

*This is a statement of the General Terms and Conditions, which shall apply to and be incorporated into contracts for the sale of Marine Fuels entered into by Minerva Bunkering and its affiliates.*

## 1. Definitions

Throughout these General Terms and Conditions, except where the context otherwise requires, the following definitions shall be applied:

“Actual Readiness” means the Vessel's readiness in all respects to receive Marine Fuels at the agreed delivery location within the Delivery Period.

“Banking Day” means a day on which banks are open in the places of business of the Sellers and the Buyers and, where a remittance is in US dollars, in New York or, if other than US dollars, in the country of the price currency.

“BDN” means Bunker Delivery Note or Bunker Delivery Receipt.

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

“Buyers” means the Vessel and jointly and severally her Master, Owners, Managers, Operators, Disponent Owners, Time Charterers, Bareboat Charterers, Charterers and the party stated in the Confirmation Note as contracting to purchase, take delivery and pay for the Marine Fuels.

“Cancellation Charges” means the greater of actual cancellation costs or minimum charge of USD 5 per metric tonne, for costs incurred as a result of any cancellation by a Buyer.

“Commercial Sample” means the either the barge or the Vessel's non-MARPOL sample(s).

“Confirmation Note” means the Sellers’ written confirmation.

“Contract” means these General Terms and Conditions, as amended and supplemented by the Confirmation Note.

“Day/Days” means a calendar day(s), unless otherwise stated.

“Delivery” means delivery of the Marine Fuels.

“Delivery Period” means any of the following which are all the same: the Vessel’s ETA/supply delivery window/vessel presentation range/supply window as stated in the Confirmation Note.

“End User” means the party ultimately using or consuming the Marine Fuels, including the Vessel, her Owners, Managers, Operators, Disponent Owners, Time Charterers, Bareboat Charterers or Charterers of the Vessel.

“Document” means any paper document and any electronic document, both of which shall be treated as having equivalent value and validity.

“Intermediary” means a trader who contracts as Buyers for the purchase of Marine Fuels with the intention of reselling the Marine Fuels either to an End User or to another Intermediary.

“General Terms and Conditions” means these standard bunker terms and conditions.

“Marine Fuels” means products as stated in the Confirmation Note.

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“Party” means the Sellers or the Buyers and “Parties” means the Sellers and Buyers collectively. “Required Supply Time” means the time at which the Sellers must commence delivery of the Marine Fuels pursuant to Clause 5(c), 5(d) or 5(e) (Delivery), as applicable.

“Sellers” means the company stated in the Confirmation Note as contracting to sell and arrange delivery of the Marine Fuels or Minerva Bunkering Pte. Ltd., Minerva Bunkering NWE N.V., Minerva Bunkering (USA) LLC or any of those companies’ affiliates.

“Vessel” means the vessel nominated by the Buyers to receive the Marine Fuels.

## **2. Contract/Specifications/Grades/Quality**

(a) The Contract shall only be concluded and be binding on the Sellers when the Sellers send the Confirmation Note to the Buyers. These General Terms and Conditions shall constitute an integral part of the Contract. The Buyers warrant that they are authorised to order Marine Fuels for the Vessel and that the request for Marine Fuels originates from the Owners of the Vessel. The Buyers assume responsibility for communicating these General Terms and Conditions to the End Users prior to the date of delivery and undertake to indemnify the Sellers for any consequences of failing to ensure that the End Users receive a copy hereof before delivery takes place.

(b) The Buyers shall have the sole responsibility for the nomination of the specifications and grades of Marine Fuels fit for use by the Vessel and determine (if applicable) the potential compatibility with any bunkers already on board the Vessel, as well as to assure that the Marine Fuels do not jeopardise the safety of the Vessel, adversely affect the performance of the Vessel’s machinery, harm personnel or contribute to additional air pollution.

(c) The Sellers warrant that the Marine Fuels shall be of a homogeneous nature and shall comply with the specifications and grades agreed between the Parties and stated in the Confirmation Note. Save for the aforesaid, any warranties whatsoever, whether statutory or otherwise, including the warranties or merchantability and fitness for a particular purpose or condition and any oral or implied agreements are expressly excluded and disclaimed.

## **3. Quantities/Measurements**

(a) Subject to the provisions of Sub-clause 6(c) (Documentation) and Clause 9 (Claims), the quantities of Marine Fuels delivered shall be measured from the official gauge or manual sounding or meter of the Bunker Tanker effecting delivery, or in case of delivery ex-wharf, from the shore-meter or the like equipment. These figures will be the only ones used for quantity determination.

(b) The Sellers shall invite the Buyers or their representatives to witness the opening and closing gauge, or manual sounding or meter reading and the taking of bunker temperatures of all bunker tanks on the Bunker Tanker and the Buyers shall be given sufficient information and access to the official gauge or manual sounding or meter of the Bunker Tanker or shore-meter and relevant documentation to verify the volume delivered. The absence of the Buyers or their representatives shall prejudice the validity of the measurement of the quantities of Marine Fuels delivered. In the event that local bunkering rules and regulations apply mandatorily, these shall take precedence over the provisions of Sub-clauses 3(a) and 3(b) (Quantities/Measurements).

(c) The Marine Fuels to be delivered under the Contract shall be measured and calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.

(d) The Sellers shall be entitled to deliver the Marine Fuels by separate part deliveries, in which case each part delivery shall be construed as a separate delivery.

