

"FB TRADE" DWC-LLC  
General Terms and Conditions of Sale  
Edition January 2024

## 1. Definitions

- 1.1. "Bunkers" means the Seller's different grades of heavy fuel, diesel, gasoil and lubricating oils and any other products and/or services offered for sale by the Seller.
- 1.2. "Buyer" means the Vessel and any party requesting quotations, placing orders, purchasing or otherwise contracting to receive the Bunkers from the Seller, including but not limited to the Vessel's owners, disponent owners, charterers, operators, managers, masters, agents and brokers.
- 1.3. "Conditions" mean these general terms and conditions of sale.
- 1.4. "Contract" means an agreement between the Seller and the Buyer for the supply of the Bunkers, always subject to these Conditions.
- 1.5. "Order Confirmation" means a written confirmation issued by the Seller to the Buyer in respect of an order placed by the Buyer and/or confirmation of a similar agreement.
- 1.6. "Physical Supplier" means "FB TRADE" DWC-LLC or a third party appointed by the Seller to deliver the Bunkers to the Vessel, as applicable. Where "FB TRADE" DWC-LLC has Bunkers available for delivery, "FB TRADE" DWC-LLC will, from time to time, act as both Seller and Physical Supplier.
- 1.7. "Seller" means "FB TRADE" DWC-LLC or any of their servants, officers, agents, brokers, designated representatives and their subsidiaries or affiliates, wherever applicable.
- 1.8. "Vessel" is the vessel to which the Bunkers are delivered under the Contract.

## 2. Scope

### 2.1. Integral part.

These Conditions constitute an integral part of any Order Confirmation and/or Contract and shall apply thereto, and the Seller's supply of Bunkers shall always be subject to these Conditions. Subject to clause 2.2 below, these Conditions embody all the terms and conditions applicable to the Contract and supersede and cancel in all respects any previous conditions by the Seller.

### 2.2. No deviation from these Conditions.

The Seller shall not be bound by, and the Buyer may not rely on, any statement, representation or warranty, collateral or other piece of communication to the extent that would amount to a deviation from these Conditions, unless and always provided that (I) the Seller has confirmed in writing which part(s) of these Conditions the Parties have agreed to deviate from, (II) the Seller states explicitly that the agreement to deviate is made in pursuance of this clause 2.2, and (III) a senior officer or member of management of the Seller (who cannot be a bunker trader), or the Seller's legal desk, confirms and authorizes the agreement to deviate in writing.

### **2.3. Severability.**

Any variance or invalidity of any parts of these Conditions shall not prejudice or limit in any way the validity of the remaining Conditions or of any Contract made between the Seller and the Buyer. If any provision of the Contract is held to be invalid, void or unenforceable that will not affect the validity, legality or enforceability of any other provision of the Conditions and the any other rights of the Seller under the Contract.

### **2.4. No waiver.**

Failure by either party at any time to enforce any of these Conditions shall not be considered as a waiver by such party of such provisions or in any way affect the validity of these Conditions.

### **2.5. Whole agreement.**

Together with the Contract and the Order Confirmation, these Conditions constitute the whole agreement made between the Seller and the Buyer, and the Buyer may not rely on any pre-contractual or post-contractual statement, representation or warranty, collateral or other piece of communication to the extent that prejudices the Seller's rights under these Conditions. Further, no statements made outside the Contract, or in any brochures, on websites, in catalogues or in sales literature or advertisements or in any correspondence or oral statements made during negotiations, are intended to have any contractual effect unless inserted specifically into the Contract. For clarity, any deviation from these Conditions will only have effect provided all of the requirements set out in clause 2.2 above are met.

### **2.6. Amendments.**

The Seller reserves the right to include, at its discretion, any additional or substitute terms and conditions. Any such additional or substitute terms and conditions shall prior to the time of concluding the Contract be advised by the Seller to the Buyer, either, via written notice

## **2.7 Condition of Agreement**

### **2.7.1 Buyer's Confirmation of Agreement**

The Buyer confirms that this Agreement is entered into on behalf of the Owner and the Vessel in rem. The Bunker Confirmation, Invoice, and Bunker Delivery Receipt shall incorporate the Seller's General Terms and Conditions (GTC), collectively forming the complete agreement for the sale and delivery of marine bunkers. The Buyer agrees to purchase, and the Seller agrees to supply, Marine Fuels in accordance with the Seller's GTC, which shall be incorporated into all Order Confirmations and Bunker Delivery Receipts.

### **2.7.2 Liability of Traders, Agents, and Managers**

If a trader, agent, or manager contracts for the purchase of Marine Bunkers on behalf of the Owner, such trader, agent, or manager shall be jointly and severally liable to pay the Physical Supplier/Seller the Invoice amount, including interest and costs, as stipulated in the Seller's GTC. Furthermore, all bunker deliveries shall be made for the account of the registered Owner and the Vessel in rem as the Buyer. The Buyer warrants that it is duly authorized to act as an agent and order Marine Bunkers for the Vessel. The Owner and Master acknowledge that the Physical Supplier/Seller holds a maritime lien and contractual lien over the Vessel and a pledge on its company registry for the Marine Bunker supply. This lien extends to the Vessel's bunkers, freight, hire, insurance proceeds, and any voyage-related or ship sale proceeds as surrogates. The Master acknowledges that the Marine Bunkers are supplied on credit to ensure the continuation of the voyage.

### **2.7.3 Buyer's Warranty of Authority**

If the Buyer is not the registered Owner of the Vessel, it expressly warrants that it has full authority from the Owner and/or Disponent Owner to enter into the bunker purchase agreement for the Vessel's voyage continuation. The Buyer further warrants that it has the Owner's authority to contract on its behalf, including on the personal credit of the Owner and/or Disponent Owner and the Vessel. The Buyer is deemed to be in possession and control of the Vessel for these purposes. Additionally, the Buyer warrants that it has informed or will inform the Owner and/or Disponent Owner of this clause and Clause Lien.

### **2.7.4 Authority of Charterers under U.S. Law**

The Buyer, acting on behalf of the Owner, acknowledges that Charterers are authorized to procure necessities for the Vessel under 46 U.S. Code § 31341. Any agent appointed by the Charterer is similarly authorized to procure necessities, including bunkers, for the Vessel in rem under 46 U.S. Code § 31341(a.4.B). The authority of the Charterer shall be determined pursuant to 46 U.S. Code § 31341.

