

# **Nalex Energy, LLC General Terms and Conditions for sale and delivery of Marine fuels effective July 2010 .**

## **1. Application of Terms**

**1.1.** These general terms and conditions (hereinafter "Seller's Terms") shall apply to and be incorporated into each and every offer and/or quotation made and/or sale/delivery contracted by Nalex Energy, LLC or its associated or affiliated companies (hereinafter "Seller") of bunker fuel oil and/or intermediate bunker fuel oil and/or marine diesel oil and/or marine gas oil (collectively hereinafter "Marine Fuels") unless the Seller expressly agrees otherwise in writing. These Seller's Terms shall override any other terms or conditions, in any form, stipulated, incorporated or referred to by the Buyer whether in its order, bunker delivery receipt, or elsewhere, including any conditions as to quality or fitness for any particular purpose whether expressed or implied.

**1.2.** Each delivery of Marine Fuels shall constitute a separate contract. Each delivery shall be confirmed by telex, fax or email from the Seller to the Buyer in the form set out at appendix A (hereinafter "Confirmation Note") confirming the bunker nomination by Buyer. In the event of any conflict between the Seller's Terms and the terms of the Confirmation Note, the terms of the latter shall prevail.

**1.3.** Each party acknowledges that in entering into any transactions governed by Sellers Terms that it has not relied on any representations, warranties, statements or undertakings except those which are expressly set out herein or in the Confirmation Note. Each party further acknowledges that it will only be entitled to remedies in respect of breach of the express terms as set out in Sellers Terms and will not be liable in tort or under any collateral contract or warranty in respect of any representations, warranties, statements or undertakings which may have been made in relation to any transaction governed by Seller's Terms.

**1.4.** The Seller's Terms are only enforceable by the Buyer and are not intended to give any third party the right to enforce any of its terms.

## **2. Identity of the Buyer**

**2.1.** "Buyer" when used herein means the person or company asking for offers and/or quotations and/or placing the order with the Seller (whether or not such person is acting as an agent for a disclosed or undisclosed principal) as well as the Vessel owner, charterer(s) ( demise or otherwise), manager and operator or anybody else for the account of whom the Vessel received or intends to receive the Marine Fuels.

**2.2.** All such parties falling within this definition "Buyer" shall be jointly and severally liable for and guarantees the proper performance of all the obligations of the Buyer set out in the Seller's Terms.

## **3. Price**

**3.1** Any offer or price quotation in respect of Marine Fuels shall, unless otherwise agreed by Seller, be valid until 17.00 hours local time of the day the offer or price quotation was given.

**3.2** The price to be paid for the Marine Fuel in each transaction shall be as agreed between Buyer and Seller and as stated in the Confirmation Note. Notwithstanding whether the Seller effects delivery by barge, pipeline, road or alongside a terminal, unless otherwise stated in the Seller's Confirmation Note, the Seller's prices (hereinafter "the purchase price of Marine Fuel") are for delivery ex-wharf.

**3.3** Buyer shall, in addition to the purchase price of Marine Fuel, pay:-

i. Wharfage charges, the use of all oil pollution control equipment required to effect delivery, delivery charges (barging, pipeline and other similar charges) , demurrage or other similar charges

ii. Mooring/unmooring charges or port duties incurred by the Seller which are for Buyer's account

iii. Duties; taxes (imposed, levied or assessed on the purchase, exchange, importation, use, resale, transportation or handling of the Marine Fuel); tolls; fees; charges; freights or other costs without limitation in the country where delivery takes place, for which the Seller is accountable but which are for Buyer's account.

**3.4** Whenever any amount set out in paragraphs 3.3 i – iii for the account of the Buyer is collectible from any person other than the Buyer, Buyer shall pay it on demand plus any interest and penalties thereon. If Buyer claims exemption from any taxes, Buyer

to promptly furnish Seller with properly completed exemption certificate in the form prescribed by the taxing authority in lieu of payment of such taxes or reimbursement of such taxes.

**3.5** If price controls are imposed, Seller shall not be required to deliver if the maximum price allowed is below that previously agreed with the Buyer.

**3.6** If the purchase price of Marine Fuel is quoted as "delivered", then in addition to the purchase price of Marine Fuel, the price shall include the delivery charges only (excluding demurrage).