#### **4. Sampling**

(a) The Sellers shall invite the Buyers or their representatives to witness the sampling of Marine Fuels. During bunkering a primary sample, other than the MARPOL sample, shall be drawn at a point, to be determined solely by the Sellers, closest to the Bunker Tanker's manifold and otherwise in accordance with the procedures set out in IMO Resolution MEPC.182(59) Guidelines for the Sampling of Fuel Oil for Determination of Compliance with MARPOL 73/78 Annex VI or any subsequent amendments thereto. Each sample shall be thoroughly mixed and carefully divided into a minimum of four (4) identical samples and one sample of each grade of Marine Fuels shall be retained on board the Vessel for MARPOL purposes. The absence of the Buyers or their representatives shall not prejudice the validity of the samples taken. In the event that local bunkering rules and regulations apply mandatorily, these shall take precedence over the provisions of this Sub-clause 4(a) (Sampling).

(b) The samples referred to in Sub-clause 4(a) (Sampling) shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, product name, delivery date and place and point of sampling and seal number, authenticated with the Vessel's stamp and signed by the Sellers' representative and the Master of the Vessel or the Master's authorised representative. Only the samples taken, sealed and distributed as per this Sub-clause 4(b) (Sampling) and stated in the BDN are valid in respect of the Marine Fuels' quality determination. Save in the case of fraud or manifest error the test results from these samples shall be final and binding on the Parties. No other samples, howsoever and whensoever taken, shall be allowed as additional evidence or deemed to have any value as evidence in respect of the Marine Fuels' quality determination whatsoever.

(c) Two (2) samples shall be retained by the Sellers for forty-five (45) Days after delivery of the Marine Fuels to the Vessel. The other two (2) samples shall be retained on board the Vessel (one of which shall be for MARPOL purposes).

Any joint testing of the Seller's samples must take place within three months of Delivery, after which the samples may be destroyed.

Joint testing must be of the Seller's sample. Notwithstanding the foregoing, if a Commercial Sample is used and it is not tested timeously so that results are known within three months of Delivery, any claims based on that sample shall be time barred.

(d) If the quantity is delivered by more than one Bunker Tanker, the sampling procedure shall be repeated as outlined in this Clause 4 (Sampling).

#### **5. Delivery**

(a) Within the Delivery Period:

- (i) the Sellers shall deliver the Marine Fuels; and
- (ii) the Buyers shall take delivery of the Marine Fuels,

day and night, Sundays and holidays included, at the port or place of delivery. This shall be subject always to the custom of that port or place, including, e.g., local custom to serve vessels strictly in their order of arrival. In accordance with this principle and our confirmation message, delivery shall be in accordance with local custom of "first vessel which comes, first served". The Seller shall not be liable for any waiting time whatsoever for a vessel which is waiting its turn in line.

Where there is a possibility the port authorities may insist on their own operations taking priority and in such case the delivery may be delayed and in this case, Buyer's lost time and operational costs shall be for their own account and not the Seller's.

(b) The Buyers, or their agents at the port or place of delivery, shall give the Sellers or their representatives at the port or place of delivery, seventy-two (72) and forty-eight (48) hours approximate and twenty-four (24) hours definite notice of the Vessel's arrival and the location and time at which delivery of the Marine Fuels are requested. If the Sellers agree to commence the delivery of the Marine Fuels at the time specified in the Buyers' twenty-four (24) hours definite notice, or if the Parties agree to another time, the Sellers shall confirm this in writing to the Buyers (the "Confirmed Delivery Time"). The Buyer shall promptly advise Seller or Seller's representative of any variation of more than eight (8) hours to the ETA of the Vessel.

(c) Provided the time of Actual Readiness is within six (6) hours of the Confirmed Delivery Time, the Sellers shall commence delivery of the Marine Fuels within six (6) hours of either: (i) the Confirmed Delivery Time; or (ii) the time of Actual Readiness, whichever is later.

(d) Where the time of Actual Readiness is not within eight (8) hours of the Confirmed Delivery Time, the Sellers shall deliver on a best endeavours basis.

(e) Where no Confirmed Delivery Time has been agreed, the Sellers shall deliver on a best endeavours basis.

(f) The Sellers shall:

(i) be in possession of all permits required to comply with all relevant regulations pertaining to delivery of Marine Fuels at the port or place of delivery; and

(ii) subject to local laws, render all necessary assistance which may be reasonably required to make connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold.

(g) The Buyers shall be responsible for making all connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold and to ensure that the hose(s) are properly connected to the Vessel's bunker manifold prior to the commencement of delivery. The Vessel shall provide and have appropriate and segregated tanks to receive the contracted quantity of Marine Fuels and avoid any uncontrolled co-mingling which may affect the stability of the supplied Marine Fuels and for which the Sellers have no liability whatsoever. The Vessel shall always be able to perform its own blending on board if deemed necessary. The Vessel shall upon delivery test the Marine Fuels by running the engines or auxiliaries or equipment for a minimum of one hour to determine that the Marine Fuels are satisfactory. In the event the Marine Fuels are not considered satisfactory, the Sellers must be notified immediately. The Sellers undertake no liability for co-mingling of fuel and the consequences thereof irrespective of the circumstances and the quantities co-mingled.

(h) The Buyers shall ensure that the Vessel is in possession of all certificates required to comply with all relevant regulations pertaining to delivery of the Marine Fuels at the port or place of delivery and that the Master of the Vessel or the Master's authorised representative shall:

(i) advise the Sellers in writing, prior to delivery, of the maximum allowable pumping rate and pressure and agree on communication and emergency shut-down procedures;

(ii) notify the Sellers in writing prior to delivery, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Marine Fuels; and

(iii) provide a free side to receive the Marine Fuels and render all necessary assistance which may reasonably be required to moor or unmoor the Bunker Tanker, as applicable.

(iv) The Seller has the option to notify the Buyer that the Seller is delivering on a best endeavours basis. If the Buyer does not cancel upon such notification, the Seller shall perform the delivery using their best endeavours but without guarantee of delivery time.

