

ACHIEVE BUNKER LIMITED



GENERAL TERMS AND CONDITIONS FOR SALES OF MARINE FUELS

These General Terms and Conditions (“Terms and Conditions”) for Sales of Marine Fuels shall apply to all Contracts for the sale and delivery of Marine Fuels by Achieve Bunker Limited (the “Seller”) with effect from 1 December 2023 (the “Effective Date”) until further notice.

1. DEFINITIONS AND TERMS

1.1 Unless the context otherwise requires, the following definitions and meanings shall apply:

“**Buyer**” means all persons and/or entities (including their successors and/or assignees) named in the Sales Confirmation issued by the Seller as buying Marine Fuels under a Contract and shall include its servants, agents and designated representatives and the registered owners of the Vessel to which the Marine Fuels are being supplied, her charterers and/or managers and/or operators of the Vessel on whose behalf the persons and/or entities named in the Sales Confirmation is acting, all of whom are deemed to have contracted with the Seller to buy the Marine Fuels and all of whom shall be jointly and severally liable as the Buyer under the Contract.

“**Seller**” means Achieve Bunker Limited 傳成燃油有限公司 (CR No. 3021093 or UBI No. 72712578 wef 27 December 2023), a private limited company incorporated under the laws of Hong Kong.

“**Contract**” means an agreement by the Buyer to buy and a corresponding agreement by the Seller to sell and/or deliver or to arrange for the sale and/or delivery of Marine Fuels as contained in the contract for the purchase and sale of the Marine Fuels between the Buyer and the Seller comprising the Sales Confirmation and these Terms and Conditions.

“**Sales Confirmation**” means a confirmation in writing from the Seller to the Buyer setting out the details of the supply of Marine Fuels, including the identity of the Buyer, the grade and quantity of Marine Fuels to be supplied, intended date and place of supply, and the agreed price.

“**Marine Fuels**” means the type and grade of bunker fuel oil, heavy fuel oil, marine fuel oil, intermediate fuel oil, marine diesel oil, marine gas oil or any other type and grade of oil, which the Seller has sold and/or delivered; or agreed to sell and/or deliver; or arranged to be sold and/or delivered, in accordance with the Sales Confirmation and these Terms and Conditions.

“**Parties**” means the Buyer and Seller and “**Party**” means either the Buyer or the Seller as the case may be.

“**Physical supplier**” means the person or entity that is supplying the Marine Fuels for and on behalf of the Seller.

“**Public Holidays**” means a designated holiday under the laws of the place in which Marine Fuels are to be delivered to the Vessel.

“**Vessel**” means the ship or vessel, rig, platform or other installation nominated by the Buyer to take delivery, or be taking delivery or having taken delivery of the Marine Fuels under a Contract.

1.2 The Sales Confirmation together with these Terms and Conditions shall constitute the full and final agreement between the Seller and the Buyer (the “Contract”) and shall supersede and replace any other agreements made between the Parties prior to the Contract and any other terms that the Buyer may seek to impose. No variation shall be binding unless agreed in writing by the Seller.

1.3 In the event of any conflict between these Terms and Conditions and the Sales Confirmation the Sales Confirmation shall prevail but only to the extent of the conflict and in all other respects the Terms and Conditions shall apply.

1.4 The Buyer buys and the Seller sells Marine Fuels in accordance with the Contract and these Terms and Conditions shall be incorporated into all Sales Confirmation and Contracts or any other sales of Marine Fuels entered into between the Seller and the Buyer whether or not express reference to the Terms and Conditions is made.

1.5 Any Buyer named in the Contract who is not a registered owner of the Vessel represents and warrants to the Seller at the time of entry into the Contract that it has authority to act on behalf of the registered owners or charterers or operators of the Vessel and the registered owners, charterers and operators have agreed to independently enter into this Contract with the Seller. Each Buyer

further represents and warrants to the Seller that it has done and/or will do all things necessary to cause the registered owners and charterers of the Vessel to be a party to the Contract, including but not limited to providing a copy of the Contract to each of them and further stipulating in any contract or sub-contract for the sale and delivery of Marine Fuels that the Buyer has entered into or will be entering into this Contract with the Seller on behalf of each of the registered owners and charterers of the Vessel and that such Contract shall be valid and binding upon each of them. The Buyer further warrants that by receiving the Marine Fuels and signing the bunker delivery note by the Chief Engineer or the Master of the Vessel, the Master is acknowledging that the Vessel is bound by the terms and conditions contained herein.

2. BASIS OF SALE

- 2.1 A binding Contract between the Seller and Buyer comes into existence when (a) the Seller sends the Sales Confirmation to the Buyer; or (b) where the Buyer accepts the price for the Marine Fuels quoted by the Seller communicated by way of fax, telex, or electronic communication including but not limited to electronic mail, chat, information, submission or instant messenger communication, telephone, registered and reply-paid letter in writing or verbally, whichever is the earlier.
- 2.2 All orders of Marine Fuels are considered to be made by the registered owners, charterers, managers and operators of the Vessel, even if no written request from each of them exists and is only relayed by the Buyer to the Seller.
- 2.3 A Sales Confirmation may be provided by the Seller to the Buyer, but the absence of any such Sales Confirmation does not in any way affect the validity of the Contract between the Seller and the Buyer, which Contract shall remain governed by these Terms and Conditions.