### **2.7.5 Dispute Resolution Regarding Agreement Terms**

If the Owner and/or Charterer alleges that they are not a party to the Seller's Bunker Order Confirmation and GTC, such allegations shall be resolved strictly under the terms of the Seller's GTC. The Owner and/or Charterer must raise any objections within three (3) calendar days of the Seller issuing a claim notice. If no objection is raised within this period, the Owner and Charterer shall be deemed to have accepted the Seller's Bunker Confirmation and GTC. Any objections raised after this period shall be null and void.

### **2.8 Non-Lien Notice**

Any notice or stamp on the Bunker Delivery Receipt or similar document shall not waive the Physical Supplier/Seller's maritime lien on the Vessel. Any remark such as "the bunker is on the Charterer's account under 46 U.S. Code § 31341(a.4.B)" shall be deemed ineffective unless the Seller was notified before the bunker supply. Any charter notification provided after bunker supply shall have no legal effect. The Owner shall not use any non-lien clause from a charter party as a defense against liability for the bunker invoice if the Owner failed to notify the Seller/Physical Supplier prior to the bunker supply.

The Seller shall not be bound by any attempt by any party to restrict, limit, or prohibit its lien rights unless a written notice to that effect is provided to the Seller before it issues its Confirmation to the Buyer.

### **2.9 Agents**

When the Buyer is not the Owner and/or Disponent Owner of the Vessel, the Buyer represents and expressly warrants to the Seller that:

- (i) It is acting as the duly named and appointed Agent of the registered Owner and has ostensible authority to bind the registered Owner to the Supply Contract.
- (ii) It has full authority to bind the Owner and Vessel in rem.
- (iii) The Agent has informed the Owner that the Seller is the supplier of the bunkers and that the Seller's GTC has been reviewed and accepted.
- (iv) The Seller's GTC, Bunker Confirmation, and Bunker Delivery Receipt have been provided to the Vessel.
- (v) The Master/Owner has authorized the Agent to engage the Seller as the supplier of Marine Fuels to the Vessel through the Physical Supplier.

### **2.10 Bunker Delivery Receipt (BDR)**

Upon completion of the supply, the BDR must be signed by the Vessel's Master or an authorized representative. If the individual signing the BDR is not the Vessel's Master, the Buyer confirms and warrants that such individual has full authority to bind the Vessel in rem. The BDR shall remain "clean," without any remark or non-lien clause.

### 2.11 Payment Default and Assignment of Rights

If the Buyer fails to timely pay the purchase price to the Seller, all rights and claims against the Vessel in rem, the Owner, and/or the Disponent Owner shall be automatically assigned to the Seller. Through this automatic assignment, the Seller shall be subrogated into the contractual position against the Buyer and/or Vessel's Owner. The Seller shall acquire the maritime lien of the Physical Supplier and shall assume the position of the Physical Supplier after payment of the bunker invoice.

### 2.12 Arrest Of The Vessel

#### 2.12.1

Notwithstanding anything to the contrary in this Agreement and without prejudice to any other rights or remedies available to the Seller, the Buyer, by accepting these terms, **expressly authorizes** the Seller to arrest the Vessel in question, or any other vessel owned, operated, or beneficially controlled by the Buyer, under any applicable jurisdiction as security for the Buyer's obligations. Should the Buyer fail to make any payment when due, the Seller shall have the right to seek an arrest order in any competent jurisdiction, in accordance with Rule B or Rule C of the **Supplemental Rules for Certain Admiralty and Maritime Claims under the Federal Rules of Civil Procedure**. The Seller may thereafter proceed with the judicial sale of the arrested Vessel pursuant to the **Commercial Instruments and Maritime Liens Act (CIMLA)**, 46 U.S.C. §§ 31341-31343. Any expenses, including but not limited to, legal fees, court costs, port fees, and maintenance costs related to the arrest, shall be borne solely by the Buyer and added to the claim for which the arrest is made.

#### 2.12.2

The Seller shall have the right to obtain a **payment guarantee** from the Owner, as provided in Clause 5.04.3. If such a guarantee has been issued and the Owner fails to settle the outstanding balance within five (5) business days after receiving proper written notice, the Seller shall have the right to **arrest any Vessel owned, operated, or beneficially controlled by the Owner or Buyer**.

The Seller shall also be entitled to seek security for its claim against any associated or sister vessel pursuant to the **doctrine of alter ego and the corporate veil-piercing principles recognized by U.S. courts**. The **Owner/Charterer irrevocably waives any and all claims** against the Seller arising from the arrest, detention, or judicial sale of the Vessel.

#### 2.12.3

The Seller shall be entitled to **obtain security for its claims** against the Vessel, its sister vessels, and their respective **owners, operators, managers, agents, buyers, or charterers in any jurisdiction, either before or during arbitration or litigation proceedings**. The Seller's right to security shall include, but not be limited to, pre-arbitration security attachments as permitted under U.S. maritime law and **Rule B attachments** in any U.S. federal district court with admiralty jurisdiction.

### 2.13 LIENS

#### 2.13.1

In addition to any other security provided by the Buyer, the **Product supplied to the Vessel is sold on the credit of the Vessel**, and the Seller shall have a **first-priority maritime lien** against the Vessel for the price of the Product supplied. This maritime lien arises automatically **under 46 U.S.C. § 31342** and shall extend to all freights, sub-freights, hire payments, and earnings due to the Vessel for the voyage during which the Product was supplied, as well as for all subsequent voyages until full payment is made.

If the Buyer is not the registered owner of the Vessel, the Buyer **expressly warrants** that it has the authority to bind the Vessel's credit for the supply of necessities and has notified the Owner accordingly. **Any attempt to disclaim, limit, or prohibit the maritime lien through charter party clauses, notices, or contractual arrangements shall be null and void under U.S. law** unless such restriction is disclosed to the Seller before confirming the order.

The Seller shall be entitled to enforce this lien **through in rem proceedings in any U.S. federal district court under Supplemental Admiralty Rule C.**

### 2.13.2

If the Buyer seeks to avoid the attachment of a maritime lien due to a **Prohibition of Lien Clause** in its charter party or for any other reason, the Buyer **must notify the Seller at the time of the initial inquiry/order for the Product.**

If such notice is given, **the Seller reserves the right to demand full payment in cash or an equivalent form prior to delivery.** Any notice attempting to limit the maritime lien after the Agreement has been executed **shall have no legal effect** on the enforceability of the Seller's lien rights.

### 2.13.3

The Seller is providing **necessaries, including marine bunkers, to the Vessel on the Buyer's order**, who is acting as an **authorized agent of the Owner and/or Master.** Accordingly, a **statutory maritime lien and/or contractual lien is automatically created over the Vessel** for the price of the supplied bunkers.