(j) If Buyer fails to comply with any of the following provisions in this clause, Buyer shall be liable to Seller for any resulting loss (including loss of time), damages, cost and/or expense incurred by Seller arising out of such non-compliance. The Seller shall have the option to levy Cancellation Charges where the Buyer cancels without reasonable notice. In cases of extreme delay by the Buyer, the Seller may make a reasonable late delivery charge.

## **6. Documentation**

(a) Before commencement of delivery the Sellers shall present for written acknowledgement by the Master of the Vessel or the Master's authorised representative, a bunker pre-delivery form or similar Document, duly signed by the Sellers or their representative, which shall contain the quantities to be delivered and all information required in accordance with ISO 13739 or any subsequent amendments thereof, including, in particular, the values for: viscosity; density; sulphur content; flash point; and delivery temperature. In addition, and if available, similar information shall be provided for vanadium; ash content; water content; and pour point. If local bunkering rules and regulations apply mandatorily, these shall take precedence over the provisions of this Sub-clause 6(a) (Documentation).

(b) Once the delivery is completed and quantities measured, a BDN shall be signed and stamped by the Master of the Vessel or the Master's authorised representative, and returned to the Sellers, or their representative, as acknowledgement of, among other items, the actual volume and the actual delivery temperature and a duplicate copy shall be retained by the Master of the Vessel or the Master's authorised representative. Signing and stamping includes digital representations of signatures and stamps which may be used instead of wet ink and paper. This receipt shall contain the following minimum information which is warranted by the Sellers: delivered quantity in volume units; density in kg/m<sup>3</sup> at 15°C as per ISO 3675; delivery temperature; flash point; sulphur content in % m/m as per ISO 8754; and viscosity.

(c) In the event the Master of the Vessel or the Master's authorised representative is not satisfied with the sampling, quantity or any other matter concerning the Marine Fuels or their delivery, the Master or the Master's authorised representative shall, on completion of delivery, issue a separate letter of protest detailing the complaints, receipt of which shall be acknowledged in writing by the Sellers' representative.

## **7. Price**

(a) The price of the Marine Fuels is valid only if the Vessel arrives within the Delivery Period and shall be in the amount expressed per unit and in the currency stated in the Confirmation Note for each grade of the Marine Fuels delivered into the Vessel's tanks free delivered/ex-wharf as applicable and stated in the Confirmation Note. In the event the price is quoted in volume units, conversion to standard volume shall be at sixty (60) degrees Fahrenheit or at fifteen (15) degrees Celsius. If the Sellers agree to arrange delivery of the Marine Fuels outside the Delivery Period, the Sellers shall be entitled to amend the price to take into account prevailing market prices at the new time of delivery or to cancel the delivery. In the event the Seller cancels the delivery, it shall be entitled to claim any hedging losses which shall be direct losses for the

purposes of clause 16(a) and it is understood that Minerva is part of a trading group using hedging strategies.

(b) Any and all additional charges incurred by the Sellers which are for the Buyers' account will be added to the price of the Marine Fuels, including but not limited to:

- (i) wharfage charges, barging charges or other similar charges;
- (ii) mooring charges or port dues;
- (iii) duties, taxes, charges or other costs in the country where delivery takes place applicable at the time of contracting and at the time of delivery;
- (iv) charges for oil pollution equipment required to be used during delivery;
- (vi) demurrage or similar charges.

(c) The Price set out in the Confirmation Note shall be valid only if the Vessel arrives at the place of delivery, and is in all respects ready to receive the Marine Fuels, (i) within the Confirmed Delivery Time; or (ii) the time of Actual Readiness, whichever is later (and Seller shall be under no obligation to deliver the Marine Fuels if the Vessel is not ready by such time).

## **8. Payment**

(a) Payment for the Marine Fuels shall be made by the Buyers within thirty (30) Days or, if otherwise agreed, within the number of Days stated in the Confirmation Note after the completion of delivery. In the event payment has been made in advance of delivery, such payment shall be adjusted on the basis of the actual quantities of Marine Fuels delivered and additional payment and/or refund shall be made within seven (7) Days after the completion of delivery.

(b) Payment shall be made in full, without set-off, counterclaim, deduction and/or discount, and free of bank charges.

(c) Payment shall be deemed to have been made on the date the payment is credited to the bank account designated by the Sellers.

(d) If payment falls due on a non-Banking Day, then payment shall be made on or before the last Banking Day before the due date.

(e) Any delay in payment and/or refund shall entitle either Party to interest at the rate of two (2) per cent per month or any part thereof or as otherwise agreed as per the Confirmation Note. The Buyers shall indemnify the Sellers against any costs incurred at the Sellers' sole discretion in the collection of overdue payments, including attorneys' fee, court fees, administrative expenses, transport costs and any other incidental costs whatsoever related to collection of overdue payments.

(f) Payment for delivery of the Marine Fuels under the Contract shall satisfy sums owed to the Sellers in the following order: (1) interest; (2) costs as described in sub-clause 8(e); and (3) principal. In case of any late payment or default by the Buyers, the Sellers may at their sole discretion allocate a payment to any such invoice issued by the Sellers to the Buyers as the Sellers deem opportune to protect their interests.

(g) In the event of non-payment or non-refund, the non-defaulting Party reserves the right to pursue such legal remedies as may be available to them to recover the amount owed.

(h) Notwithstanding any agreement to the contrary, payment for any amounts (whether yet payable or not) under the Contract (or any other contract between the Buyers and the Sellers) will become due immediately in the event of:

- (i) bankruptcy;
- (ii) liquidation;
- (iii) suspension of payment (or any of the events stated in Sub-clauses 18(a) and (b) (Termination)); or
- (iv) any comparable situation of the Buyers.