3. PRICE

- 3.1 The price of Marine Fuels shall be the price as quoted by the Seller in writing and accepted by the Buyer for the relevant grade of Marine Fuel and as stated in the Sales Confirmation.
- 3.2 The price as agreed is only valid for delivery commencing within a 3-day delivery range beginning from the estimated date/time of arrival ("ETA") of the Vessel as indicated in the Contract; or if a range of estimated dates/times of arrival was indicated in the Contract, from the earliest date/time in that range. If the Buyer begins to take delivery or requires delivery to commence outside the said 3-day delivery range, the Seller shall be entitled at its option to adjust the price upwards to reflect prevailing market prices or to cancel the nomination. This is without prejudice to any claim the Seller may have against the Buyer for losses and/or damages for failing to take delivery within the 3-day delivery range.
- 3.3 The price as agreed is valid for a delivered quantity which is within the tolerance or margin of 5% more or less (+/- 5%) of the quantity specified in the Sales Confirmation. If the delivered quantity falls outside the five percent 5% tolerance or margin, the Seller shall be entitled at its option to adjust the price upwards to reflect the prevailing market prices. This is without prejudice to any claim which the Seller may have against the Buyer for any of its losses and/or damages.
- 3.4 Subject to Clauses 3.2 and 3.3 above, the prices applicable at the commencement of delivery under the Contract shall remain effective until the completion of delivery.
- 3.5 Unless otherwise agreed in writing by the Seller, all prices in the Contract are expressed to be net in U.S. dollars and do not include taxes, duties, levies, wharfage charges, barging charges, mooring charges, port charges or dues, overtime charges incurred where delivery takes place outside of regular working days and hours at the relevant port of delivery, or any other charges or costs whatsoever and howsoever arising out of and/or in connection with the delivery of Marine Fuels. All applicable taxes, duties, levies, wharfage charges, barging charges, mooring charges, port charges or dues, overtime charges and any other charges or costs arising out of and/or in connection with the delivery of Marine Fuels shall be for Buyer's account and paid for by the Buyer.
- 3.6 The Seller shall have a lien on the Vessel for all sums payable in respect of Marine Fuels delivered to the Vessel.

4. QUALITY

- 4.1 Notwithstanding any information that may be provided by the Seller to the Buyer regarding the characteristics and/or quality of the Marine Fuels, the Buyer shall bear the sole responsibility and risk for the selection of Marine Fuels for use in the Vessel including but not limited to the selection of Marine Fuels fit for use by the Vessel and the determination of compatibility with other fuels already on board the Vessel for use in the Vessel. The Seller does not warrant and shall be under no obligation to check whether the Buyer's selection and nomination of the grade of Marine Fuels is suitable for use by the Vessel or any other receiving facilities. The Seller also does not warrant that the Marine Fuels delivered or to be delivered is compatible with any other marine fuel, additives, lubricants and/or cylinder oil, which may be or will be on board and/or used by the Vessel. In no event shall the Seller be responsible for any loss caused by the quality or compatibility of the Marine Fuels delivered if the Marine Fuels were mixed or comingled with any other products, marine fuels and/or additives after delivery has been completed.

- 4.2 The Marine Fuels to be delivered hereunder shall be the Seller's or Seller's supplier's commercial grades as generally available at the time and place of delivery.
- 4.3 Save as otherwise stated in Clause 4.2, all other warranties and conditions (including but not limited to any warranties or conditions whatsoever relating to quality, fitness for purpose, description, or otherwise) whether expressed or implied by common law, statute, or otherwise are hereby expressly excluded.
- 4.4 Where the Buyer nominates Marine Fuels above the sulphur limits set out in MARPOL Annex VI, the Buyer shall be fully responsible for, and on the Seller's request provide confirmation in writing, that the Vessel has working Abatement Technology (as defined in MARPOL Annex VI) installed in compliance with MARPOL Annex VI or must include a copy of a valid Fuel Oil Non-Availability Report (FONAR) and that the relevant authorization granted to the Vessel for that specific delivery of Marine Fuels. The Buyer shall indemnify the Seller of all cost or losses incurred as a result of Seller's breach of this Clause.

5. QUANTITY

- 5.1 The quantity of Marine Fuels delivered by the Seller shall be the quantity specified in the Sales Confirmation with a tolerance or margin at Sellers' option of 5% more or less (+/- 5%) of the quantity specified. However the Seller's obligation to supply and/or to arrange for the supply of such quantities as specified in the Sales Confirmation shall notwithstanding any term in the Contract be subject to availability of the Marine Fuels from its nominated physical supplier at the time and place of the requested delivery.
- 5.2 The quantity of Marine Fuels delivered shall be finally and conclusively determined from the tank gauge or meter of the barge or truck effecting delivery or by gauging in the Seller's or Seller's physical supplier's shore tanks at Seller's election. Except where government regulations or local authorities determine otherwise, the calculation of the quantity of Marine Fuels delivered or any adjustment in volume owing to difference in temperature shall be made in accordance with API/ASTM-IP Petroleum Measurements Tables for petroleum and petroleum products or the methods of any other recognised standards authority at the discretion of the Seller or the Seller's physical supplier.
- 5.3 The Buyer shall have the option of being present or appointing a representative to observe the taking of measurements. If the Buyer does not send any representative to witness the measurements of the quantity of Marine Fuels delivered and/or the Buyers' representative does not personally witness the measurement, the Buyer shall be barred from raising any challenge to the finality and conclusiveness of the measurement and/or to bring any claim of a quantitative nature.
- 5.4 In the event the quantity of Marine Fuels delivered exceeds the quantity ordered inclusive of the 5% tolerance or margin as stipulated in Clause 3.3 above, the Buyer may refuse to accept delivery of the excess quantity, but if the Buyer does not so refuse the Buyer shall be obligated to pay for the excess quantity delivered at a price that is specified in the Sales Confirmation or the price as adjusted by the Seller pursuant to Clause 3.3 above, whichever is the higher.

