

These General Terms and Conditions of Sale (GTCS) shall apply to all Contracts for the sale of Marine Fuels, Lubricants and related Products and/or Services on the following basis.

## Article 1 - DEFINITIONS

The following expressions where mentioned in these GTCS or in the contract shall have the meanings as shown below and unless the GTCS otherwise require, any words denoting the singular shall include the plural and vice-versa:

- 1.1 **Buyer** means the entity or person who has contracted with the Seller to buy Fuel or other Products and/or Services, which shall include its assignees or successors, or Managers (the entity that is operationally or technically or commercially managing the vessel), or Operators (the entity that may be commercially operating the vessel), or Trader (the entity that is buying the Fuel and/or other Products from the Buyer and selling such to the Owner/Managers/Operator) or the Owner (the Owner of the vessel), shall also mean "Buyer".
- 1.2 **Seller** means the entity that appears as the Seller in the Contract. Reference to the term "Supplier" or "Physical Supplier" shall also mean "Seller".
- 1.3 **Supply Place** means the location where the supply operation takes place.
- 1.4 **Supply Equipment** or **SE** means the Seller or the Physical Suppliers barges, tankers, trucks, pipes and pumps as the case may be used to supply the Vessel.
- 1.5 **Contract** means the Contract between the Seller and the Buyer which consists of these GTCS and the Order Confirmation that is issued by the Seller for each supply of Fuel and/or other Products and Services.
- 1.6 **Controlling Sample** means the sample or samples taken by an Independent Surveyor or by the Sellers Personnel from the SE's before or at the time of delivery.
- 1.7 **Independent Surveyor** means an Independent Survey Company or a Surveyor appointed from time to time by the Seller in its sole discretion or jointly appointed by the Seller and the Buyer, as the case may be.
- 1.8 **Fuel** or **Fuels** means the grades of Marine Fuel to be delivered or that has been delivered.
- 1.9 **Oil** or **Oils** means the grades of Lube Oil and Lubricants to be delivered or that has been delivered.
- 1.10 **Fuel/Oil** or **Fuels/Oils** means the type of product to be delivered or that has been supplied which can be Fuel only, Oil only or both of them.
- 1.11 **Sales Order Form** or **SOF** means the form issued by the Seller to the Buyer for Order Confirmation.
- 1.12 **Order Confirmation** means a written confirmation issued by the Seller to the Buyer, which can be made by SOF and/or any other written mean (i.e. fax, telefax, email, website, text), setting out the details of the supply of Fuel/Oil and/or other Products or Services including i.e. supply place, supply date, volume and grade of the Fuel/Oil and the agreed price.
- 1.13 **Vessel** means the Vessel to which the Fuel and Lubricants are being delivered to, or too which the Buyer is contracting to buy the Fuel for.
- 1.14 **Agent** means the entity acting on behalf of any of the Buyer or the Vessel.
- 1.15 **Arrival Notice** means the notice sent from the Buyer to the Seller that shall contain the following information (which may be updated as necessary): a) Call Sign, b) Vessel's Name, c) Owners, d) Flag, e) Agents, f) Length Overall, g) Gross Tonnage, h) Net Tonnage, i) Dead Weight, j) Ex-Names, k)ETA: Expected Time of Arrival, l) Lloyds Register Number, m) Requirements.
- 1.16 **Designated Bank Account** means the Bank Account that is designated by the Seller in its invoice for receipt of the payment of dues that arise out of this contract.

## Article 2 - TERMS

- 2.1 These GTCS supersede and cancel any previous General terms and Conditions of the Seller and shall be effective from the "Effective Date". No variations shall be of any effect unless agreed in writing by the Seller.
- 2.2 In the event of any conflict between the Contract and any oral or any unsigned written variation by any staff of the Seller, these GTCS shall always prevail, any reference to the words Contract or GTCS shall mean the reference to the Contract.

- 2.3 It is agreed that the Buyer has bought and the Seller has sold the Fuel and/or other Products or Services as per the terms of the Contract and the GTCS.

## Article 3 - ORDER CONFIRMATION

- 3.1 Should the Contract be entered into by any party acting as an Agent for the Buyer and/or acting for or on behalf of the Buyer, whether such is disclosed or undisclosed, then such Agent in addition to the Buyer and/or holder of any interest in the Vessel receiving the Fuel, Oil, Products and/or Services shall be jointly and severally liable for and guarantees the proper performance of all the obligations of the Buyer under this Contract, and shall be deemed as a principle and not only acting as an Agent.
- 3.2 It is agreed that all orders of all supplies and/or deliveries are considered to be emanating from the Master of the Vessel even if relied by the Buyer to the Seller and even if no written request for the Master of the Vessel exists. The dues and costs of such supplies and/or deliveries shall be treated as a primary lien on the Vessel.