**3.7** The Buyer shall complete taking delivery on, before or within three (3) calendar days following of the date of delivery confirmed by the Seller in the Confirmation Note ("Accepted Delivery Date"). The four (4) calendar day period comprising the Accepted Delivery Date and the three (3) calendar days thereafter are referred to herein as the "Pricing Date Range". Time shall be of the essence in relation to the vessel arriving in time to take delivery within the Pricing Date Range and/or Buyer completing taking delivery on, before or within the Pricing Date Range and Buyer undertakes to advise Seller promptly if at any time Buyer believes that Buyer's vessel may not be able to comply with such deadline.

**3.8** The Seller shall be under no obligation to deliver if the vessel arrives after the Pricing Date Range or if the vessel fails to arrive in time to permit delivery within the Pricing Date Range. If the vessel arrives after the Pricing Date Range or if, through no fault of Seller, delivery cannot be completed by the end of the Pricing Date Range, the Seller at its sole discretion has the option to terminate the contract. If part delivery has taken place prior to such termination, Buyers to remain liable for payment of the purchase price on such quantity of Marine Fuel as was delivered in accordance with Seller's Terms. Whether or not Seller exercises the option to terminate shall be entirely without prejudice to any claim for damages which Seller may have in respect of the vessel and /or Buyers not taking complete delivery within the Pricing Date Range.

**3.9** In the event that delivery does not take place at the agreed place of delivery set out in the Confirmation Note or if delivery takes place in full or in part after the Pricing Date Range, then:-

**3.9.1** Seller shall be entitled to the higher of (i) a late delivery/non delivery fee to cover Seller's additional expenses (such as but not limited to the daily rate of hire of any barge/tank truck arranged by Seller's to effect the delivery) resulting from such late/non delivery at USD5pmt in respect of the quantity of Marine Fuel that was not delivered prior to the end of the Pricing Date Range, or (ii) Seller's actual expenses incurred PLUS

**3.9.2** Seller shall have the right to adjust the price to take account of the change of place of delivery and/or market fluctuations in price effecting such quantity of Marine Fuels that was delivered after the Pricing Date Range. Sellers adjustment to be final and binding.

#### **4. Grades**

**4.1** The Marine Fuels supplied hereunder shall be the Seller's commercial grades offered to customers generally at the time and place of delivery. This constitutes the whole of the Seller's obligations with respect to the quality of the Marine Fuels to be supplied and (save to the extent that exclusion is not permitted or is ineffective by operation of law) all statutory or other conditions and /or warranties, express or implied, with respect to the description or quality of the Marine Fuel or its merchantability or fitness for any particular purpose are expressly excluded.

**4.2** The Buyer warrants that it has not relied on any representations made by or on behalf of the Seller and Buyer shall be solely responsible for nominating to the Seller the proper grade of Marine Fuels fit for use in the vessel nominated.

**4.3** Information regarding the typical characteristics of the Marine Fuels at any delivery location shall only be indicative of the Marine Fuels that have been available at that location from time to time and shall not form part of the specification of Marine Fuels to be delivered.

**4.4** The Buyer agrees that where standard specifications are being given or referred to, that variations of up to 5% from the specification are accepted by the Buyer without any claims whatsoever.

#### **5. Estimated times of arrival**

**5.1** If Buyer fails to comply with any of the following provisions, any resulting loss (including loss of time), damage, cost and expense incurred by Sellers arising out of such non-compliance shall be for Buyers account.

**5.2** The Buyer or its representative shall give the Seller or Seller's local representative at the place of delivery written notice of the date and estimated time of arrival of the Vessel at place of delivery and the time at which deliveries are required ("ETA'S"). Such ETA's shall be sent seventy two (72), forty eight (48), twenty four (24), twelve (12) and six (6) hours prior to Vessel's ETA. Buyer to also promptly advise Seller or Seller's local representative of any variation of more than 10% to any ETA provided.

**5.3** Notwithstanding anything elsewhere herein, the Seller will effect supply on a best endeavor basis as promptly and as practically as possible. Any Accepted Date of Delivery stated in the Confirmation Note is not guaranteed and time is not of the essence in respect thereof. Neither Seller nor its supplier shall not be liable for any demurrage or loss incurred by the Buyer under any circumstances whatsoever or for any delay in supply howsoever caused, or for any eventual or consequential losses and or damages that may be suffered by the Buyer or the vessel. Buyer's sole remedy in the event of a delay in delivery or failure of supply due to fault of Seller shall be to cancel the sale/delivery.