(i) In any other situation, which at the reasonable discretion of the Sellers is deemed to affect adversely the financial position of the Buyers, the Sellers shall have the option to:

- (i) demand that the Buyers comply with their obligations under the Contract; and/or
- (ii) demand adequate security; and/or
- (iii) suspend any pending deliveries; and/or
- (iv) withdraw permission to consume the Marine Fuels for the propulsion of the Vessel; and/or
- (v) terminate the Contract.

(j) In consideration of the Sellers extending credit for the sale of Marine Fuels and/or in consideration of the Sellers supplying the Marine Fuels to the Vessel, it is agreed that the Sellers are relying on the faith and credit of the Vessel. It is agreed that the Sellers have and will retain their right of an *in rem* maritime lien against the Vessel to secure full payment for the Marine Fuels supplied to the Vessel. The Sellers supply the Marine Fuels to the Vessel with the express agreement that the provision is authorised and ratified by the Buyers and the End Users. The Buyers expressly warrant that they have the authority to pledge the Vessel's credit as aforesaid and that they have given notice of these General Terms and Conditions and this Sub-clause 8(i) (Payment) to the Vessel's Owners. Any attempt to avoid or impair the Sellers' lien against the Vessel shall be null, void and of no effect. No disclaimer of lien or liability, whether by stamp or other form, shall operate to alter, change or waive the Sellers' *in rem* maritime lien against the Vessel or the Vessel's liability for the debt resulting from delivery of the Marine Fuels. The Buyers confirm that the Sellers have an *in rem* lien against the Vessel for any Marine Fuels supplied under the Contract.

## 9. Claims

### (a) Quantity

(i) Any dispute as to the quantity delivered must be notified at the time of delivery in accordance with Sub-clause 6(c) (Documentation), and quantity claims must be presented to the Sellers by the Buyers in writing within seven (7) Days from the date of delivery. In the event of failure to comply with either or both of the aforementioned, any such claim shall be deemed to be waived and barred.

(ii) The Sellers shall have the right to charge the Buyers for all proven additional expenses incurred by the Sellers in connection with the Buyers' failure to take delivery of the full quantity of the Marine Fuels ordered by the Buyers (with an operational tolerance of +/- five (5) per cent).

(iii) The Buyers shall have the right to charge the Sellers for all proven additional expenses incurred by the Buyers in connection with the Sellers' failure to deliver the full quantity of the Marine Fuels agreed as per the Confirmation Note on the basis of the Seller's barge figures (with an operational tolerance of +/- five (5) per cent), unless the quantity is amended by the Master or the Master's authorised representative in writing.

(b) Quality/Specification

(i) Any claim as to the quality or specification of the Marine Fuels must be notified in writing promptly after the circumstances giving rise to such claim have been discovered or promptly after the circumstances ought to have been discovered when exercising due care and testing the fuel as required by the Contract. Such notice shall specify the nature of the problem and the circumstances giving rise to the claim. A notice which does not specify the nature of the problem and the circumstances giving rise to the claim shall not constitute a valid notification pursuant to this Sub-clause 9(b) (Claims). If the Buyers do not notify the Sellers of any quality or specification claim with a valid notification as required by this Sub-clause 9(b) (Claims) at the earliest opportunity and in any event no later than within thirty (30) Days of the date of delivery, such claim shall be deemed to be waived and barred. The Buyers acknowledge that early notification and strict compliance with this Sub-clause 9(b) (Claims) is essential for the Sellers to handle quality claims and to protect the interests of the Sellers and the Buyers, and the Sellers shall not be liable for any losses which could have been prevented had the Buyers notified the Sellers at the earliest opportunity.

(ii) In the event a claim is raised pursuant to Sub-clause 9(b)(i) (Claims), the Parties hereto shall have the quality of the Marine Fuels analysed by a mutually agreed qualified and independent laboratory at the port of delivery. Failing such agreement, by an independent laboratory solely chosen by the Sellers. This joint testing must take place within three months after the delivery date. The test shall analyse the relevant parameter(s) of the Marine Fuels claimed to be outside agreed specifications, but only with respect to the characteristics (physical specifications) specified by ISO and not otherwise. The Buyers may at their own cost request analysis of other specific parameters contained in the ISO specification. The Sellers shall provide the laboratory with one of the samples retained by them as per Sub-clause 4(c) (Sampling) and the test methods used by the laboratory shall be in accordance with those set out in ISO 8217. Unless otherwise agreed, the cost of the analysis and surveyors for both sides shall be for the account of the Party whose claim/case is found unproven by the analysis. In the event that the laboratory's results of the analysis fall within the reproducibility and/or repeatability of the test method as set out in ISO 4259, then such results shall not be considered as constituting the Marine Fuels being off-specification. The test results shall be final and binding save for manifest error.

(iii) In the event that the Buyers were to consider a potential de-bunkering 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 Sellers must first be sought and obtained, and the Buyers must comply with reasonable mitigation proposals from the Sellers. The Buyers are further obliged to closely work and cooperate with the Sellers in relation to every single specific action to be taken in respect of the de-bunkering operation. Unless the Buyers prove that it is operationally impossible, the Buyers shall accept that fuel intended for de-bunkering is carried on board the Vessel until the Vessel calls a port with reasonable de-bunkering facilities and in which a reasonable price for the de-bunkered fuel can be obtained. All damages, losses, costs, and expenses which may result from any unilateral decision taken by the Buyers shall be solely and exclusively born by the Buyers. In case de-bunkering takes place, the Sellers shall have the right but not the obligation to perform a replacement supply at the originally agreed price, quality and quantity.