## Article 4 - PRICE – PAYMENT – RISK – PROPERTY

- 4.1 The price of the Fuel/Oil delivered shall be the price laid down by the Seller in the Order Confirmation which is quoted exclusive of any applicable taxes or duties unless otherwise agreed. In addition to the price the Buyer shall pay for delivery costs and any charges for delivery outside normal working hours at the place of supply.
- 4.2 All amounts for any fuel/oil delivered under this Contract shall unconditionally and irrevocably become due and payable from the Buyer to the Seller and shall constitute a lien on the Vessel.
- 4.3 The Buyer shall become liable for the Fuel/Oil immediately upon the Fuel/Oil (upon delivery) passing the SE's rail, and risk of the Fuel/Oil shall pass to the Buyer at that time. Title to the Fuel/Oil shall pass only when the Fuel/Oil has been fully paid for by the Buyer and until such time the Seller shall retain title to the Fuel/Oil.
- 4.4 Payment shall be made in United States Dollars (USD) or Euros (EUR) or any equivalent currency as the Seller may require, by telegraphic or telex transfer to the Designated Bank Account as designated by the Seller. If payment is made to any other account the Buyer shall not be released from its obligation to make payment to the Seller. All payments shall be made net of transfer charges which shall be for the Buyer's account, and shall be made without any discount or deduction and without set off or counter claim whether relating to any present or past agreements of Contracts. If payment is withheld or set off by the Buyer, partly or in full, due to alleged short delivery, quality dispute or any other reason whatsoever or not paid in time the Buyer shall pay, in addition to the outstanding amount, a compensation to the Seller of 20% (twenty percent) of the outstanding amount.
- 4.5 Any credit arrangements agreed by the Seller shall be totally without prejudice to the Seller's right to require payment forthwith. The Seller may at any time request the Buyer to pay promptly or in advance for any delivery or invoices irrespective of any prior agreement as regarding price and payment terms. The Seller reserves the right at any time to modify or terminate any credit arrangements and to call for immediate payment.
- 4.6 Time is of the paramount essence in this Contract. If payment by the Buyer to the Designated Bank Account is delayed beyond the due date or beyond the date on which the Seller has set as being the due date, the Seller shall be entitled to interest at the rate as indicated on the invoice from the date on which the payment was due until the date on which the full payment is received in the Designated Bank Account, in addition to any other rights the Seller may have under this Contract.
- 4.7 In case the agreed purchase price including any additional costs or accrued interest is not paid when due any cost of that collection and legal fees shall be paid for by the Buyer. Further the Buyer shall pay an administration fee which is to be calculated on the base of the damage caused by the Buyer to the Seller.

## Article 5 - ARRIVAL NOTICE

- 5.1 The Buyer undertakes to send to the Seller within 24 hours from the time the

Contract is entered into, by telex or by fax, an Arrival Notice, and thereafter 3,2 and day before the Vessel's arrival at the Supply Place. If the Contract is entered into such that the Arrival Notice within the stipulated timings in this paragraph are not possible, the Seller shall give such Arrival Notice at least 12 hours before the actual arrival of the Vessel at the Supply Place. Should the Buyer give an incomplete or late or not give an Arrival Notice as stipulated herein for any reason, the Seller shall be entitled to cancel the Contract and shall not be liable to the Buyer for any consequences, losses or damages arising from such cancellation.

- 5.2 The Buyer shall not amend the estimated arrival time and date as stipulated in the Contract beyond 12 hours. If the Buyer does amend such beyond 12 hours or if the Vessel fails to arrive within 12 hours from the arrival date and time at the Supply Place as stipulated in the Contract, the Seller shall have the right to revise the price and the date of supply and other terms and alternatively shall have the right to cancel the Contract and claim damages.