**5.4** If a charge is imposed on Sellers by the owners/operators of a berth and/or barge by reason of the prolonged occupation of the berth and /or delays in unmooring from the barge, for reasons beyond the control of Sellers, their servants or agents, the Buyer shall be liable for such charge.

## **6. Deliveries**

**6.1** The Buyer shall be responsible for providing safe reception of the full quantity of Marine Fuels contracted for without risk to the Buyer, the Seller, any agent, employee or supplier of the Buyer or Seller or to the property of any such parties (negligence by the Seller or failure of or defect in the Seller's equipment being solely excepted).

**6.2** The Buyer shall ensure that the vessel to be supplied with Marine Fuels shall:-

**6.2.1** be free from all conditions or defects which might give rise to any hazard or cause any delay in connection with the delivery of Marine Fuels to such vessel

**6.2.2** have onboard all required certificates and be compliance with all national, state and local statutes, regulations and ordinances, including those requiring proof of financial ability in regard to spills of oil.

**6.3** Delivery is to take place during ordinary working days and hours at the relevant port of delivery and within normal harbour limits, unless agreed otherwise by Seller and permitted by port regulations in which event Buyer shall pay any extra expense incurred including but not limited to overtime and extra fees.

**6.4** The Seller has the right to deliver by barge, by pipeline, by road or alongside the terminal. The Buyer shall provide a free side for barge deliveries and prompt and safe passage between the public roadway and the actual place of unloading for road vehicles. The Seller shall not be obliged to deliver in locations or over roadways which in its opinion are unsafe for its barges or vehicles.

**6.5** The Buyer shall be solely responsible for and shall make all connections between the delivery hose(s) and the Vessel's intake pipe and provide all necessary assistance and provide sufficient tankage and equipment to receive promptly and safely each and every consignment of the delivery.

**6.6** If a delivery permit is required from any government authority or any instrumentality thereof, or from any public or private port authority, for any delivery of Marine Fuel hereunder, then the Buyer shall be responsible for obtaining the same. If Seller is aware that Buyer has not obtained such required permit, no delivery shall be made until Buyer has obtained the same.

**6.7** The delivery date shall be deemed to be the date of completion of delivery as stated in the bunker delivery note. Seller may elect to discontinue operations at any delivery location for any reason without obligation to Buyer.

**6.8** If delivery is to be made by barge or road vehicle the Buyer shall notify the Seller when making its enquiry.

## **7. Quantity determination**

**7.1** Except where government regulations or local authorities determine otherwise, adjustment in volume owing to difference in temperature shall be made in accordance with API/ASTM-IP Petroleum Measurement Standards. The quantities of Marine Fuel

delivered shall, as Seller's option, be determined from the official gauge or meter of the Seller's bunkering barge or tank truck effecting delivery, or of the shore-tank in the case of delivery ex-wharf.

**7.2** Should however quantity be subject to determination by local customs authorities, it is understood that the final and binding quantity shall be the one resulting from such determination.

**7.3** Absent manifest error or fraud, the Seller's measurements of volume and calculations of quantity in accordance with clause 7.1 shall be final and conclusive of the volume and quantity of Marine Fuels delivered. Buyer, at its own expense, shall be at liberty to appoint a Seller approved petroleum inspector ("Buyer's Accredited Representative") who shall be at liberty to witness and check such weights and measurements.

**7.4** The Buyer shall not be entitled to complain of an incorrect measurement of the volume of Marine Fuels delivered unless such the Buyer's Accredited Representative has witnessed such measurement and has made the complaint in writing at the time of delivery as to accuracy. Seller has option to leave delivery equipment connected to the vessel at Buyer's expense until quantity dispute has been resolved to Seller's satisfaction.