(iv) The Buyers shall always be obliged to mitigate their losses and minimise the consequences of having received off-specification or suspected off-specification Marine Fuel 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 Buyers 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 Sellers shall be liable towards the Buyers for the costs of such mitigation, subject to all other defences, limitations and exclusions contained in these General Terms and Conditions and otherwise, provided and to the extent that the mitigation costs exceed USD 1,000. Sellers shall not be liable for such costs in excess of USD 10,000.

(v) In case any claims are presented by the Buyers, the Buyers shall permit the Sellers unrestricted access to inspect the Vessel, its engines, records and to interview the crew concerning such claim(s). The Sellers shall be permitted to appoint a third-party inspection company to board the Vessel and the Buyers shall provide the Sellers with copies of any Documents reasonably requested by the Sellers including, but not limited to, any technical documentation or records from the Vessel as well as communication to and from the Vessel regarding the claim(s) and all Documents relating to substitute supplies, yard stays, communication with local agents and other Documents concerning port calls related to the claim(s).

(c) Delay

In the event of any delay resulting from:

(i) the Buyers' failure to give proper notices and/or the Vessel's failure to be in Actual Readiness within six (6) hours of the Confirmed Delivery Time and/or the Vessel failing to receive the Marine Fuels at the pumping rate and pressure referred to in Sub-clause 5(h)(i) (Delivery); or

(ii) the Seller's failure to commence delivery of the Marine Fuels within the Required Supply Time, then the Party suffering such delay shall be entitled to compensation from the other Party for any actual loss suffered as a result of that delay unless such delay is caused by local customs requiring vessels to be supplied on a first-come first-served basis or otherwise caused by congestion at the port or prior commitments of the available barges.

Any claims by Buyers in respect of delays shall be submitted with full supporting documentation within 15 (fifteen) Days of the date of delivery, failing which such claim(s) shall be deemed waived and barred. The Sellers shall not be liable to the Buyers for any demurrage under this clause or elsewhere in these Terms.

(d) Time Bar

In each and every case, any and all claims, including those under Sub-clauses 9(a)(i), 9(b)(i) and 9(c) (Claims), by the Buyers shall be time barred unless arbitration proceedings have been commenced in accordance with Clause 25 (Dispute Resolution Clause) within twelve (12) months of the date of delivery of the Marine Fuels or the Day that delivery should have commenced as per the Confirmation Note.

**10. Risk/Title**

(a) Risk for the Marine Fuels shall pass to the Buyers once the Marine Fuels have passed the Sellers' flange connected to the Vessel's bunker manifold.

(b) Title and property rights in and to the Marine Fuels shall remain vested with the Sellers and irrespective of any credit terms agreed by any party in the chain, title and property rights in and to the Marine Fuels

shall pass to the Buyers only upon payment of all sums due to the Sellers under the Contract. Until such time as payment is made, on behalf of themselves and the Vessel, the Buyers and the End User agree that they are in possession of the Marine Fuels solely as bailee for the Sellers. If, prior to payment, the Sellers' Marine Fuels are commingled with other marine fuels on board the Vessel, title to the Marine Fuels shall remain with the Sellers corresponding to the quantity of the Marine Fuels delivered. The above is without prejudice to such other rights as the Sellers may have under the laws of the governing jurisdiction against the Buyers or the Vessel in the event of non-payment.

(c) The Buyers agree not to use the Marine Fuels for any purpose except propulsion of the Vessel. Buyers agree they are obliged to pay the Sellers forthwith the value of any quantity actually consumed. The value of the remaining quantity of delivered Marine Fuels, which is as yet unconsumed, shall become payable on the due date set out in the Sellers' invoice.

#### **11. Special Clauses Applicable to Sales of Marine Fuels to Intermediaries:**

The following specific clauses shall additionally apply in each case where the Contract is made with an Intermediary as Buyers and notwithstanding anything to the contrary contained herein.

(a) The Intermediary's claim against its customer, be it an End User or another Intermediary, is assigned to the Sellers as security for the Intermediary's due payment of the Sellers' claim against the Intermediary, and until and unless the Intermediary has made payment to the Sellers, it shall have no right to collect payment from its customer. In the event that the customer pays the Intermediary before the Intermediary has paid the Sellers, such sums shall be deemed kept in escrow by the Intermediary on behalf of the Sellers until the Sellers have been paid in full.

(b) It is a condition of the Contract that the Intermediary will ensure that these terms will be made part of the contract with its customer as well as any and all other contracts in the chain until the contract with the End User.

(c) In the event of a bankruptcy or similar situation involving the Intermediary, the Marine Fuels and the sums due therefor shall not form part of the bankruptcy estate.

(d) The End User shall be entitled to set-off or withhold any amounts due by it to the relevant Intermediary where it has an exposure to the Sellers for the same sum that the Intermediary is demanding, or where the Sellers have put the End User on notice of a claim.

#### **12. Compliance with Laws and Regulations**

The Parties will not do or permit to be done anything which might cause any breach or infringement of the laws and regulations of the flag state of the Vessel or the country of incorporation of the Sellers, or of the places where the Vessel or the Sellers trade or take Marine Fuels under the Contract.

**13. Sanctions Compliance Clause**

(a) "Sanctions Laws" means any sanction, prohibition or restriction imposed by the United Nations, the European Union, the United Kingdom or the United States of America, including but not limited to the US Department of the Treasury Office of Foreign Asset Control ("OFAC") including the OFAC Specially Designated Nationals or Blocked Persons List (SDN) and the US Department of State.