The Owner/Charterer **expressly agrees that the Seller shall have a lien over all their company registries, shares, and assets** for the outstanding bunker invoice, accrued interest, and legal costs. The **directors of the Owner/Charterer shall be held personally liable** for unpaid bunker invoices and shall be deemed to be parties to the Seller's General Terms and Conditions (GTC).

The Buyer further warrants that the Seller has the right to **assert and enforce its maritime and/or contractual lien** against the Vessel, its **freight earnings, hire payments, insurance proceeds, and resale value.** This right shall extend to **any associated or sister vessel**, as recognized in U.S. case law

### 2.13.4

The **laws of the United States**, including but not limited to the **Commercial Instruments and Maritime Liens Act (CIMLA), 46 U.S.C. §§ 31341-31343**, shall **govern the existence and enforcement of any maritime lien**, regardless of the jurisdiction where the legal proceedings take place.

The Seller shall be entitled to **assert its rights through in rem actions, lien attachments, or other available legal remedies in any jurisdiction where the Vessel may be found.** The Buyer warrants that the Seller shall have and **enforce a maritime lien under the flag law of the Vessel**, where applicable.

Furthermore, the **U.S. Maritime Lien Act shall be applied by the Arbitrator** in resolving any disputes related to the Seller's lien rights.

The Buyer, the Vessel, or its Owners **must notify the Seller in writing at least twelve (12) hours prior to the scheduled supply** if they intend to dispute or exclude the Vessel's liability. Such notice must be sent via email to [info@fbtrade.ae](mailto:info@fbtrade.ae)

### 2.13.5

If the **Director of the Vessel's Management Company is also the director of the Ship-Owning Company of other vessels in their fleet**, they acknowledge and **agree that all such ship-owning companies shall be jointly and severally liable** for the outstanding invoice, accrued interest, and legal costs.

This clause is enforceable **under the alter ego and veil-piercing principles established in U.S. federal maritime law**,

## 3. Owner's Acceptance

### 3.1. Acceptance.

Bunkers delivered under a Contract shall be made for account of the Buyer, which always includes the Vessel and her registered owners. If the legal entity to whom the Order Confirmation is issued is not the registered owner of the Vessel, the master (or any other officer or representative of the Vessel), by signing or stamping the bunker delivery notes or other similar document and by taking delivery of the Bunkers, shall be deemed to have full authority on behalf of the Vessel and her registered owners to take delivery of the Bunkers and accept these Conditions. The Buyer further warrants that it is authorized as agent to order the Bunkers for the Vessel and that the Seller has a lien on the Vessel for any Bunkers supplied under this Agreement in accordance with the applicable law. If the party requesting the Bunkers

is not the Owner of the Vessel, the Buyer assumes the sole responsibility for communicating the terms and conditions of this Agreement to the Owner of the Vessel prior to the date of delivery.

### **3.2. “No-lien stamps”.**

The Buyer expressly undertakes not to make any endorsement, complaint or comment (such as the insertion of “No-lien” clausings) on the bunker delivery note when presented for signature by the Buyer’s representative(s). Any such insertion shall be invalid and of no effect whatsoever. The Bunkers are received with full authority from the owner of the Vessel.

## **4. Terms of Offers and Contracts**

### **4.1. Quotations, offers and estimates.**

The Seller’s offers, quotations and estimates of prices and other costs are to be understood as being conditional, subject to availability and alteration, and shall include only such products as are expressly specified.

### **4.2. Formation of Contract.**

The Contract shall be deemed to have formed when, and only when, the Seller provides the Buyer with an Order Confirmation.

### **4.3. Approximate values.**

Save where otherwise expressly provided for in the Order Confirmation, all particulars notified to the Buyer (e.g. analytical data, delivery times, names of delivery vessels, specifications of the Bunkers, etc.) and all documents to which access has been given shall be deemed to contain only approximate values and do not constitute undertakings or warranties. The Seller reserves the right to alter such particulars or documents.

### **4.4. FOB and Incoterms.**

The supply of Bunkers is always made on FOB terms, unless another Incoterm is expressly stated in the Order Confirmation. References to FOB or other Incoterms shall be deemed to have the meaning contained in the most recent edition of Incoterms.

## **5. Prices, Invoicing, Payment, Interest, Collection Costs, Allocation**

### **5.1. Prices.**

The Buyer shall pay the agreed prices as set out in the Seller’s Order Confirmation and invoice(s).

### **5.2. Additional expenses and costs.**

The Buyer shall pay any additional expenses and costs such as barging, overtime, demurrage, wharfage, dockage, part/harbor/agency fees, dues, duties, taxes, levies and other costs, including those imposed by governments and local authorities. The Seller shall endeavor to include, by way of estimates, these additional expenses and costs in the Order Confirmation, however, the Seller shall at all times be entitled to invoice the aforementioned expenses and costs. If any price is quoted as “Delivered”, the price includes transportation to the Buyer’s Vessel, but does not include demurrage or any other expenses or costs as indicated above.

### **5.3. VAT and other taxes.**

All quoted prices and the prices mentioned in the Order Confirmation are exclusive of VAT and other taxes, unless specifically stated. VAT and other taxes and similar charges shall always be promptly paid by the Buyer upon receiving the Seller’s invoice.



#### **5.4. Due date for payment.**

Payment shall be received by the Seller in full no later than on the due date stated in the Seller's invoice, free of bank charges and other cost, into the Seller's nominated bank account.

#### **5.5. Currency.**

Unless otherwise specified in the Order Confirmation or in the Seller's invoice, prices shall be in US dollars and shall represent only the purchase price for the Bunkers (typically quoted in USD per metric ton). Payment shall always be made in the invoiced currency.

#### **5.6 No set-off.**

Payment shall be made in full, without any set-off, deduction and/or discount, unless agreed in writing prior to payment being made.

#### **5.7. Interest and administration charges.**

In the event that payment is not received by the Seller by the due date the Seller is entitled to interests at the rate of 2 (two) percent per month pro rata compounded each month without prejudice to any other rights or remedies available to the Seller. The Seller shall also be entitled to charge a delayed payment administration fee of USD 1.50 per metric ton supplied with a minimum administration fee of USD 500.00.

#### **5.8. Collection costs.**

The Seller's collection costs shall be solely for the Buyer's account. If the Buyer fails to make payment in full on the due date for payment, the Seller will take legal action (such as ship arrest and/or arbitration) to collect the overdue payment. The Seller's costs and expenses incurred in connection with the collection of such overdue payments shall be indemnified by the Buyer upon demand from the Seller. These costs and expenses include, but are not limited to, interest charges, internal costs, and external costs such as expenses to lawyers, debt collectors or other consultants, court fees, costs for translating documents, bailiff's or Marshall's fees and any collection costs of whatsoever nature. The Seller shall be entitled to invoice those costs from time to time.