6. NOMINATION AND DELIVERIES

- 6.1 The Buyer shall give the Seller at least seventy-two (72) hours prior written notice (excluding Saturday, Sunday and Public Holidays) of the exact time and exact location at which delivery is required and the Vessel's readiness to receive delivery, and the exact required quantity to enable the Seller to make all necessary arrangements for delivery to Buyer.
- 6.2 Without prejudice to Clause 14.2, the Seller shall endeavor to deliver the Marine Fuels to the Buyer's receiving Vessel as promptly as circumstances permit. However, the Seller shall not be liable whatsoever, including but not limited to any expenses, losses, damages, loss of use, loss of hire, detention, delays or demurrage which may be suffered by the Buyer or any other third parties, for any delays whatsoever or for any congestion that might affect the Seller's and/or the Seller's physical suppliers loading terminal, delivery facilities and/or bunker barges/trucks or any prior commitments of available bunker barges/trucks, or discretionary decisions of the local transportation provider as to the placement of the Vessel's order, and/or any other circumstances whatsoever outside the direct and immediate control of the Seller. In case of any delays not caused by any of the above circumstances, and which can be attributed solely to the gross negligence of the Seller, the Seller's liability to the Buyer shall be limited to and under no circumstances whatsoever exceed any additional port costs that might be incurred in connection with the delay in shifting, pilotage and berthing of the Vessel.
- 6.3 Delivery of the Marine Fuels shall be carried out subject to any regulations, requirements, practices and procedures prevailing at the port and time of delivery. The Buyer shall be solely responsible for ascertaining, acquainting itself and complying with all such regulations, requirements, practices and procedures prevailing at the port of delivery (including but not limited to relevant berth restrictions and requirements). The Buyer shall indemnify the Seller for any losses, costs, damages and expenses which have been incurred by the Seller following the Buyer's failure to comply with such regulations, requirements, restrictions, practices and procedures. Without prejudice to the foregoing, if any government and/or port permit and/or license are required for delivery of the Marine Fuels, the Seller have no obligation to deliver until such permit and/or license has been obtained by the Buyer.
- 6.4 In all cases, the Buyer shall be responsible for making all connections and disconnections of the pipelines or delivery hoses to the Vessel's bunker manifold and ensuring that the pipelines or delivery hoses are properly connected to the Vessel's bunker manifold

prior to the commencement of delivery and that they remain properly connected until the completion of delivery. The Buyer shall also render all necessary assistance and provide sufficient tankage and equipment to receive promptly all deliveries of Marine Fuels.

- 6.5 The Seller shall be at liberty to make arrangement with more than one physical supplier to supply the whole or any part of the Marine Fuels sold under each Contract and to substitute any of the physical supplier(s) initially nominated by the Seller under the Contract.
- 6.6 Should the Buyer and/or the Vessel cause any delays whatsoever to the delivery of the Marine Fuels for any reason whatsoever, or the Vessel fails to vacate the wharf or terminal promptly for any reasons whatsoever, the Buyer shall be liable for and indemnify the Seller against any and all losses, damages, costs and expenses whatsoever incurred by the Seller arising from any such delays, including but not limited to losses, damages, costs and/or expenses due to delays to the Seller's and/or the Seller's physical supplier's barge, and whether or not such losses, damages, costs and/or expenses is suffered directly or indirectly including claims that may be made by a third party against the Seller.
- 6.7 If subsequent to the entry into the Contract, the Buyer cancels the order under the Contract or fails to take delivery or rejects delivery of all or any part of the Marine Fuels under the Contract or fails to take all necessary steps towards taking delivery of the Marine Fuels or otherwise performing its obligations to take delivery of the Marine Fuels under the Contract for any reason whatsoever (including circumstances entirely outside of the Buyer's control), the Buyer shall be liable for and shall indemnify the Seller against all losses, damages and expenses whatsoever incurred by the Seller arising from such cancellation, failure or rejection by the Buyer, including but not limited to any difference between the Contract price and the prevailing market price of the Marine Fuels, loss or expense arising in connection with the physical or derivative trades that the Seller entered into with third parties for the purpose of effecting the supply of Marine Fuels, barging expenses of no less than US\$6.00 per metric ton for transportation of the Marine Fuels, storage costs and hedging losses. Without any prejudice whatsoever to the Seller's right to damages and to be indemnified by the Buyer, the Seller shall be entitled at its sole discretion to sell to a third party all or any part of the Marine Fuels which the Buyer has failed or rejected to take delivery of, as fuels of a lower grade and/or at prices lower than the prevailing market prices.
- 6.8 Without prejudice to its other rights and remedies, the Seller shall be entitled to set-off or deduct from any amounts due from the Seller to the Buyer under the Contract and/or any other contract against: (a) all sums due from the Buyer to the Seller under the Contract and/or any other contract; and/or (b) all damages, losses and expenses that the Seller suffers or incurs or may suffer or incur under the Contract and/or any other contract.