(b) The Buyers and the Sellers each warrant that at the date of entering into the Contract and continuing until delivery of the Marine Fuels and payment by the Buyers to the Sellers in full:

(i) neither Party is subject to any of the Sanctions Laws referred to in Sub-clause 13(a) (Sanctions Compliance Clause), which prohibit or render unlawful any performance under the Contract;

(ii) the Sellers are selling and the Buyers are purchasing the Marine Fuels as principals and not as agent, trustee or nominee of any person with whom transactions are prohibited or restricted under Sub-clause 13(a) (Sanctions Compliance Clause);

(iii) the Buyers further warrant that the Vessel is not a designated vessel and is not and will not be chartered to any entity or transport any cargo contrary to the restrictions or prohibitions in Sub-clause 13(a) (Sanctions Compliance Clause) above; and

(iv) the Sellers further warrant 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 Laws referred to in Sub-clause 13(a) (Sanctions Compliance Clause) above.

(c) If at any time during the performance of the Contract either Party becomes aware that the other Party is in breach of warranty as aforesaid, the Party not in breach shall comply with the laws and regulations of any Government to which that Party or the Vessel is subject and follow any orders or directions which may be given by any regulatory or administrative body, acting with powers to compel compliance. In the absence of any such orders, directions, laws or regulations, the Party not in breach may terminate the Contract forthwith.

(d) Notwithstanding anything to the contrary in this Clause 13 (Sanctions Compliance Clause), the Buyers and the Sellers shall not be required to do anything which constitutes a violation of the laws and regulations of any State to which either of them is subject.

(e) The Buyers and the Sellers shall be liable to indemnify the other Party against any and all claims, including return of any payment, losses, damage, costs and fines whatsoever suffered by the other Party resulting from any breach of warranty as aforesaid and in accordance with the Contract.

**14. Anti-Corruption Clause**

(a) The Parties agree that in connection with the performance of the Contract each Party shall:

(i) comply at all times with all applicable anti-corruption legislation and have procedures in place that are, to the best of its knowledge and belief, designed to prevent the commission of any offence under such legislation by any member of its organisation or by any person providing services for it or on its behalf; and

(ii) make and keep books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions in connection with the Contract.

(b) If a demand for payment, goods or any other thing of value (“Demand”) is made to either Party by any official, any contractor or sub-contractor engaged by or acting on behalf of either Party or any other person not employed by either Party, and it appears that meeting such Demand would breach any applicable anti-corruption legislation, then the Party receiving the Demand shall notify the other Party as soon as practicable and the Parties shall cooperate in taking reasonable steps to resist the Demand.

(c) If either Party fails to comply with any applicable anti-corruption legislation, it shall defend and indemnify the other Party against any fine, penalty, liability, loss or damage and for any related costs (including, without limitation, court costs and legal fees) arising from such breach.

(d) Without prejudice to any of its other rights under the Contract, either party may terminate the Contract without incurring any liability to the other Party if:

(i) at any time, the other Party or any member of its organisation has committed a breach of any applicable anti-corruption legislation in connection with the Contract; and

(ii) such breach causes the non-breaching Party to be in breach of any applicable anti-corruption legislation.

Any such right to terminate must be exercised without undue delay.

(e) Each Party represents and warrants that, in connection with the negotiation of the Contract, neither it nor any member of its organisation has committed any breach of applicable anti-corruption legislation. Breach of this Sub-clause 15(e) (Anti-Corruption Clause) shall entitle the non-breaching Party to terminate the Contract without incurring any liability to the other Party.

## **15. Liability**

(a) Neither the Buyers nor the Sellers shall be liable to the other Party for:

(i) any loss of profit, increased costs or expenses in obtaining replacement fuel, deviation costs whether for repairs or replacement fuel or otherwise, crew overtime payment, port fees, agency costs, costs for external consultants, loss of time (except for claims for delay raised in accordance with Sub-clause 9(c) (Claims)), loss of production whatsoever and whether arising directly or indirectly from the performance or non-performance of the Contract, and whether or not the same is due to negligence or any other fault on the part of either Party, their servants or agents, and

(ii) any indirect or consequential loss arising out of or in connection with the performance or non-performance of the Contract, whether such loss is due to any breach of contract, negligence or any other fault on the part of either Party, their servants or agents.

(b) Notwithstanding any other provision in these General Terms and Conditions, the liability of either Party, whatsoever or howsoever caused, shall (exclusive of interest and legal and enforcement costs) not exceed the lower amount of either USD\$ 500,000 or the invoice value of the Marine Fuels giving rise to the claim on which the Party’s liability is based. This limitation of Seller’s liability shall apply regardless of whether the liability arises in contract, tort (including negligence) or any other way whatsoever and shall be in addition to any other exclusions or limitations available to Seller under these Seller’s Terms and/or at law. In case the Contract concerns the supply of two grades of Marine Fuels and liability arises from one

grade being off-specification, only the invoice value for the off-specification grade shall be taken into account in calculating the limit of the Sellers' liability.

(c) The Buyers undertake to indemnify and hold the Sellers harmless against any claims pursued by any third party of whatever kind against the Sellers whether directly or indirectly related to the supply of Marine Fuels governed by this Contract and whether in contract or in tort. In case any such claim is being pursued against the Sellers, the Buyers undertake to ensure that the Sellers shall be in the same position *vis-à-vis* the third party and its claim as if such claim had been pursued against the Sellers by the Buyers pursuant to the terms of the Contract, including the limitations set out in this Clause 16 (Liability). Minerva shall only be liable to a Buyer to the extent it can recover from its supplier.

(d) Notwithstanding anything in these Seller's Terms to the contrary, Seller shall not be liable for deviation costs, demurrage or delays to and/or incurred by the Vessel (or for any liability that Buyer may have to a third party for such costs, demurrage or delays) or for any damage to the Vessel's engines, tanks or other machinery (and nor for any cleaning of such parts of the Vessel);

(e) This limitation of Seller's liability shall apply regardless of whether the liability arises in contract, tort (including negligence) or any other way whatsoever and shall be in addition to any other exclusions or limitations available to Seller under these Seller's Terms and/or at law.