## Article 6 - DELIVERY

- 6.1 The Buyer and Vessel and all of the personnel and Agents shall comply with all the relevant regulations applied at the Supply Place. If the Buyer or the Vessel or Crew fail to abide by such regulations, the Seller shall be entitled to cancel the Contract in which case the Seller shall be under no liability to the Buyer for any consequences, losses or damages whatsoever arising from such cancellation. Furthermore, the Buyer shall be liable for all consequences, losses and/or damages (including but not limited to fine and penalties) suffered by the Seller as a result of the Buyers or the Vessel or its Crew failing to observe any of such regulations.
- 6.2 The Buyer shall indemnify the Seller in respect of any damage or loss which may be suffered by the Seller or their servants, Agents or Crew caused by the Buyer or receiving Vessel's Crew during bunkering operations.
- 6.3 Notwithstanding any other provisions elsewhere in the Contract the Seller does not guarantee the pumping rate at which the Fuel/Oil is to be delivered to the Vessel. The Seller shall not be liable for any consequences, losses or damages howsoever caused arising from the rate at which the Fuel/Oil is pumped into the Vessel.
- 6.4 The Seller shall not be in breach of their obligations hereunder to the extent that performance is prevented, delayed due to any reason, including but not limited to: a) Shortage of Fuel/Oil, b) Breakdown or underperformance of the SE, c) Any conditions outside the control of the Seller.
- 6.5 The Buyer undertakes to take delivery and leave the Supply Place with all due dispatch. In the event that the supply is delayed by the Buyer for whatever reason, or if after the supply of the Vessel, the Vessel fails to leave the Supply Place immediately, any loss or damage suffered by the Seller resulting from such delay, including any claims incurred or arising due to the delay in the supply of other Vessels shall be borne and paid for by the Buyer to the Seller.
- 6.6 Notwithstanding anything contained elsewhere herein, the Seller will effect the supply on a best endeavour basis as promptly as possible and shall not be liable for any demurrage under any circumstances or for any delay in supply caused due to whatsoever reason, or for any consequential losses and/or damages that may be suffered by the Buyer or the Vessel.

## Article 7 - QUALITY

- 7.1 The Buyer shall have the sole responsibility of the nomination of the Grade required for the Vessel.
- 7.2 Fuels/Oils sold shall conform to only those specifications defined under the ISO Standard prevailing as agreed from time to time, unless otherwise stated in the Contract. The same sold Fuels/Oils shall be used solely for the operation of the Vessel's machinery in its normal trade and all Fuels/Oils delivered shall be used solely for the operation of the Vessel originally receiving it.
- 7.3 The parties may agree and select and appoint an Independent Surveyor. The Buyer may request in writing from the Seller to appoint an Independent Surveyor upon which the Seller may appoint an Independent Surveyor, the cost of such appointment shall be to the account of the Buyer. Further, any appointment of an Independent Surveyor by the Buyer contrary to the provisions contain herein shall be invalid, and the findings shall be of no evidential value, nor binding upon the Seller.

- 7.4 It is agreed that in the event that the density of the Fuel/Oil is within plus or minus 0.005 of the Seller's declared density as compared with the tested density of the Controlling Sample, the Seller shall not be liable for any compensation to the Buyer on variation or reduction, in the quantity or value of the Fuel/Oil.
- 7.5 It is agreed by the Buyer that if it is proven by analysis of the Controlling Sample that the Fuel/Oil supplied to the Vessel by the Seller does not need the specification of the Grade of Fuel/Oil agreed, the Buyer shall not make any deduction, and pay the full invoice amount within its due date.

## Article 8 - SAMPLES

- 8.1 The Seller may take at its option up to three sealed samples ("the Controlling Samples") of the Fuel/Oil delivered from the Seller SE's, of which one may be retained by the Seller and such retained Controlling Samples shall be the only sample by which the quality of the Fuel/Oil delivered shall be tested to ascertain the properties and specifications of the Fuel/Oil supplied.
- 8.2 The Independent Surveyor in the presence of a representative of the Seller shall only test controlling samples. The result of any such test carried out on the Controlling Samples shall be conclusive evidence and binding between the Buyer and the Seller as to the quality of the Fuel/Oil delivered.
- 8.3 If the tests are carried out at Buyers request, the Buyers shall bear the total costs for such analysis. If the tests are carried out as a result of quality dispute, the Buyer shall bear the costs if the qualities are in conformity with any of the Grades of Fuel/Oil agreed.
- 8.4 It is agreed that any result of any tests on any other samples, or tests carried out on a Controlling Samples by any surveyor other than the Independent Surveyor, or a test on any other samples other than the Controlling Samples whether or not such samples were taken at the same time as the Controlling Samples shall be of no evidential value whatsoever, and shall not be binding on the Seller and shall not be capable of giving rise to any claim of whatsoever nature against the Seller.