7. SAMPLING

- 7.1 The Seller or Seller's physical supplier shall take representative samples of each grade of Marine Fuels delivered to the Buyer, in accordance with the usual sampling procedures of the Seller or the Seller's appointed physical supplier at the port of delivery.
- 7.2 The number of representative samples taken shall be four (4). All samples shall be sealed, labelled and signed by both the Seller or the Seller's physical supplier and the Buyer, the Buyer's representative or the Vessel's representative. Two (2) sealed samples shall be handed to the Buyer, the Buyer's representative or the Vessel's representative. The remaining two (2) sealed samples shall be retained by the Seller or the Seller's physical supplier for a period of thirty (30) days. The two (2) sealed sample(s) retained by the Seller or the Seller's physical supplier as aforesaid shall be the umpire samples used for analysis by the independent laboratory referred to in Clause 12.2 below.
- 7.3 The Buyer shall be at liberty to witness or to appoint a Buyer's representative to witness the sampling process, provided always that the sampling process is not delayed and/or interfered with. Any failure or refusal of the Buyer to witness or to appoint a Buyer's representative to witness the sampling process shall not in any way prejudice the validity of these sealed samples.
- 7.4 No samples drawn by the Buyer, the Buyer's representative or the Vessel's representative or samples subsequently taken from the Vessel or elsewhere after the Marine Fuels have been delivered to the Vessel, shall be allowed or admitted as evidence of the quality of the Marine Fuels. Further, if any seals on the Buyer's samples have either been removed or tampered with in the absence of either the Seller or the Seller's physical supplier (save where the Seller or Seller's physical supplier has waived its right to be present during the removal of the seal), such samples shall be deemed to be of no evidential value in determining or assessing the quality of the Marine Fuels supplied.

8. PAYMENT

- 8.1 The Buyer shall pay to the Seller for the Marine Fuels, all charges, taxes, interest (if any) and any other monies payable under this Contract in full without any deduction, set-off or counterclaim whatsoever in United States Dollars and free of all bank charges by electronic or telegraphic transfer of same day funds to the Seller's bank account, quoting the Seller's invoice number and the Buyer's name.
- 8.2 Unless otherwise agreed in writing between the Parties, all payments under this Contract shall be made within thirty (30) days

from the date of delivery of the Marine Fuels (with the date of delivery of the Marine Fuels to count as day one). The Seller shall be entitled to charge interest on all overdue payments at the rate of two per cent (2%) per month, with interest to accrue on a daily pro rata basis. The Buyer further agrees that the stipulated interest rate charged on all overdue payments is reasonable and proportionate to the Seller's legitimate interest and also in line with market practice, and the Buyer shall be barred from raising any defence(s) or allegation(s) in any proceedings that the stipulated interest rate is in the nature of a penalty clause or otherwise unenforceable.

- 8.3 All overdue payments may be applied, at the sole and absolute discretion of the Seller, first towards the settlement of interest outstanding before application to the principal payments due under this Contract or any other contract between the Seller and Buyer.
- 8.4 Should the Seller incur any legal fees, costs or expenses in connection with the recovery of any amounts due from the Seller to the Buyer under the Contract or for any other purposes in connection with the preservation and enforcement of the Seller's rights under the Contract for which the Buyer is responsible, the Buyer shall reimburse the Seller on a full indemnity basis for all such fees, costs or expenses incurred by the Seller.
- 8.5 If a payment due date falls on a non-banking day in New York, Singapore, London, Hong Kong, or Mainland China, then payment shall be made by the Buyer to the Seller on the preceding banking day.
- 8.6 Where the Buyer is requested by any person, whether such person is a third party or a person who purports to be from the Seller, to make payment to a bank account other than the Seller's bank account, the Buyer shall obtain an oral and written confirmation of the Seller's bank account details from a registered director of the Seller and to verify for itself the correct bank account details of the Seller, prior to effecting any such payment. Where payment is made by the Buyer to an account other than the Seller's account, the Buyer assumes any and all risk of loss arising out of any such mistaken or fraudulent or diverted payment, and no payment whatsoever shall be deemed to have been made by the Buyer to the Seller under the Contract.
- 8.7 All credit given by the Seller to the Buyer under this Contract is made against the Buyer's continuing representation and warranty to the Seller that it has the financial ability to meet its payment obligations under the Contract, that there are no events whatsoever affecting the Buyer's financial ability to make payments due under the Contract to the Seller, and the Buyer will promptly notify the Seller of the occurrence of any adverse event affecting its ability to make payment to the Seller under the Contract. Notwithstanding any terms in this Contract, if the Marine Fuels are supplied on credit and if the Buyer's financial condition or credit standing is deemed at any time by the Seller (at its sole discretion) to be impaired or otherwise unsatisfactory, the Seller may whether before or after delivery of the Marine Fuels, require the Buyer to make full payment of all amounts due under the Contract at any time before the date due for payment or to provide or to arrange to provide satisfactory security to the Seller. In the event the Buyer fails to make payment or give security within the time stipulated by the Seller, the Seller shall be entitled to withhold, suspend or terminate any delivery of the Marine Fuels under the Contract, and this shall be without prejudice to all of the Seller's other rights and remedies. In the event of any withholding, suspension or termination, the Buyer shall have no recourse whatsoever against the Seller.
- 8.8 Unless otherwise agreed by the Seller in writing, the security to be provided pursuant to Clause 8.7 above shall be in the form of a standby letter of credit or performance bond on wording to be determined by the Seller up to the value of the amounts due or estimated by the Seller to be due from the Buyer under the Contract and issued by a first class international bank acceptable to the Seller.