(f) It is a condition precedent to Buyer's right to pursue any claim against Seller under or in connection with a transaction (including but not limited to any claim relating to the quality or quantity of the Marine Fuels supplied by Seller) that all sums due from Buyer in connection with such transaction have first been paid, in full and on the applicable payment due date. Any deduction made from or late payment of all or any part of the amount due under Seller's invoice under a transaction for any reason whatsoever shall be considered a breach of these Seller's Terms and in such event the Buyer shall be deemed to have automatically waived and lost its right to pursue any claim against the Seller of whatsoever nature whether notified or not and shall be bound to pay, in full, all sums deducted or withheld forthwith.

(g) To the extent permissible by applicable law, the Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of the Marine Fuels delivered hereunder.

## **16. Force Majeure**

Neither Party shall be liable for any loss, damage or delay due to any of the following force majeure events and/or conditions at the port of delivery which could not reasonably be foreseen at the time of entering into the Contract or guarded against, to the extent the Party invoking force majeure is prevented or hindered from performing any or all of their obligations under the Contract, provided they have made all reasonable efforts to avoid, minimise or prevent the effect of such events and/or conditions:

- (a) acts of God;
  - (b) any Government requisition, control, intervention, requirement or interference;
  - (c) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;
  - (d) riots, civil commotion, blockades or embargoes;
  - (e) epidemics and pandemics;
  - (f) earthquakes, landslides, floods or other extraordinary weather conditions;
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- (g) strikes, lockouts or other industrial action, unless limited to the employees of the Party seeking to invoke force majeure, delays caused by customs, port closure;
- (h) fire, accident, explosion except where caused by negligence of the Party seeking to invoke force majeure;
- (i) unavailability or inadequacy of, or interference with, supply from the Sellers' sources of supply;
- (j) breakdowns or damage to, or confiscation or unavailability of, the facilities or equipment, including any barge used for the production, transportation, handling or delivery of Marine Fuels of the Supplier;
- (k) explosions, fires or destruction of tankage, pipelines, refineries or terminals of or any kind of installations;
- (l) any compliance with any law, regulation or ordinance, or with any order, demand or request of an international, national, port, transportation, local or other authority or agency (including the International Energy Agency) or of any body or person purporting to be or to act for any such authority or agency or any corporation directly or indirectly controlled by any of them;
- (m) any curtailment, reduction in, interference with, failure or cessation of supplies of product from any of the Seller's or the Seller's suppliers' sources of supply or by any refusal to supply whether lawful or otherwise by the Seller's suppliers (whether or not in fact such sources of supply are for the purposes of the applicable transaction);
- (n) any other similar cause beyond the reasonable control of either Party.

The Party seeking to invoke force majeure shall notify the other Party in writing within two (2) Days of the occurrence of any such event/condition.

If the period of force majeure continues for more than ten (10) days, either party may elect to terminate the contract by giving notice in writing to the other party.

## **17. Termination**

Without prejudice to accrued rights hereunder, either Party hereto shall be entitled to terminate the Contract in the event of:

- (a) any application being made or any proceedings being commenced, or any order or judgment being given by any court, for
  - (i) the winding up, dissolution, liquidation or bankruptcy of either Party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver or administrator is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors; or
  - (ii) the appointment of a receiver, liquidator, trustee, administrator, administrative receiver or similar functionary of the other Party of all or a substantial part of its assets (otherwise than for the purpose of a reconstruction or amalgamation); or
- (b) any act being done or event occurring which, under the applicable law thereof, has a substantially similar effect to any of the said acts or events described above; or

- (c) either Party is in breach of the provisions of Clause 13 (Sanctions Compliance Clause) and 14 (Anti-Corruption Clause); or
- (d) either Party is in breach of any material provision under the Contract; or
- (e) if a force majeure event as defined in Clause 17 (Force Majeure) prevents or hinders the performance of the Contract for a period exceeding ten (10) consecutive Days from the time at which the impediment begins to prevent performance if notice is given without delay or, if notice is not given without delay, from the time at which notice thereof reaches the other Party.

**18. Pollution**

- (a) In the event of any spillage (which for the purpose of this Clause 19 (Pollution) shall mean any leakage, escape, spillage or overflow of the Marine Fuels) causing or likely to cause pollution occurring at any stage of the bunkering operation, the Buyers and the Sellers shall jointly, and regardless as to whether the Buyers or the Sellers are responsible, immediately take such actions as are reasonably necessary to effect clean up and which shall always be conducted in accordance with such local laws and regulations which may compulsorily apply.
- (b) Where it is a compulsory requirement of the law of the port or place of delivery of the Marine Fuels that the Sellers shall have in place their own oil spill contingency plans, the Sellers shall ensure that they have in place valid oil spill contingency plans.
- (c) Each Party hereby guarantees payment of and/or agrees to indemnify and hold the other Party harmless for any claims, losses, damages, expenses, penalties or other liabilities incurred (including but not limited to those incurred under any state, national or international oil pollution legislation), as a result of any spillage arising out of or in connection with the performance of the Contract where such spillage is caused or contributed to by that Party. To the extent that such spillage is caused or contributed to by any fault on the part of both Parties, each Party shall indemnify the other Party for its respective degree of fault.
- (d) The Sellers shall use their best endeavours to ensure that the owners of the Bunker Tanker are fully insured for oil spill liabilities as required by statutory rules or regulations. If such coverage or insurance is not obtained by the owners of the Bunker Tanker, it shall be the sole responsibility of the Sellers to establish such coverage for their account. Proof and conditions of such coverage, whether established by the company supplying the Marine Fuels or by the Sellers, shall be made available to the Buyers at their request, as soon as practically possible.