#### **5.9. Allocation of payments.**

All payments received by the Seller shall be applied to settle, first, any overdue interest and administration charges, then, to any collection costs incurred (such costs to be indemnified by the Buyer as set out in clause 5.8 above), and, then, to principal.

#### **5.10. Anticipatory breach.**

If the Buyer's right to possession of the Bunkers ceases, the Seller shall be entitled to demand all payments settled immediately, whether or not such payments have fallen due under the Seller's invoice.

#### **5.11. Security.**

The Seller shall at all times be entitled to require that the Buyer gives security for the proper performance of all of the Buyer's payment obligations. Security shall be given to the satisfaction of, and as deemed sufficient by, the Seller. Failure to immediately provide such security shall entitle the Seller, inter alia, to suspend further performance of any and all orders and to assert any other right and remedy available under the Contract and under the law applicable.

### **6. Quality and Samples – claims**

#### **6.1. Quality.**

The agreed quality shall always be limited to the quality description set out in the Order Confirmation; for instance, by reference in the Order Confirmation to the quality standard term ISO-8217:2010, which is mentioned in this clause for illustration purposes only. If the Order Confirmation does not contain such description and does not contain any other similar terms of quality, the Bunkers shall be of the quality that is generally offered by the Seller to its customers at the time and place of delivery and subject to being available for delivery at the agreed place of delivery.

#### **6.2. No implied warranties.**

Any implied conditions, obligations and warranties, including the warranties of merchantability, fitness for a particular purpose and/or any similar warranty, are expressly excluded and disclaimed and shall not apply.

#### **6.3. The Buyer's responsibility.**

The Buyer, having greater knowledge than the Seller of the Buyer's own requirements and needs, shall have the sole responsibility for the prior selection of the particular grade(s) and acceptance thereof. The Order Confirmation is deemed to describe the type of Bunkers demanded by the Buyer, and the Buyer shall immediately upon receipt of the Order Confirmation notify the Seller of any wrongful description in the Order Confirmation compared to the Buyer's demand. In case such notice is not provided to the Seller, the Order Confirmation's description of quality shall be deemed to be binding, as shall all other terms and descriptions set out in the Order Confirmation.

#### **6.4. Agreed procedure for sampling and testing of samples.**

The following clauses shall exclusively govern the taking of samples and the testing of such samples:

A. The Seller shall arrange samples to be taken during delivery of the Bunkers. Unless otherwise agreed in writing the samples shall be taken in accordance with the sampling procedures customary at the place of supply.

B. Sampling shall be performed in the presence of the Buyer and Seller, or their representatives, but the failure of the Buyer to attend the sampling process shall not prejudice the validity of the samples.

C. All samples shall be sealed, labelled and signed by both the Buyer and Seller, or their representatives, and two (2) samples shall be retained by the Buyer one being the MARPOL compliant sample in accordance with the relevant rules and regulations in force at the time of supply.

D. In the event of a dispute regarding the quality of the Bunkers delivered, the samples drawn pursuant to these clauses shall be conclusive and final evidence of the quality of the Bunkers delivered to and received by the Vessel.

E. One, and only one, of the samples retained by the Seller shall be forwarded to an independent laboratory to perform a set of tests, the result of which is to be made available to both parties. Those test results shall be final and binding upon both parties as to the parameters tested. The parties are to use best endeavors to agree on the independent laboratory to perform the tests. If, however, no agreement can be reached on the choice of laboratory within 7 calendar days of the Buyer being advised of the Seller opting to have a sample tested, the Seller is at liberty to send the sample to a reputable and independent laboratory of its choice for the tests to be conducted, and those test results will be final and binding upon the Buyer and the Seller as set out above.

F. The seal on the samples must be breached only in the presence of both parties unless, either, (i) the Buyer has declared in writing that they will not be present at the time and place for testing by the laboratory (as per the clause above), or, (ii) the Seller proceeds to send the sample for testing based on no agreement reached (as further described in the clause above), or if such agreement has been reached but the Buyer for whatever reason fails to be present at the appropriate time and place. Both parties shall have the right to appoint independent person(s) and/or surveyor(s) to witness the seal breaking and the testing.

G. No other samples than the ones taken under the procedure set out above shall be allowed as evidence. If any of the seals have been removed or tampered with, such sample(s) shall be deemed to have no value as evidence.



H. Any eventual samples drawn by the Buyer's or the Vessel's personnel, either during bunkering or at any later date after bunkering, shall not be valid as evidence. The fact that such samples may eventually bear the signature of personnel on board the barge or tank truck or other delivery conveyance shall have no legal significance as such local personnel have no authority to bind the Seller to different contractual terms.

I. The Buyer shall never be entitled to debunker unless preapproved in writing by the Seller and always provided that the Seller's and the Physical Supplier's instructions for de-bunkering are strictly adhered to. All costs and expenses related to de-bunkering, storage, etc., shall always be borne by the Buyer.

#### **6.5. Quality claims – notification and time bar.**

Any claims relating to the quality of the Bunkers delivered shall be notified by the Buyer and/or the Vessel to the Seller within 14 (fourteen) days after completion of delivery in the form of a written letter of protest with full supporting documentation. If the Buyer or the Vessel's master fails to present such letter of protest to the Seller, such claim shall be deemed to have been waived and shall be absolutely barred for all purposes. In addition, any and all claims of the Buyer that have been notified to the Seller shall become time-barred unless arbitration has been commenced and served on the Seller within 12 (twelve) months from the date of delivery. The date of delivery is set out in the bunker delivery note.

#### **6.6. Determination of quality – evidence.**

Any claims relating to quality shall be solved amicably or in arbitration. The evidence obtained under the exclusive procedure that governs the taking of samples and the testing of such samples (the full procedure is detailed in clause 6.4 above) shall be final and binding on the parties and shall accordingly be guiding for the arbitral tribunal's decision in respect of the evidence relied on by the tribunal to assess quality.

#### **6.7. No liability for commingling.**

The Seller shall have no liability whatsoever for claims arising in circumstances where the Buyer may have commingled the Bunkers on board the Vessel with other fuels or similar products.

### **7. Quantity – claims**

#### **7.1. Quantity.**

All quantities referred to in the Contract are understood to be approximate with a margin of 10 per cent more or less in the Seller's option.