## Article 9 - VALIDITY OF THE CONTRACT

- 9.1 Notwithstanding anything contained herein, the Buyer hereby unconditionally agrees that even if it is proven that the Fuel/Oil supplied was not in accordance with the Grade of Fuel/Oil agreed or that the Seller has defaulted in executing any of its obligations under the Contract, such shall not violate and nullify any part of the Contract in any way, neither shall it affect the duties, liabilities and obligations of the Buyer towards the Seller, irrespective of any claim made or proven of whatsoever nature by the Buyer.

## Article 10 - QUANTITY

- 10.1 The quantity of Fuel/Oil delivered by the Seller to the Buyer shall be measured by measurements taken on the SE's tanks or shore tanks or by SE's meters only by SE's personnel which shall be conclusive evidence of the quantities delivered and shall be included in the receipt to be signed by a representative of the Buyer. Measurements by any other means taken on board the Vessel shall not be binding on the Seller and shall have no evidential value as between the Seller and the Buyer.
- 10.2 The Buyer shall have the right to call upon an Independent Surveyor to measure the quantity of Fuel/Oil delivered; the Independent Surveyor shall be appointed by the Seller or jointly appointed by both the Buyer and the Seller and shall only measure the SE tanks or shore tanks or by SE's meters only to determine the quantity and shall issue his survey report. If such Independent Surveyor is requested by the Buyers they shall pay the Independent Surveyor expenses and costs in relation to the measurements of the quality of Fuel/Oil delivered. The measurement carried out by the Independent Surveyor shall be conclusive evidence of the quantities delivered and shall be included in the receipt to be signed by a representative of the Buyer. Measurements by any other means taken on board the Vessel shall not be binding on the Seller and shall have no evidential value as between the Seller and the Buyer; both the Sellers and Buyers representatives shall have the right to witness the measurement operations.

## Article 11 - CLAIMS/LIABILITY

- 11.1 Notice of any claim made by the Buyer shall be given in writing fully documented with all supportive documents to the Seller at their address and be received by them within 15 days from date of delivery (or if not delivery took place, within 15 days from the intended time of delivery stated in the last complete Arrival Notice tendered by the Buyer). Unless the Buyer gives notice of any claim pursuant to this clause within the time limit, all claims by the Buyer of whatsoever nature shall be automatically extinguished and completely time barred and waived against the Seller. Notwithstanding the above, any claim in respect of differences in quantity by the Buyer shall be made to the Seller at the supplying facility at the time of delivery and shall be confirmed in writing within seven days thereof; if such claim in respect of quantity is not made at the time of supply, then such claim shall be considered as invalid, null and void.
- 11.2 The Seller's liability for any damage whatsoever arising under this contract whether caused by negligence or not, whether based in tort or contract and whether falling on the Buyer or third party shall be limited to the invoice value of the supply for which liability has arisen. For the avoidance of doubt the foregoing shall include product liability claims.  
The Seller shall under no circumstances be held liable for any consequential losses whatsoever, including, without limitation, delay, detention, demurrage, charter hire, crew wages, pilotage, towage, port charges, lost profits or increased cost or expenses for obtaining replacement fuel.
- 11.3 Any liability for damages to the Vessel shall in any event be reduced by 20 (twenty) percent of the invoice value of spare parts for each year or fraction thereof in which the replaced part has been in use. The Buyer undertakes to indemnify the Seller against any claims, losses or costs of whatever kind related to the Bunker Contract instituted by third parties against the Seller to the extent such claims exceeds the Seller's liability towards the Buyer according to this clause.
- 11.4 If the Buyer gives notice of any claim within the time limit concerning the properties or specification of the Fuel/Oil (a "quality claim"), the Buyer must within seven days of giving notice of the Quality Claim notify the Seller in writing that they wish one or more of the properties or the specifications to be tested. In such event, the Buyer may only ask for the specification(s) that is(are) disputed to be tested and the said specification(s) must be amongst the specifications stipulated in the quality agreed in the Contract for the Grade of Fuel/Oil to be supplied. The disputed specification shall be tested by an analysis of the Controlling Sample. The choice of the Independent Surveyor and laboratory where the tests are to be conducted are at the sole discretion of the Seller. The Buyer or his representative shall be entitled to attend the testing of the Controlling Sample and the Buyer may give authority for the Independent Surveyor to conduct the test in his absence. In the Buyer neither appoints a representative nor authorizes tests to proceed in his absence, the Buyer shall be deemed to have accepted and be bound by the results of the test. If the Buyer fails to notify the Seller that it requires the Controlling Sample to be tested within the above mentioned seven days of the notice of claim pursuant to this Clause, the Quality Claim will be extinguished and absolutely barred and waived as against the Seller. Any claim of whatsoever nature made by the Buyer and based on any sample obtained or analyzed contrary to the stipulations of this Clause shall be invalid, void, barred and not have any evidential value and not be binding on the Seller.
- 11.5 The Buyer shall pay the amount invoiced on its due date promptly in accordance with the set payments and credit terms without the right off set-off or deduction from the invoice amount.

