Buyer a Material Safety Data Sheet complying with Regulation (EC) n° 1272/2008 ("**CLP**") and specifying information regarding the chemical composition of any hazardous products (substances, preparations, mixtures, alloys or goods) supplied under this agreement, including the safety information required under reach and, where Seller is a EEA

manufacturer, information regarding the registration or pre-registration status of any products pursuant to reach.

Both the Seller and the Buyer will perform their activity according to best practices, complying with internationally accepted standards regarding safety, health, quality and the environment, and respecting and abiding by the laws, rules and regulations applicable in each case, according to the place where the activity is performed, ensuring that authorizations and communications are complied with.

#### **26.11. Assignment and succession**

Any Contract or Commitment shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns. The Buyer shall not assign or encumber all or any part of the benefit of, or any rights or benefits under, any Contract or Commitment without the prior written consent of the Seller, which consent shall not be unnecessarily or unreasonably withheld or denied. Specifically, if the Buyer is acting as a part of a chain of contracts or as a company of a group of companies, the Buyer represents and warrants to the Seller that it has direct right to be paid by the Vessel Owner in case of non-payment by any other parts of the chain of contracts or the group of companies.

The Buyer shall ensure and represents and warrants to the Seller that any receivables that any of the Parties of the chain of contracts or group of companies shall not be assigned or encumbered in any form whatsoever if the Seller has not been timely paid in full. The Seller may at any time assign all or any part of the benefit of, or its rights or benefits under, any Commitment.

The Seller may at any time sub-contract or enter into any arrangement whereby another person is to perform any or all of its obligations under any Commitment.

The Buyer shall not assign all or part of the supply ordered to a third-party without the prior written consent of the Seller. Such consent shall not be unreasonably withheld by the Seller where the Buyer as assignee and the third-party as assignor remain joint and severally liable for the due fulfilments of any and all contractual obligations.

#### **26.12. Substitution**

In respect of any of the ports of delivery listed in the Port Services Guide, at any time the Seller may transfer its rights and obligations under a Commitment (without further notice to the Buyer) in respect of supplies of Marine Fuels to the Buyer to the Delivering Company identified for the relevant port of delivery. The Buyer agrees that upon such transfer it shall be bound to buy and take from the Delivering Company the whole or any part of the Marine Fuels that under such Commitment are to be sold and delivered to that port of delivery, upon these terms and conditions in all respects as if the Delivering Company was named as the Seller in such Commitment and the Seller shall stand discharged from all of its obligations under such Commitment to the Buyer in respect of the supply of Marine Fuel at that port of delivery.

Notwithstanding the foregoing provisions:

- (i) Notices to be given by or to the Seller or the Delivering Companies shall be given by or to the Seller (unless otherwise indicated); and
- (ii) Unless the Buyer is requested to make payments directly to the Delivering Company, payments shall be made to the Seller for the benefit of the Delivering Company.

Notwithstanding the foregoing provisions of this Clause 26 (*Miscellaneous*) the Seller shall stand and remain bound as guarantor to the Buyer of the performance by the Delivering Company of its obligations under any Commitment in respect of supplies of Marine Fuels.



**26.13. Confidentiality**

26.13.1. Each Party shall treat as confidential all information obtained as a result of entering into or performing any Commitment which relates to:

- (i) the subject matter of these terms and conditions; or
- (ii) the other Party.

26.13.2. Each Party shall:

- (i) not disclose any such confidential information to any person other than any of its directors or employees who needs to know such information in order to discharge his/her duties;
- (ii) not use any such confidential information other than for the purpose of satisfying its obligations under any Commitment; and
- (iii) procure that any person to whom any such confidential information is disclosed by it complies with the restrictions contained in this Clause as if such person were a party to any Commitment.

26.13.3. Notwithstanding the other provisions of this Clause, either Party may disclose any such confidential information:

- (i) if and to the extent required by law or for the purpose of any judicial proceedings;
- (ii) to a Delivering Company;
- (iii) to its affiliates, professional advisers, auditors and bankers;
- (iv) if and to the extent the information has come into the public domain through no fault of that party; or
- (v) if and to the extent the other Party has given prior written consent to the disclosure, such consent not to be unreasonably withheld,  
further to written notice being provided to the other Party.

26.13.4. The restrictions contained in this Clause 26.13. (*Confidentiality*) shall continue to apply after the termination of any Commitment.

**26.14. No partnership**

Nothing in a Commitment and no action taken by the Parties under a Commitment shall constitute a partnership, association, joint venture or other co-operative entity between any of the Parties.

**26.15. Data and data protection**

26.15.1. Data supplied, whether personal or otherwise, by a Buyer and/or which relates to a Buyer's account, will, with the Buyer's consent, given with the acceptance of these General Terms and Conditions, be held and processed by computer or otherwise by the Seller to operate the Buyer's account(s); to confirm, update and enhance the Seller's customer records; for statistical analysis; to establish any identity or otherwise as required under applicable legislation; to assess each Buyer's credit status on an on-going basis; and otherwise as considered necessary or appropriate by the Seller. In each case the processing may continue after the Commitment has ended.

Alternatively, the Buyer may be requested to complete or fulfil other checks as may be necessary to satisfy credit assessments, money laundering or fraud detection requirements.

26.15.2. The Seller may disclose, with the Buyer's consent, given with the acceptance of these GT&Cs, data relating to the Buyer and/or a Buyer's account(s):

- (i) to a credit reference agency where it may be accessed by other financial institutions to assist assessment of any application for credit made to the Seller and for debt tracing and fraud prevention;

- (ii) to any agent or sub-contractor of the Seller performing services in connection with the Buyer's account;
- (iii) to a Delivering Company or any other person to whom the Seller proposes to transfer any of its rights and/or duties under a Commitment;
- (iv) to any guarantor or person providing security in relation to Buyer's obligations under a Commitment;
- (v) as required or permitted by law or any regulatory authority; and/or
- (vi) as otherwise considered necessary or appropriate by the Seller.

26.15.3. Without prejudice to any other provisions for termination contained in these terms and conditions, all monies due and owing by the Buyer to the Seller shall become due and payable forthwith if the Seller discovers that any information provided by the Buyer to the Seller is materially inaccurate.

26.15.4. Pursuant to the European Regulation (UE) 2016/670 of 27<sup>th</sup> April 2016 and any other additional EU applicable Regulations and the Spanish Personal Data Protection Act (*Basic law 15/1999 of 13 December*) and Royal Decree 1720/2007 of 21 December, by which the enabling Regulations for the Personal Data Protection Act were approved and any other regulations on data protection as may be applicable, the Seller undertakes strictly to comply with the provision of prevailing data protection legislation.

**26.16. Compliance with law**

Notwithstanding anything contained in the Contract to the contrary, the obligations of the Parties with respect to the consummation of the transactions contemplated by the said Contract shall be subject to all laws, present and future, of any government having jurisdiction over the Parties and the Contract, and to orders, regulations, directions or requests of any such government.