#### **7.2. Determination of quantity – evidence.**

The quantity of the Bunkers delivered shall be determined solely from the information inserted into the bunker delivery note, or, if that has not been signed, but the official gauge/sounding of the delivering barge, road wagon, or rail tank car, delivery note for drum deliveries, or by gauging in the Seller's shore tank or by the Seller's oil meter, at the Seller's election. The Buyer may be present or represented by a properly accredited agent or surveyor when quantity measurements are taken. If the Buyer is not present or represented, the Seller's determination of quantities shall be deemed to be final and binding on the parties. Quantities calculated from the vessel's soundings shall not be considered.

#### **7.3. Quantity claims – notification and time bar.**

In the event of a quantity complaint, the Buyer or the master of the Vessel shall give immediate notice on the bunker delivery note or issue a separate Letter of Protest to the Seller or Seller's representative. If the Buyer fails to provide

timely notice to the Seller, any such claim by the Buyer shall be extinguished as non-existent, and the Buyer shall be deemed to have expressly waived any such claim against the Seller, and the Seller's measurements shall be conclusive evidence of the quantity of Bunkers delivered. In addition, any and all claims of the Buyer that have notified to the Seller in due time shall become time-barred unless arbitration has been commenced and served on the Seller within 12 (twelve) months from the date of delivery.

## **8. Delivery and Risk of Delay**

### **8.1. Approximate times.**

The time of delivery, as given by the Seller, has been given as an approximate time, unless it has been otherwise specifically agreed in writing between the parties.

### **8.2. 72 hours' notice.**

The Buyer shall always notify the Seller at least 72 hours (Saturday, Sunday and local holidays excluded) in advance of the Vessel's readiness to take delivery of the exact quantity of Bunkers to be delivered to enable the Seller to make the necessary arrangements for the delivery.

### **8.3. Range for delivery.**

The Order Confirmation includes the earliest estimated time of the Vessel's arrival (ETA) as advised by the Buyer. The Vessel shall always begin to take delivery within the ETA provided for in the Order Confirmation, and, if the ETA listed in the Order Confirmation exceeds 3 (three) calendar days, the Vessel shall always begin to take delivery of the Bunkers within the first 3 (three) calendar days. The Contract price shall be valid only for deliveries begun within the ETA stated in the Order Confirmation, or, within the 3 (three) calendar day- period if such period applies as provided for in this clause. If the Buyer begins to take delivery or requests delivery to begin beyond these periods, as applicable, the Seller shall be entitled to amend the agreed price(s) under the Contract. This entitlement is without prejudice to any claim the Seller may have against the Buyer for failing to take timely delivery.

### **8.4. Failure to take delivery.**

If the Buyer fails to take delivery of the Bunkers, or any part thereof, the Seller shall be entitled, at the Buyer's risk and expense, either, to transport the Bunkers back to storage, and/or, to sell the Bunkers at the price available in the market and claim damages against the Buyer, without prejudice to the Seller's other rights under the Contract. The Seller shall also be entitled to charge a minimum cancellation fee of 5% (five) of the agreed prices in case the Buyer fails to take delivery as provided for herein.

### **8.5. Delivery circumstances permitting.**

The Vessel shall be bunkered as promptly as the prevailing circumstances permit, having regard to circumstances such as weather, technical issues, caused by weather, congestion, affecting the delivery facilities of the Seller, the Physical Suppliers and/or other agents and subcontractors, and to prior commitments of barges or other delivery means. The Seller and/or the Physical Supplier shall not be liable for any consequences or any time lost due to the Vessel having to wait for berth for bunkering or for completion of bunkering, and unless otherwise agreed in writing, the Seller shall not be obligated to deliver prior to the nominated date or spread of dates. The Seller is not responsible for delays caused by local customs, pilots, port- or other authorities.

**8.6. Shortage of supply.** If the Seller, for any reason and in its sole discretion, anticipates there may be such a shortage of Bunkers at any port of place that it may be unable to meet the demands of all its buyers, the Seller may allocate its available and anticipated supply among its Buyers in such a manner as it may in its sole discretion determine. The Buyer may raise no claim against the Seller in these circumstances.

### **8.7. Buyer's cause of delay.**

If the Buyer causes delay to the Seller's and/or the Physical Supplier's delivery when receiving the Bunkers, the Buyer shall be deemed to be in breach of contract and be liable accordingly.

#### **8.8. Permitted tanks only.**

The Seller shall not be required to deliver the Bunkers into any of the Vessel's tanks which are not permitted for use with such product and/or which are not normally used for such product.

#### **8.9. Port Licenses and permits.**

If any government or local port license, permit or the like is required for deliveries to be made hereunder, each party must comply and facilitate a smooth delivery. In case of the Buyer's failure to comply, the Buyer shall be deemed to have breached the Contract. In addition, the Seller shall not be required to deliver the Bunkers if any customs and/or other government permit required for such purpose has not been obtained in due time before the delivery.

#### **8.10. Modes for delivery.**

Delivery shall be made either from a shore terminal or by barge or by any other accredited methods of delivery, where such deliveries are available from time to time. In the case of more than one method of delivery being available, The Seller shall at its sole discretion select one, providing that it does not breach any other conditions of the Contract.

#### **8.11. The Buyer's obligation to provide a near and safe berth, position or anchorage.**

The Buyer shall provide free of cost a clear and safe berth, position or anchorage alongside the Vessel's receiving lines. The Seller shall be under no obligation to make delivery when a clear and safe berth, position or anchorage is not available, which shall be solely at the discretion of the Seller and the master of the Physical Supplier's barge. The Buyer shall indemnify the Seller against all claims and expenses for any loss, damage, demurrage or delay caused to the Seller's delivery equipment, irrespective of whether the circumstance causing the loss, damage, demurrage or delay was within the control of the Buyer, its agents and employees, or his local representative.

#### **8.12. Assistance from the Buyer.**

The Buyer shall make all connections and disconnections between pipelines or delivery hoses and Vessel's intake lines and shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly all deliveries hereunder.

#### **8.13. Transfer of risk.**

Delivery shall be deemed completed and all risk and liabilities, including without limitation loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage to the Bunkers delivered and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties, shall pass to the Buyer as the Bunkers pass the flange connecting the pipelines or delivery hoses with the intake lines of the Vessel. Bunkers supplied by any other methods shall be considered to be delivered under these Conditions when passing the Vessel's rail.

#### **8.14. Bunker delivery receipt.**

Upon completion of the delivery to the Vessel, the master, or other authorized representative of the Vessel, shall confirm the delivery on behalf of the Vessel and the Buyer by signing a bunker delivery receipt provided by the Physical Supplier. The Seller shall not be deemed to have any constructive knowledge of the authority or lack of authority of any purported local representative of the Buyer and shall be under no duty to verify authority of such purported representative.