9. RISK AND TITLE

- 9.1 Delivery of the Marine Fuels shall be deemed to be complete and risk shall pass to the Buyer as the Marine Fuels pass the flange connecting the delivery facilities provided by the Seller with the receiving facilities provided by the Buyer.
- 9.2 Notwithstanding completion of delivery and passing of risk in Clause 9.1 above, the Seller shall retain full title to the Marine Fuels until the Seller has received full payment for the Marine Fuels and all other amounts due under the Contract, even if the Marine Fuels are no longer in the possession or custody of the Buyer. Until such time as payment is made, the Buyer agrees, on behalf of itself and the Vessel that the Buyer and the Vessel are in possession of the Marine Fuels as bailees of the Seller, and the Buyer and the Vessel shall not be entitled to the use or consumption of the Marine Fuels. If, prior to payment, the Seller's Marine Fuels are comingled with other marine fuels onboard the Vessel, title to the Marine Fuels shall remain with the Seller corresponding to the quantity of Marine Fuels delivered. In the event the Marine Fuels are comingled with marine fuels owned by third parties and the total comingled marine fuels is reduced through wrongful use or consumption of the Seller's Marine Fuels in contravention of the preceding provisions, title in the unused Marine Fuels will remain with the Seller on a pro rata basis calculated using the amounts as they were when first comingled. The foregoing is without prejudice to any other rights or remedies that the Seller may assert or may have, including but not limited to any rights and remedies against the Buyer and/or the Vessel.

10. ASSIGNMENT

- 10.1 Save as provided in Clause 18.1 below, the Buyer shall not assign the Contract or any of its rights and obligations under it without

the written consent of the Seller.

10.2 The Buyer hereby agrees that the Seller shall be entitled to and has the option to take an assignment from the Buyer of all rights, receivables, benefits, interests, rights of suits, profits, claims and price (the "assigned proceeds") to which the Buyer is entitled under any contract of sale and/or supply and/or delivery which it may enter into with the Vessel, shipowner, charterer, manager, operator or trader or any other party whatsoever, pursuant to which it sells, re-sells or otherwise delivers or supplies the Marine Fuels sold by the Seller (or any part thereof), whether comingled with marine fuel sold or supplied by other parties or otherwise, such option to be exercised by the Seller at its sole and absolute discretion (the "Option").

The Option may be exercised by the Seller at any time before the Buyer makes payment in full for the Marine Fuels under the Contract by giving written notice to the Buyer.

Upon the exercise of the Option, the Buyer agrees to assign and shall be deemed to irrevocably and outrightly assign the assigned proceeds to the Seller. Upon receipt by the Seller of the assigned proceeds, the Buyer's liability to make payment for the Marine Fuels under the Contract shall be extinguished to the extent of such amount received by the Seller from the assigned proceeds, without prejudice to any other rights or obligations of the Parties under the Contract. The Buyer irrevocably authorizes and consents to the giving of any notice of assignment by the Seller or the commencement of any legal proceedings or arbitration (whether jointly in the name of the Seller and the Buyer, or in the sole name of the Buyer and including any arrest of vessel or attachment of assets) in any jurisdiction or venue for the recovery of such assigned proceeds. Without prejudice to the generality of the foregoing, the Buyer agrees to provide all necessary assistance and cooperation to the Seller in the recovery of such assigned proceeds, including but not limited to providing discovery and disclosure of documents, procuring witness statements and attendance of witnesses for meetings and hearings and the execution of any documents reasonably required by the Seller in order to effectively and/or validly exercise these rights against another party.

For the avoidance of doubt, if the Seller exercises the Option, the Seller shall have the sole right to retain for itself all of the assigned proceeds and the Seller shall not be in anyway whatsoever liable to account to the Buyer for any excess sums whatsoever.

11. MARITIME LIEN

11.1 Without prejudice to any other claims, rights and remedies of the Seller, and Clause 10.2 in particular, insofar as the Buyer is entitled to a maritime lien for the supply of Marine Fuels to a vessel, her owner, charterer or any other party, the Buyer shall, at the election of the Seller, either:

- (a) assign in favour of the Seller such lien and all proceeds, receivables, interests, rights, benefits due to the Buyer from the vessel, her owner, charterer or any other party to whom the Buyer supplies the Marine Fuels; and/or
- (b) commence admiralty proceedings or actions in rem in its own name or the joint names of the Buyer and Seller or in the name of the Seller (as the Seller may direct) in such jurisdiction as may be nominated by the Seller to enforce such maritime lien against the vessel to which the bunkers are supplied.

11.2 Marine Fuels delivered pursuant to the Contract are sold and delivered on the financial credit of the Vessel and on the promise of the Buyer to pay. The Buyer therefore expressly warrants and agrees that the Marine Fuels are delivered with the authorisation and on behalf of the registered owners of the Vessel, her Master, the charterers and/or agents of the Vessel and there is no provision in the Vessel's charterparty (or any other similar contractual arrangement) that purports to limit the registered owners of the Vessel, her Master, the charterers, agents or representatives of the Vessel from incurring a maritime lien on the Vessel.

11.3 Until the Seller receives full payment for the Marine Fuels (and all interest and costs payable in respect thereof, including but not limited to legal fees and disbursements), the Seller shall have a maritime lien, attachment and/or claim against the vessel and/or the Marine Fuels delivered. Such maritime lien, attachment and/or claim shall be without prejudice to and is in addition to any other remedy available to the Seller.

11.4 The Buyer shall not do anything nor enter into any agreement that will in any way prejudice the Seller's right or ability to assert or enforce any such maritime lien, attachment and/or claim. If the Marine Fuels have been comingled on board the Vessel, the Seller retains its right of maritime lien, attachment and/or claim against the Vessel and/or against such part of the comingled marine fuels as corresponds with the quantity of the Marine Fuels delivered.

11.5 "No-Lien" stamps (or any similar notification) on any document including on any bunker delivery note, whether used by the Buyer, the Vessel (or its representatives) or any third party shall not vary the terms of the Contract, and shall in no way prejudice any right of lien, attachment and/or claim that the Seller has against the Buyer, the Vessel or the Marine Fuels.