**19. Drugs and Alcohol Policy**

- (a) Each Party shall enforce a company drug and alcohol policy on board the Vessel and the Bunker Tanker and, in the case of the Sellers, also in their facilities.
  - (b) Such company drug and alcohol policies shall meet or exceed the standards in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended.
  - (c) The Buyers' personnel shall comply with the Sellers' policy in the Seller's facilities or on board the Bunker Tanker, and the Sellers' personnel shall comply with the Buyers' policy when on board the Vessel.
  - (d) Both Parties acknowledge and agree that the selling, possession, distribution, use or being under the influence of alcohol or any controlled substance or dangerous drugs other than those medically prescribed is prohibited.
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**20. Confidentiality**

(a) Neither Party shall disclose to third parties any confidential information relating to pre-contractual discussions and/or the terms and conditions of the Contract, except with the prior written consent of the other Party, which shall not be unreasonably withheld, or to the extent required by law, or by a request of a government or its agency thereof.

(b) The Parties shall take reasonable precautions to ensure that no unauthorised disclosure of confidential information takes place.

(c) If a Party is uncertain as to whether information is confidential, the Sellers or the Buyers (as the case may be) shall consult with the other Party.

(d) Should either Party be required by law to disclose confidential information, the disclosing Party will, where permitted, notify the other Party and shall disclose only the minimum confidential information required to satisfy legal requirements.

(e) Information is not confidential for the purposes of this Clause 21 (Confidentiality) if it was in the possession of the Party prior to receipt from the other Party; becomes publicly available other than as a result of a breach of the Contract by one of the Parties; or is lawfully received from a third party.

(f) This Clause 21 (Confidentiality) shall survive termination of the Contract.

**21. Third-Party Rights**

No third parties may enforce any term of the Contract and The Contracts (Rights of Third Parties) Act 1999 is expressly excluded from all contracts to which these terms apply.

**22. Assignment**

The Buyers shall not be entitled to assign the benefit of the Contract or any claim against Sellers thereunder, whether related to the Contract or otherwise.

The Sellers may, without the Buyers' consent, assign their right to receive and obtain payment under the Contract in connection with any finance, securitisation or bank funding arrangements.

**23. Partial Validity**

If any provision of the 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 the 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.

**24. Dispute Resolution Clause**

(a) The Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with the Contract shall be referred to arbitration in Geneva, Switzerland.

The arbitration shall be conducted in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution ("Swiss Rules") in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The language of the arbitration shall be English.



In cases in which the aggregate amount in dispute is less than USD 250,000, the Expedited Procedure of the Swiss Rules shall apply, and the case shall be referred to a sole arbitrator.

In cases in which the aggregate amount in dispute is more than USD 250,000 but less than USD 1,000,000, the Expedited Procedure of the Swiss Rules shall apply, and the case shall be referred to three arbitrators.

The General Maritime Law of the United States shall always apply with respect to the existence of a maritime lien, regardless of the country in which the Sellers take legal action. The Sellers shall be entitled to assert their rights of lien or attachment or other rights, whether in law, in equity or otherwise, in any jurisdiction where the Vessel may be found.

(b) The Parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with the Contract. In the case of any dispute in respect of which arbitration has been commenced under Sub-clauses 25(a), (c) or (d) (Dispute Resolution Clause), the following shall apply:

(i) Either Party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other Party of a written notice (the "Mediation Notice") calling on the other Party to agree to mediation.

(ii) The other Party shall thereupon within fourteen (14) Days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the Parties shall thereafter agree on a mediator within a further fourteen (14) Days, failing which on the application of either Party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the Parties may agree or, in the event of disagreement, as may be set by the mediator.

(iii) If the other Party does not agree to mediation, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the Parties.

(iv) The mediation shall not affect the rights of either Party to seek such relief or take such steps as it considers necessary to protect its interests.

(v) Either Party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vi) Unless otherwise agreed or specified in the mediation terms, each Party shall bear its own costs incurred in the mediation and the Parties shall share equally the mediator's costs and expenses.

(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

(c) For the sole benefit of the Sellers, it is further agreed that the Sellers, without prejudice to any rights hereunder or any claim raised pursuant to Sub-clause 25(a) (Dispute Resolution Clause) above, have the right to proceed against the Buyers, any third party or the Vessel in such jurisdiction as the Sellers at their sole discretion sees fit inter alia for the purpose of securing payment of any amount due to the Sellers from the Buyers or the Owners. In such circumstances the proceedings shall be governed by the substantive and procedural law of such jurisdiction.

(d) 21.1 The United Nations Convention on Agreements for the International Sale of Goods of Vienna 1980 shall not apply to any sale and purchase of Marine Fuels under these Seller's Terms or any Confirmation Note.

**25. Notices**

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

**26. Entire Agreement and Priority of Terms**

(a) The written terms of the Contract comprise the entire agreement between the Buyers and the Sellers in relation to the sale and purchase of the Marine Fuels and supersede all previous agreements whether oral or written between the Parties in relation thereto. No amendments to the Contract may be made unless agreed by both Parties in writing.

(b) Each of the Parties acknowledges that in entering into the Contract it has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether or not made negligently) other than as is expressly set out in the Contract.

(c) Any terms implied into the Contract by any applicable statute or law are hereby excluded to the extent that such exclusion can legally be made. Nothing in this Clause 27 (Entire Agreement and Priority of Terms) shall limit or exclude any liability for fraud by any Party to the Contract.

(d) Unless otherwise agreed, these General Terms and Conditions shall apply to any sale of Marine Fuels by the Sellers to the Buyers regardless of whether a Confirmation Note has been issued or not.