#### **8.15. Normal working hours.**

Delivery shall be made during normal working hours. Unless otherwise agreed, deliveries outside normal working hours shall be subject to additional costs, which shall be borne by the Buyer.

### **9. Health, Safety and Environment**

#### **9.1. Health and safety requirements.**

It shall be the sole responsibility of the Buyer to comply, and advise its personnel, agents and/or customers to comply, both during and after delivery, with all health and safety requirements applicable to the Bunkers supplied. The Seller accepts no responsibility for any consequences arising from the Buyer's failure to comply with such health and safety requirements. The Buyer acknowledges familiarity with the hazards inherent in the nature of any petroleum products and shall protect, indemnify and hold the Seller harmless against any claims and liability incurred as a result of the Buyer, or any user of the Bunkers, or its customers failing to comply with the relevant health and safety requirements.

## **9.2. Environment.**

The Seller and the Physical Supplier shall have no risk of harm to the environment. In the event of any leakage, spillage, overflow of bunker's causing or likely to cause pollution occurring at any stage, the Buyer shall, regardless as to whether the Buyer, the Seller or any third party is responsible, immediately take such action as is necessary to affect clean up, and, failing prompt action, the Buyer (who hereby warrant that they have been authorized by the Vessel's registered owners) hereby authorizes the Seller to take whatever measure(s) the Seller deems necessary to efficiently clean-up and restore the environment at the Buyer's cost and expense. The Buyer shall defend, indemnify and hold the Seller and/or the Physical Supplier harmless against any claim or liability arising out of any leakage, spillage or overflow, unless such leakage, spillage or overflow shall be proven to be wholly caused by the Seller's and/or the Physical Supplier's gross negligence.

## **9.3. Regulations.**

The Buyer warrants that the Vessel at all material times complies with all applicable national and international regulations. It shall be the responsibility of the Buyer and the master of the Vessel to notify the Seller of any special condition, difficulties, peculiarities, deficiencies or defects with respect to the Vessel or any part thereof, which might adversely affect the delivery of Bunkers. The Seller has the right to refuse to deliver the product to the vessel if it's deemed probable in the Sellers sole discretion that such delivery will result in adverse consequences of any kind whatsoever.

## **10. Indemnity**

The Buyer shall defend, indemnify and hold the Seller harmless with respect to any and all liability, loss, claims, expenses, or damage the Seller may suffer or incur by reason of, or in any way connected with, the fault or default by the Buyer and/or its agents in the purchase of, receipt, use, storage handling or transportation of the Bunkers in connection with each bunker transaction.

## **11. Warranty**

### **11.1. Seller's warranty.**

The Seller warrants that at the time when the Bunkers were delivered such Bunkers conform to the Contract and were delivered with reasonable skill and care.

### **11.2. The Buyer's remedy for the Seller's breach of warranty.**

In the event of a breach by the Seller of the warranty, the Seller shall only be obliged (and shall have no further liability in contract, tort, law or otherwise) at its option either to:

A. Credit the price (if already paid) attributable to the non-conforming Bunkers; or

B. Replace and/or redeliver the non-conforming Bunkers, provided that any Bunkers are returned to the Seller in their delivered state at the Buyer's expense. The Seller shall especially not be responsible for debunkering or for any other form of offloading of the Bunkers, nor for storage, transportation, customs clearing and/or any other precondition necessary to return the non-conforming Bunkers.

This clause 11.2 shall be the Buyer's only remedy and in lieu of any other rights and remedies which might otherwise be available to the Buyer. Any repair, rectification or replacement of the Bunkers will be warranted on the terms set out in this clause 11.2.

**11.3. No liability beyond warranty.**

All conditions, warranties or other terms, whether express or implied, statutory or otherwise, inconsistent with the above clause 11.1, are hereby expressly excluded to the fullest extent possible.

**11.4. Exclusions from the scope of warranty.**

The warranty given in clause 11.1 will not apply:

- A. Where the warranty claim arises from normal wear and tear, the Buyer's willful damage or willful misconduct, the Buyer's negligence, abnormal working conditions, use for unintended purpose, misuse, abuse or lack of maintenance;
- B. If the Buyer fails to comply with the Seller's and/or the Physical Supplier's specific advice or general instructions (whether oral or in writing);
- C. Where the Bunkers supplied are de-bunkered by the Buyer, unless the Buyer and the Vessel strictly adheres to the Seller's and the Physical Supplier's instructions;
- D. If the total price for the Bunkers has not been paid on the due date for payment in accordance with the Seller's invoice;
- E. If the Buyer has not notified the Seller of the warranty claim within 14 days after the time the Buyer discovered, or ought to have discovered, the material circumstances which gave rise to the claim; or 7.3 above.

**12. Limitation of Liability and Consequential Damages**

**12.1. Limitation of liability.**

Considering that the Seller undertakes certain warranty obligations (as set out in clause 11), the Seller shall be under no liability whatsoever to the Buyer for any loss, damage, delay or expense incurred of whatsoever nature, whether direct or indirect, including but not limited to (i) any loss of profit, hire, business contracts, trading, revenues or anticipated savings, or (ii) for damage to the Buyer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special, indirect, consequential or incidental loss or damage of any nature whatsoever.

**12.2. The Seller's liability is limited to the price for the Bunkers.**

In the event the Seller is held liable for any claim, loss, damage, damages, cost, expenses, etc., the Seller's liability shall never exceed the price for the Bunkers delivered under the Contract as set out in the Seller's invoice.

**12.3. The Buyer's liability.**

The Seller is entitled to recover from the Buyer all direct and indirect losses, costs and expenses incurred as a consequence of the Buyer's breach of contract, and the Seller may terminate the Contract, in whole or in part, at its own discretion upon a material breach by the Buyer.

**13. Breach and cancellation**

**13.1. Breach.**

The Seller's liability in case of breach shall be limited under the provisions herein, including without limitation clauses 11 and 12.