12. QUANTITY AND QUALITY CLAIMS

12.1 The quantity of Marine Fuels delivered shall be determined in accordance with Clause 5.1. Any claim relating to the quantity of

Marine Fuels delivered to the Vessel shall be notified by telephone and in writing by the Buyer to the Seller immediately while the delivery hoses are still connected to the Vessel. In the event oral and written notice is not given by the Buyer to the Seller immediately prior to disconnection of the delivery hoses, any quantity claim whatsoever or howsoever arising shall be deemed to be entirely waived and time-barred. Any remarks given in the bunker delivery note or in a separate note of protest handed by the Buyer or the Master or the Vessel to the Seller or the physical supplier of Marine Fuels shall not qualify as a notice under this Clause and the Seller shall under no circumstances be deemed to have accepted any such remark or note of protest handed by the Buyer or the Master or the Vessel to the physical supplier.

- 12.2 Where there is a complaint about the quality of the Marine Fuels, any one of the umpire samples retained by the Seller shall be tested by an independent laboratory mutually agreed between the Buyer and Seller. If the Parties do not agree on the independent laboratory within five (5) days of the dispute arising, the Seller shall have full discretion to decide on and appoint the independent laboratory. Testing shall be limited to analysis of the disputed properties and the results from the testing of any one (1) umpire sample shall be conclusive and binding evidence of the quality of the Marine Fuels supplied to the Vessel. If the results of the analysis of the umpire sample is found to be within the reproducibility and/or repeatability tolerance(s), range(s) and/or limit(s) for the Marine Fuels in accordance with ISO 4259 (as amended and/or supplemented from time to time), the quality of the Marine Fuels shall be deemed to be on-specification. All grades of Marine Fuels may contain petroleum industry allowed bioderived components. Any costs involved including the costs of the analysis of the "umpire sample" shall be borne by the Buyer, unless and until such time the complaint as to quality is proven to be justified.
- 12.3 Where specifications designate a maximum value, no minimum value is guaranteed unless expressly stated in the Sales Confirmation. Conversely, where minimum values are provided in a specification, no maximum values are guaranteed unless expressly stated in the Sales Confirmation.
- 12.4 Any claim relating to the quality of the Marine Fuels delivered shall be presented in writing by the Buyer to the Seller containing all details necessary to allow evaluation of the claim as soon as an alleged quality problem has occurred or the Buyer has been notified of any alleged problem, but in any event any and all quality claims shall be made within no later than seven (7) days from the date of delivery of the Marine Fuels to the Vessel. If the Buyer does not lodge a quality claim within seven (7) days from the date of delivery of the relevant Marine Fuels, the Buyer's claim shall be extinguished and the Buyer shall be barred from making such a claim for damages and/or losses and/or expenses and/or for any compensation whatsoever. Buyer's submission of any claim hereunder does not relieve it of responsibility to make payment in full as required under Clause 8.
- 12.5 A written claim for the purposes of Clauses 12.1, 12.2 and 12.4 must provide a complete and comprehensive explanation of the circumstances and basis of the claim, including where applicable the quantities short and/or the discrepancies in quality, and include a full test report for a test performed on one of the official samples mentioned in the bunker delivery note performed by an independent laboratory along with copies of all correspondence with the independent laboratory evidencing the matters complained of.
- 12.6 Where the Buyer makes a claim pertaining to the quality of Marine Fuels, the Seller shall be entitled upon its request and the Buyer shall allow (or where the Vessel is not under the ownership or charter or control or possession of the Buyer, the Buyer shall procure the necessary authorisation to allow) the Seller's representatives to board the Vessel to fully investigate the claim, including but not limited to inspecting and taking copies of the Vessel's logbooks, documents and written records (including but not limited to the engine room log, deck log, and maintenance documents), and any documents and records whatsoever which the Seller considers necessary for its investigations, and to have full access to the Vessel's spaces (including but not limited to the engine room spaces). The Buyer's failure to allow (or to procure the necessary authorisation to allow) boarding to fully inspect the claim as aforesaid shall afford the Seller a full and complete defence to any claim brought by the Buyer.

13. HEALTH, SAFETY AND ENVIRONMENT PROTECTION

- 13.1 The Buyer warrants that the Vessel shall at the time of nomination and at all times during delivery be in compliance with all applicable standards, requirements and regulations imposed by the relevant government or quasi government authorities, port authorities and international conventions.
- 13.2 The Buyer shall further be responsible for users' compliance with all health and safety requirements relating to Marine Fuels supplied and shall take all steps as may be necessary or reasonably required to ensure that any user of the Marine Fuels avoids frequent or prolonged contact with or exposure to the Marine Fuels both during and subsequent to delivery. The Seller and Seller's physical supplier accepts no responsibility for any consequence arising from failure to comply with such health and safety requirements or arising from such contact or exposure.
- 13.3 In the event of any oil spill howsoever arising including leakage, escape, spillage, overflow of bunkers causing or likely to cause pollution occurring at any stage, the Buyer and the Vessel shall, regardless of whether the Buyer or Seller is responsible, immediately take such action as is necessary to effect a clean up and failing prompt action by the Buyer authorizes Seller to take whatever measures the Seller deems fit to effect and clean up the oil spill at Buyer's and the Vessel's own time and expense. The Buyer hereby warrants that it has been authorized by Vessel's Owners to grant such authority to the Seller. It shall be the responsibility of the Master of the Vessel to notify the Seller of any special conditions, difficulties, peculiarities, deficiencies or

defects with respect to the Vessel or any part thereof which might adversely affect the delivery of Marine Fuels. The Seller has the right to refuse to deliver of Marine Fuels to the Vessel if it is probable that such delivery will result in adverse consequences of any kind whatsoever.