## Article 12 - ENVIRONMENTAL PROTECTION

- 12.1 The Buyer shall be responsible for ensuring that the shipping company observes all health and safety regulations with regard to the receipt and use of bunker oil and the Seller disclaims any liability whatsoever in relation thereto.
- 12.2 If an escape, spillage or discharge of Oil ("Spill") occurs while a delivery of Fuel/Oil being made to the Vessel, the Buyer and the Agent/Trader/Owner/Manager/Operator/Charterers of the Vessel shall promptly take all such action as is reasonably necessary to remove the oil and mitigate the effects of such spill. However, notwithstanding the cause of such Spill, the

Seller is hereby authorized at his option to take such measures either cooperation with the Buyer or exclusively as the sole party and incur such expenses (whether by employing his own resources or by contracting with others) as are reasonable in the sole judgment of the Seller to remove the oil and mitigate the effect of such Spill. If the Seller has exercised its option to remove the oil and mitigate the effect of such Spill, the Buyer agrees to cooperate and render such assistance as is required by the Seller in the course of such action.

The party that caused the said Spill by its act or omission shall pay for any expenses, damage, costs, fines and penalties arising from the Spill. Should the Buyer agree to give or cause to be given to the Seller upon demand all such documents and other information concerning any Spill which are requested by the Seller or are required by laws or regulations applicable at the time and place where the Seller delivers Fuel/Oil to the Buyer.

## Article 13 - LIEN

- 13.1 In addition to any other security the Seller may have, and as this Contract is entered into and product is supplied upon the faith and credit of the Vessel, it is agreed and acknowledged that a lien over the Vessel is created for the price of the Fuel/Oil supplied together with any interest accrued. The Buyer, if not the Owner of the Vessel, hereby expressly warrants that they have full authority of the Agents/Traders/Owners/Managers/Operators/Charterers to pledge the Vessel in favour of the Seller and that they have given notice of the provisions of this Contract to them. The seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien(s) attaching to a Vessel. The Seller shall be entitled to rely on any provisions of the law of the flag state of the Vessel, the law of the Supply place or the law of the place where the Vessel might be arrested.

## Article 14 - SUBSTITUTION

- 14.1 Sellers reserve the right to substitute for themselves a third party for the performance of all or part of their obligations.

## Article 15 - FORCE MAJEUR

- 15.1 Neither Buyers nor Sellers shall be responsible for any loss or damage resulting from any delay or failure in delivery or receipt in Marine Fuels and/or other products, hereunder due to fire, explosion or mechanical breakdown, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes or other differences with workmen or unions, or from any delay or failure in delivery or receipt Marine Fuels/Oils hereunder when the supplies of Buyers and Sellers or the facilities of production manufacture, consumption, transportation, distribution of Buyers and Sellers are impaired by causes beyond Buyers' and Sellers' control, or by the order, requisition, request or recommendation of any governmental proration, regulation or priority, or from any delay or failure due to any causes beyond Buyers' and Sellers' control similar or dissimilar to any such cases. When such cause or causes exist, the party affected shall have the right, upon notice without delay as soon as practicable to the other of the nature and probable duration of such cause or causes, to restrict or cease deliveries or acceptance hereunder in a fair and equitable manner for the duration of such cause.

## Article 16 - LAW AND JURISDICTION

- 16.1 Any agreements and documents to which these General Terms and Conditions of Sale apply shall be exclusively governed by the laws of Italy unless otherwise provided herein.
- 16.2 Any disputes arising from any agreements or documents to which these General Terms and Conditions of Sale apply shall be exclusively submitted to the competent courts in Italy.
- 16.3 In case of breach of contract by the Buyer, the Seller shall moreover be entitled to take such legal action in any court of law in any state or country which the Seller may choose and which the Seller finds relevant in order to safeguard or exercise the Seller's rights in pursuance of this present Agreement.