### **13.2. Cancellation.**

Without prejudice to any other remedies and rights, the Seller shall have the option immediately to cancel the Contract, in whole or in part, or to store or procure the storage of the Bunkers, in whole or in part, for the account and risk of the Buyer, and to charge the Buyer the expenses thereby incurred, or to hold the Buyer fully to the Contract, or take any other measures which the Seller deems appropriate, without prejudice to its rights of indemnification, without any liability on the part of the Seller, in any one of (but not limited to) the following cases:

- A. when the Buyer, for whatever reason, fails to take timely delivery of the Bunkers, in whole or in part, at the agreed place for delivery; or
- B. when the Buyer fails, in whole or in part, to pay any amount due to the Seller and/or provide security
- C. when, before the date of delivery, it is apparent in the opinion of the Seller that the financial position of the Buyer entails a risk to the Seller; or
- D. when, in case of force majeure, the Seller is of the opinion that the execution of the agreement should be cancelled; or
- E. when the Seller, in its sole discretion, has reasonable grounds to believe that any party, entity or person connected to the supply of the Bunkers is/are:
  - (I) Iranian(s), Syrian(s) or North Koreans;
  - (II) Related in any way to Iran or Iranian(s), to Syria or Syrian(s) or to North Korea or North Korean(s);
  - (III) Listed on the US OFAC Specially Designated Nationals and Blocked Persons List (or similar lists from time to time);
  - (IV) Covered by any US-, UN- and/or EU sanctions; or
  - (V) Covered by any sanctions of any other jurisdiction and/or administration; or
- F. when the Seller for any other reason whatsoever has a business interest in discontinuing delivery.

In either of the above cases mentioned, the Seller cannot be held liable for any loss, delays, claims or damage arising from the cancellation.

### **14. Anti-corruption and bribery**

The Buyer acknowledges that any Contracts and any actions related to such Contracts as well as any interaction with third parties related to such Contract are covered by certain anticorruption laws and regulations, including but not limited to the U.S. Foreign Corrupt Practices Act and the UK Bribery Act. Therefore, the Buyer shall comply with all applicable anticorruption laws and regulations and agrees that the Buyer has not, and will not, offer, promise, pay or authorize the payment of any money or anything of value, or take any action in furtherance of such a payment, whether by direct or indirect means, to any public official or private individual to influence the decision of such person in the performance of his duties to a government or to his company. The Buyer shall be fully liable in case of breach of this clause and shall pay for any and all claims, damages, costs or losses incurred by the Seller.

### **15. Force Majeure**

#### **15.1. The Seller and the Physical Supplier.**



Neither the Seller nor the Physical Supplier shall be liable for any loss, claim, damage, delay, demurrage, etc., due to any delay or failure in their performance under the Contract:

- A. By reason of compliance with any order or request of any government authority or person purporting to act therefore;
  - B. When supply of Bunkers or any facility of production, manufacture, storage, transportation, distribution or delivery contemplated by the Seller or the Physical Supplier is interrupted, delayed by congestion or for other reasons not available;
  - C. By unavailability of the Bunkers and/or barge equipment or by inadequate resource for any cause whatsoever which interruption, delay, unavailability or inadequate resources is not within the immediate control of the Seller, including (without limitation) if such is caused wholly or partly by labor disputes, strikes, stoppages, lock-out, governmental intervention, wars, civil commotion, riot, quarantine, fire flood, earthquake, accident, storm, swell, ice, adverse weather or any act of God;
  - D. By any loss of, alteration of, or damage to, or any a reduction in the functionality, availability or operation of the internet, or other forms of telecommunication, or of a computer system, hardware, program, software, data, information repository, microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Seller, the Buyer, the Physical Supplier or any other third party (*cyber risks*); or
  - E. Any other similar circumstances;
- Either of the events set out above shall be considered force majeure. Neither the Seller nor the Physical Supplier shall be required to remove any such cause or replace any affected source or supply or facility if doing so shall involve additional expense.

#### **15.2. The Buyer.**

If the Buyer exercises reasonable diligence, the Buyer shall not be liable for failure to receive any particular delivery of Bunkers if prevented therefrom by force majeure

### **16. Assignments**

#### **16.1. The Seller's right of assignment.**

The Seller may assign/transfer any/all of its right and obligation under the Contract.

#### **16.2. No assignment for the Buyer.**

The Buyer shall not assign/transfer any/all of its right under the Contract, without written consent of the Seller.

### **17. Title**

#### **17.1. Retention of title.**

The Bunkers shall remain the Seller's property and title therein shall not be transferred to the Buyer until the Seller has received payment in full in accordance with the Seller's invoice(s) and until the Seller has paid the Physical Supplier in full (the latter requirement shall not apply if the Seller acts as Physical Supplier, in which case title shall transfer only at the time of the Buyer's payment in full to the Seller).

Until the Seller's retention of title ceases, and title thus has been transferred in full to the Buyer, the Buyer shall:

- A. Hold the Bunkers as bailee for the Seller and shall not be entitled to use them other than for the propulsion of the Vessel;

B. Store them in such a way that they can be identified as the Seller's property and shall keep them separate from the Buyer's own property and the property of any other third party;

C. Keep them at the Buyer's risk and expense from the time of delivery and until the time when the Seller takes redelivery or repossession; and

D. Insure them against any loss or damage, and in the event of such loss or damage it shall notify the relevant insurers that the insured property is owned by the Seller, and even if the Buyer receives any such insurance proceeds, the Buyer shall always hold the proceeds of such insurance on behalf of the Seller as trustee of the Seller and shall request the Seller to inform to which of the Seller's bank accounts the proceeds may be wired to.

### 17.2. Res Cogitans clause.

The transaction contemplated under these Conditions is not a contract for the sale of goods but a *sui generis* contract. The Contract is not subject to any express or implied terms for the transfer of title as a condition to the Buyer's obligation to make payment on the due date. The Buyer has agreed to contract not for the transfer of property in the whole of the Bunkers but for the delivery of a certain quantity of Bunkers which the Buyer has an immediate right to use for the Vessel's propulsion against not having to pay the price for the Bunkers until the agreed period of credit has expired.

### 17.3. Cessation of the Buyer's right of possession and usage.

Notwithstanding clause 17.1 above, the Buyer's rights to possession and use of the Bunkers shall cease if:

A. The Buyer is declared bankrupt;

B. The Buyer enters into any other form of insolvency proceedings, such as US Chapter 11 proceedings or similar proceedings in other jurisdictions, such as rehabilitation or reconstruction proceedings or any other form of proceedings in contemplation of a court-sanctioned structural debt arrangement being made vis-à-vis the Buyer and its creditors;

C. The Buyer makes any proposal to any of its creditor(s) for a reorganization, rehabilitation or any other form of voluntary arrangement;

D. A receiver, liquidator, administrator or the like is appointed in respect of the Buyer's business; or

E. The Buyer breaches any of its financial covenants or warranties provided by the Buyer to its financiers. Upon cessation of the Buyer's right to possession of the Bunkers as provided for herein, the Buyer shall at his own expense make the Bunkers available to the Seller and allow the Seller to repossess them. The Buyer hereby grants the Seller, his agents and employees an irrevocable license to enter any premises where the Bunkers are stored in order to repossess them at any time.