14. INDEMNITY AND LIMITATION OF LIABILITY

- 14.1 The Buyer will indemnify the Seller or the Seller's physical suppliers against any claims, demands, suits, liabilities, fines, penalties and expenses incurred or sustained arising out of or in connection with the act, omission, neglect or default of the Buyer, its servants or agents in the receipt, use, storage or transportation of the Marine Fuels delivered hereunder.
- 14.2 Notwithstanding anything contained herein, the Seller shall not be liable to the Buyer under any circumstances whatsoever, whether in contract or in tort or otherwise, for any punitive or exemplary damages, consequential, indirect, special or economic loss or damage including but not limited to loss of profit or business, demurrage, loss of time or hire, cost of overheads thrown away, costs of substituted vessel, physical loss or damage (in whole or in part) of or to vessel or cargo due to delay or by reason of shutdown, non availability of supply of Marine Fuels, non operation or the like.
- 14.3 Notwithstanding any other provisions in this Contract, the Seller's total liability under this Contract whatsoever and howsoever arising shall not exceed the agreed selling price of the Marine Fuels under the Contract. Where a Contract provides for the supply of two or more grades of Marine Fuels and the Seller's liability only arises in respect of one or more grades of Marine Fuels, liability shall be limited to the agreed selling price of that grade of Marine Fuels for which the Seller is liable and no more. In any case, the Seller shall have no liability for any claims in this Contract unless and until the Seller has received full payment from the Buyer of all sums due under the Contract.
- 14.4 The Seller shall not be liable for any acts or omissions of the Seller's physical suppliers, Seller's agents and Seller's contractors including but not limited to those transporting and/or delivering the Marine Fuels and fueling agents.
- 14.5 The Seller and the Buyer recognize the risks inherent in ship-to-ship operations and that the decision to proceed with any such operation is entirely at the discretion of the Master of the Vessel involved, and at the sole risk of the Buyer and the Vessel.

15. TERMINATION

- 15.1 Notwithstanding anything to the contrary expressed or implied elsewhere herein, the Seller, without prejudice any of to its other rights and/or remedies, may at its sole discretion terminate the Contract forthwith on notifying the Buyer either orally or by notice in writing in each of the following events:
- (a) the Buyer fails to perform any of its obligations under this Contract;
 - (b) a liquidator, trustee in bankruptcy, receiver, manager or other similar entity is appointed in respect of the assets and/or undertaking of the Buyer or any of its associated companies;
 - (c) the Buyer or any such associated company enters into an arrangement or composition with its creditor, or any similar appointment, arrangement or composition is made under any applicable law; or
 - (d) if the Seller has a reason to anticipate or believe that the Buyer will enter into any such appointment, arrangement or composition.

16. FORCE MAJEURE

- 16.1 In the case of extraordinary events which are beyond the control of the Seller and which are unforeseeable and which do not allow the Seller, with due consideration of its other delivery obligations, to make contractual deliveries or which would allow the Seller to make such deliveries only at economically unreasonable conditions, the Seller shall be entitled for the duration of such obstruction to restrict or discontinue the deliveries or in the case of prolonged obstruction to withdraw from the Contract or terminate it without notice.
- 16.2 Without prejudice to the generality of the foregoing, Clause 16.1 shall apply without limitation for instance to acts of God, fires, floods, war or warlike conditions, unrest, strikes, sabotage, lock-out or labour disputes, accidents, transportation or terminal mechanisms, any terminations, curtailments, cessations, delays or failures of supplies of Marine Fuels from any part of the Sellers and/or Seller's physical suppliers or of the petroleum from which such Marine Fuels are derived, or compliance with any order, demand or request, measure or action of any international, national, port, transportation or government or quasi-government authority or agency (including any restrictions, curtailment or cessation of crude oil supply within OPEC or other crude oil exporting countries), breakdown of machinery, vessel, equipment or any facility, inoperability of any machinery, vessel or equipment or any facility, or any other causes or circumstances whatsoever outside the direct and immediate control of the Seller. The same shall also apply if the Seller is forced, compelled or restricted by market conditions such that the Seller can no longer reasonably be expected to continue deliveries.

16.3 Under no circumstances, however, shall the Buyer be excused under this clause of the Buyer's obligation to make payment for all amounts due on account of Marine Fuels previously delivered hereunder.

17. WAIVER

17.1 No waiver by either Party of any breach of any terms and conditions of this Contract shall be effective unless the waiver is issued in writing by the waiving Party. No waiver of breach of any of the terms and conditions herein by either Party to be performed by then other Party shall be construed as a waiver of any succeeding breach of the same or any other terms and conditions.

18. MISCELLANEOUS

18.1 The supply by Seller of Marine Fuels and every quotation, pro-forma invoice, sales confirmation, price list or other similar document relating to Marine Fuels are made or issued solely subject to these conditions and no representation, warranty collateral or otherwise shall bind the Seller and no statement made by any representative by or on behalf of Seller shall vary the terms of this Contract unless such representation warranty or statement shall be made in writing and signed by a director of the Seller and shall be stated to be made specifically pursuant to this Clause 18.

18.2 The Seller's offers and estimates of costs are to be understood as being conditional and subject to availability and alteration and shall include only such services as are expressly specified.