## **8. Quality and Sampling**

**8.1** The Seller shall take one representative primary sample of each grade of Marine Fuels delivered, in accordance with its normal sampling procedures or the procedures of any accredited Petroleum inspector appointed by Sellers, prior to the Marine Fuel leaving the shore tank, Seller's barge or tank trucks as the case may be. Four representative samples shall be taken from the primary sample by the Seller. Each of these four representative samples shall be securely sealed and provided with labels showing the Vessels name, identity of delivery facility, Marine Fuel grade, delivery date and place and point of sampling and seal number (to be inserted on delivery note), authenticated by the Vessel's stamp and signed by Seller's representative and Buyer or Buyer's representative.

**8.2** The Buyer or the Buyer's Accredited Representative shall be at liberty to witness the sampling. Three of these samples are taken for quality purposes ("quality samples"). The fourth sample is known as the MARPOL control sample. One sealed quality sample and the MARPOL Control Sample shall be handed to the Master of the vessel receiving the Marine Fuels and the two other quality samples shall be retained by the Seller for a 15 day period or the minimum period under applicable law, whichever is the longer, from the date of delivery in a safe place. At the end of the said period the remaining quality samples may be discarded unless the Buyer has made a complaint or claim as provided for under clause 9.1, in which case one of the samples shall be retained by the Seller for its own use and the other sample shall be retained by the Seller for analysis by the expert referred to in clause 8.3.

**8.3** Any dispute as to the quality of the Marine Fuels delivered shall be determined finally and conclusively, save for manifest error or fraud, by an expert appointed and paid for jointly by Buyer and the Seller or, if they cannot agree to such an appointment, then an expert appointed by the President for the time being of the Energy Institute. The expert shall be requested to analyse one or more of the quality samples taken under 8.1 above and base his or her decision upon the results thereof.

## **9. Claims**

**9.1** The Seller shall not be liable for any claim in relation to the quality of the Marine Fuel supplied and such claims shall be waived and absolutely time barred unless (i) within 15 calendar days of the delivery, Seller receives from Buyer written notice of such claim and (ii) within 45 days after delivery, Buyer submits to Seller a detailed written claim together with all available supporting documentation substantiating each and every constituent part of the claim [including but not limited to an analysis report prepared by independent inspectors/laboratory of Buyer's retained quality sample and all correspondence to/from the fuel testing organization used by Buyers]. Buyers to further immediately on making a claim give Seller's representative a reasonable opportunity to inspect the vessel, including, without limitation, its engines, fuel tanks, equipment, logs, records and copies of communications including communications between the Buyer and the vessel, failing which Buyer's claim to be time barred.

**9.2** Claims for short delivery shall be waived and absolutely time barred unless written

notice of shortage is made by Buyer's Accredited Representative at the time of delivery as per clause 7.4 and a fully documented claim presented 15 calendar days thereafter.

**9.3** Buyer is under an obligation to take all reasonable actions to eliminate or minimize damages and costs associated with any off-specification or suspected offspecification Marine Fuels, including retention and burning of Marine Fuels in accordance with Seller's instructions. Seller's obligation shall not exceed direct expenses incurred for removal and replacement of Marine Fuels. If Buyer removes such Marine Fuels without the express written consent of Seller, then all such removal and related costs shall be for Buyer's account. Notwithstanding anything in Seller's Terms to the contrary, (i) Seller's obligations or liabilities hereunder shall not include any consequential, special, incidental or indirect damages, including without limitation, deviation costs, demurrage, damage or delays to any Vessels or Buyer's delivery vessels or to their engines or tanks, and any actual or prospective loss of profits, and (ii) Seller's maximum liability shall not exceed the price charged to the Buyer for that portion Marine Fuel sold to the Buyer on which liability is asserted and in respect of which the Buyer is able to show that a loss was suffered. It is a condition precedent to any obligation for payment by the Seller that all sums due to it by the Buyer have first been paid and that they have been paid within the deadlines specified in the Payment Terms clause.

**9.4** Seller shall have no liability for any claims arising in circumstances where there is or has been commingling of the Marine Fuels delivered with other fuel aboard the Vessel or Buyer's delivery vessel.

**9.5** The Buyer shall not assign the contract or any of its rights and obligations under it without the express consent of the Seller.