## 18. Governing law and arbitration

### 18.01 General Jurisdiction Clause

All disputes arising in connection with this Agreement or any related agreement shall be resolved as provided herein, unless the **Seller, at its sole discretion, decides otherwise.**

For the sole benefit of the Seller, it is further agreed that the Seller shall have the **unrestricted right** to proceed against the **Buyer, the Owner, the Vessel, or any third party** in any jurisdiction chosen by the Seller, including but not limited to the jurisdiction of the Vessel's arrest, to secure payment of any outstanding amount. In such cases, **the substantive and**

procedural laws of the jurisdiction selected by the Seller shall govern the proceedings, including the enforcement of maritime liens, attachments, or other security interests.

## 18.02 Arbitration in London and U.S. Maritime Lien Enforcement.

### 18.02.1 London Arbitration.

Any and all disputes and claims arising out of or in connection with this Agreement, including but not limited to **its existence, scope, validity, enforceability, or arbitrability**, shall be referred to arbitration in **London** under the **Arbitration Act 1996** or any statutory modification or re-enactment thereof.

- The arbitration shall be conducted in accordance with the **London Maritime Arbitrators Association (LMAA) Terms** in force at the commencement of the proceedings.
- The **seat of arbitration shall be England**, even if hearings take place elsewhere.
- The language of the arbitration shall be **English**.
- If the parties fail to agree on a sole arbitrator, a panel of **three arbitrators** shall be appointed.

### 18.02.2 U.S. Federal Maritime Lien Act and Lien Enforcement.

Regardless of the forum in which arbitration or legal proceedings are initiated, the determination of maritime liens, attachments, shall be governed by the United States Federal Maritime Lien Act (46 U.S.C. §§ 31341-31343).

The Seller shall retain the unequivocal right to:

- Initiate **Rule B** attachments and **Rule C in rem** actions in any U.S. Federal District Court with Admiralty Jurisdiction to secure payment for outstanding bunker invoices.
- Enforce a **maritime lien** over the Vessel, its earnings, and its resale value, irrespective of any purported restrictions in a charter party or other contractual agreement.
- Pursue claims against any **sister vessel** or **associated ship** under applicable U.S. maritime law and relevant international legal doctrines.
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### 18.02.3 New York Arbitration Option.

At the **sole discretion of the Seller**, arbitration or legal proceedings may be commenced in **New York**, and the **Buyer and Owner expressly agree to the jurisdiction of the New York courts and arbitral panels**.

- Any dispute **arising under or in connection with this Agreement** shall be resolved by arbitration in **New York City**, under the Rules of the Society of Maritime Arbitrators, Inc. (SMA), including the Consolidation Rule.
- The **U.S. General Maritime Law and CIMLA (46 U.S.C. § 31301 et seq.)** shall apply in all cases.
- The Buyer waives any defense of forum non conveniens and agrees to service of process by email, certified mail, or courier service.

The clauses **18** are **exclusively for the Seller's benefit**. The Seller shall **not be restricted from initiating proceedings in any other jurisdiction with competent authority**.

## 18.03 Maritime Lien and Interest Rate Provisions

### 18.03.1 Foreign Maritime Lien Recognition.

If the flag state of the Vessel recognizes maritime liens for bunker supply, the Seller shall have the right to enforce such liens under flag state law. The Buyer and Owner agree that:

- A 2 % monthly interest rate (compounded) shall apply for any late payment of bunker invoices.
- CIMLA will apply in any jurisdiction, and the Buyer/Owner waives any challenge to the enforcement of maritime liens internationally.

#### 18.03.2 South Africa Associated Ship Arrest.

Pursuant to Section 3(7)(a) of the Admiralty Jurisdiction Regulation Act 105 of 1983 (AJRA), South Africa, a vessel may be arrested as an associated ship when:

- It is owned by a company controlled by a person who owned or controlled the primary vessel at the time the maritime claim arose.
- The associated ship owner agrees that they are bound by the arbitration clause and all other terms of this Agreement, including joint and several liability for outstanding bunker invoices, interest, and legal costs.

#### 18.04 Exclusion of CISG and Buyer's Waiver of Counter Security

##### 18.04.1 Exclusion of CISG.

The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to this Agreement.

##### 18.04.2 Waiver of Counter Security.

The Buyer irrevocably waives any and all rights to demand counter-security or security for costs from the Seller in response to any claim or counterclaim in any court or arbitration proceeding.

#### 18.05 Service of Process and Rule B Attachments.

- The Buyer acknowledges that it has no appointed agent for service of process in New York, New Jersey, Connecticut, Vermont, or any adjacent jurisdiction.
- The Buyer irrevocably waives any defense related to the existence of an adjacent jurisdiction where it may be sued under Rule B of the Supplemental Admiralty Rules for Maritime Claims.
- The Seller has the unrestricted right to attach the Buyer's assets under Rule B proceedings in any competent jurisdiction.
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#### 18.06 Arbitrator's Jurisdiction

- The arbitrator shall have the exclusive authority to rule on its own jurisdiction, including issues related to the existence, validity, or arbitrability of claims.
- A challenge to the arbitration agreement shall not stay or delay arbitration proceedings.
- The arbitrator's power includes the right to determine the existence of a contract independently of any other disputed contractual terms.

#### 18.07 Interim Measures and Injunctions

- The Tribunal shall have the power to issue interim measures to prevent the sale of the Vessel and to ensure that the Seller's claims are secured from the proceeds of any judicial ship sale. Additionally, the Tribunal may order an advance payment from the sale proceeds to cover part of the Seller's claims.
- The Buyer and Owner agree that all bunker invoices, interest, and legal costs shall be settled from the sale proceeds of the Vessel as a priority claim.

#### 18.08 Rights of Non-Physical Suppliers

- If the Seller is not the physical supplier but is purchasing bunkers from another provider, the Seller shall be entitled to enforce all rights held by the physical supplier, including the right to enforce a maritime lien against the Vessel and the Owner/Charterer.
- The Seller shall have the same rights as the Physical Supplier under its own sale and purchase terms.

#### 19. Entry Into Force And Availability.

##### 19.1. Entry into force.

These Conditions enter into force with effect from 10 May 2022 at 00.01 hours (GMT) and shall apply to all Contracts and Order Confirmations agreed on this date and time or hereafter.

##### 20. Availability.

These Conditions are available at the Seller's website, on which site the Seller may public amendments, alterations, changes or verifications to the Conditions. Such amendments, alterations, changes or verifications are deemed to be part of the entire Conditions once same have been published on the website.