18.3 Without prejudice to Clause 14.2, and subject always to Clause 18.5 below, the Seller shall in any event be discharged and released from liability, if any, in respect of any claim relating to the delivery or non-delivery of Marine Fuel(s) (including without limitation claims in the nature of delay, demurrage, detention or deviation) unless a claim in writing (together with full supporting documentation and full details) is presented to the Seller promptly after the circumstances giving rise to the claim are discovered, but in no event later than thirty (30) days following:

- the date of delivery; or
- the date of delivery as stated in the Contract, in the case of non-delivery,

failing which the Buyer's claim shall be extinguished and the Buyer shall be barred from making such a claim for damages and/or losses and/or expenses and/or for any compensation whatsoever. For the avoidance of doubt, the submission of claims on the part of the Buyer shall not relieve it of its obligations to make payment in full as required under Clause 8.

18.4 Subject always to any other term of the Contract which provides for a different time period and without prejudice to Clause 14.2, any claim whatsoever against the Seller shall be time barred unless proceedings are validly commenced within three (3) months from the date of delivery of the Marine Fuels or the date of delivery as stated in the Contract Document (in the case of non-delivery).

18.5 Notwithstanding the time limits stated in Clauses 18.3 and 18.4 above, if the Seller's suppliers and/or physical suppliers in connection with this Contract ("**Seller's Suppliers**") impose time limits which are shorter than the time limits stated in Clauses 18.3 and/or 18.4 above, then the shorter time limits of the Seller's Suppliers shall apply to this Contract so as to time-bar or otherwise extinguish the Buyer's claim in the event the Buyer fails to present its claim or otherwise validly commence proceedings before the expiration of the time limits imposed by the Seller's Suppliers. At the Buyer's request in writing, the Seller shall as soon as practicable notify the Buyer of the time limits imposed by the Seller's Suppliers. For purposes of this Clause, the Seller's Suppliers shall be deemed to have imposed a shorter time limit so long as their time limits expire before the time limits stated in Clauses 18.3 and/or 18.4.

19. TRADE SANCTIONS

19.1 The Buyer warrants that nothing in connection with the Contract and the performance of the Contract including but not limited to the Vessel, the employment and operations of the Vessel, the Vessel's owners, her managers, charterers or operators, the cargo carried by the Vessel, or any other things, persons or parties connected to the Vessel, the Vessel's trade or employment, and her cargo (including but not limited to the nature, type, origin, intended use(s) or destination) exposes the Seller, financial institutions, insurers or any other parties involved in any way whatsoever with the performance of the Contract (including but not limited to the remittance of any sums pursuant to the Contract) ("**Interested Parties**") to the risk of violating, contravening, acting inconsistently with, or the risk of being penalized or prejudiced under any laws, regulations, rules, requirements or legislation relating to trade controls, sanctions, export controls, boycotts, and embargoes whatsoever (whether national or supranational) in the world, including the United Nations, United States of America, People's Republic of China, European Union, United Kingdom, and Australia ("**Trade Restrictions**"). In the event that the Seller and/or any of the Interested Parties incurs any losses, damages, expenses and/or costs whatsoever as a result of a breach of this warranty, the Buyer shall indemnify the Seller and/or any Interested Parties for all of the said losses, damages, expenses and/or costs thereby caused.

- 19.2 Nothing in the Contract should be interpreted or construed to induce or require either Buyer or Seller to act in any manner (including but not limited to failing to take to any actions in connection with a transaction) which violates, contravenes, is inconsistent with, which may be penalized or prohibited under, or exposes the Seller to the risk of penalty or prejudice under, any Trade Restrictions.
- 19.3 The Buyer shall forthwith provide to the Seller any information, documents and written certifications which the Seller may require to satisfy the Seller and/or any Interested Parties that nothing in connection with the Contract and/or the performance of the Contract, including but not limited to the Vessel, the employment or operations of the Vessel, the Vessel's beneficial owners, her managers, charterers or operators, the cargo carried by the Vessel, or any other things or persons and parties connected to the Vessel, the Vessel's trade and employment, or her cargo (including but not limited to nature, type, origin, intended use(s) or destination) exposes the Seller and/or the Interested Parties to the risk of violating, contravening, acting inconsistently with, or the risk of penalty or prejudice under, any Trade Restrictions.
- 19.4 If in the Seller's reasonable opinion, the Seller's performance of the Contract exposes the Seller and/or the Interested Parties to the risk of violating, contravening, acting inconsistently with, or the risk of penalty or prejudice under, any Trade Restrictions, the Seller shall be entitled to cancel the Contract without any liability whatsoever, provided that the Seller gives written notice of the cancellation as soon as reasonably practicable. Nothing in this clause shall prejudice any other rights and remedies which the Seller may have against the Buyer.

20. GOVERNING LAW AND JURISDICTION

- 20.1 The procedural and substantive laws of the United States of America shall always apply with respect to the existence and enforcement of a maritime lien against the Vessel, regardless of the country in which the Seller takes legal action. The Seller shall be entitled (but shall not be obliged) to assert its rights of lien and/or attachment and/or any other rights against the Vessel, whether in law, in equity or otherwise, in any jurisdiction where the Vessel may be found.
- 20.2 Subject to the Seller's right to enforce its maritime lien against the Vessel in any jurisdiction in accordance with the procedural and substantive law of the United States of America, the construction, validity and performance of the Contract shall be governed by the laws of Hong Kong.
- 20.3 Any dispute arising out of or in connection with this Contract shall be referred to arbitration in Hong Kong in accordance with the Arbitration Ordinance Cap. 609 or any statutory re-enactment or modification thereof save to the extent necessary to give effect to the provisions of this clause.

The arbitration shall be conducted in accordance with the HKMAG Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to a sole arbitrator to be mutually agreed between the Parties, and failing agreement, for the President of the HKMAG to appoint the sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 50,000, the arbitration shall be conducted in accordance with the HKMAG Small Claims Procedure current at the time when the arbitration proceedings are commenced.