**9.6** No servant or agent of the Seller (including every independent contractor from time to time employed by the carrier) shall in any circumstances whatsoever be under any liability whatsoever to the Buyer for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and, without prejudice to the generality of the foregoing provisions of this clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defense and immunity of whatsoever nature applicable to the Seller or to which the Seller is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the Seller acting as aforesaid and for the purpose of all the foregoing provisions of this clause the Seller is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents from time to time (including independent contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to the Seller's Terms.

**9.7** Should any timely claim submitted by Buyer not be settled to Buyer's satisfaction, any legal action by it thereon shall be time barred unless commenced in accordance with the terms of the law and jurisdiction clause within 90 calendar day after delivery or the date that delivery should have been made. This provision shall survive any termination of the contract arising between Seller and Buyer.

## **10. Indemnity**

The Buyer shall defend, indemnify and hold Seller harmless with respect to any and all liability, loss, claims, expenses or damage that the Seller may suffer or incur by reason of, or in any way connected with the fault or default of the Buyer or its agent, servants or sub-contractors in the purchase, receipt, use, storage, handling or transportation of the Marine Fuels supplied under Seller's Terms.

## **11. Risk and Property**

**11.1** Risk in the Marine Fuels delivered shall pass to the Buyer once the Marine Fuels passes the flange connecting the delivery facilities provided by Seller with the receiving facilities provided by the Buyer ie Buyer's vessel, nominated barge, coastal lighter, tank truck or the like.

**11.2** Title to the Marine Fuels shall pass to the Buyer upon payment of the value of the Marine Fuels delivered, pursuant to clause 14. Marine Fuels are supplied under Seller's Terms on the faith and credit of the vessel to which they are supplied as well as the faith and credit of the Buyer. Until full payment has been made, the Seller shall

have a lien over the Vessel for the value of the Marine Fuels delivered. If the Marine Fuels have been commingled with other Marine Fuels on board the Vessel, the Seller shall have the right of lien and have title over such part of the commingled Marine Fuels as corresponds to the value of the quantity of the Marine Fuels delivered. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien or liens attaching to the vessel. All costs associated with seizure of the Vessel shall be for the Buyer's account. For avoidance of doubt, the Buyer shall not be entitled to cancel the effect of the lien by wording on the delivery ticket or otherwise.

## **12. Health, Safety and the Environment**

**12.1** The Buyer shall provide its employees, agents, contractors, users and customers with health, safety and environmental information including the Material Safety Data Sheets ("HSE Data"). Seller on request from Buyer shall supply the HSE Data and any other relevant information relating to the danger to health and environment of the Marine Fuels. The Buyer shall be responsible for ensuring that all relevant requirements, obligations, recommendations, international regulations, directives, conventions or guidelines in respect of health, safety and the environment relating to the delivered Marine Fuels are complied with.

**12.2** 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 any Marine Fuels.

**12.3** The Buyer shall at all times comply with any obligations, requirements or recommendations contained in any law, statute, directive or regulation of any territory, state or jurisdiction in or through which the Marine Fuels may be delivered, sold, transported or used and all Government, state or local regulations at the port such as, but not limited to, those related to fire, or spillage or loss of Marine Fuels. Compliance by the Buyer with the recommendations in HSE Data shall not excuse the Buyer from its obligations under this sub-section (12.3).

**12.4** If a spill occurs during supply the Buyer shall promptly take all action reasonably necessary to remove the spillage and mitigate its effect. If the Buyer fails to promptly take such action, the Seller may, at its option and upon notice to the Buyer or the agent for the Buyer's vessel, take such measures it considers to be required in connection with the removal of the spillage and the mitigation of its effects by employing its own resources or contracting with others. The Buyer shall indemnify the Seller against all liability, costs and expenses including but not limited to those incurred by the Seller in accordance with the provisions of this sub-clause 12.4 arising from any spillage except to the extent that such spillage has been caused or contributed to by the negligence of the Seller or failure of or defect in the Seller's equipment. The Buyer shall promptly provide the Seller with any requested documents and information regarding a spill including the vessel's spill contingency plan or any other applicable programme for the prevention or mitigation of pollution as required by any applicable laws or regulations.

**12.5** The Buyer shall indemnify and keep indemnified the Seller against any liability, claim or proceedings whatsoever arising out of or in connection with any failure by the Buyer to comply with its obligations under this Section 12.

## **13. Force Majeure**

**13.1** No failure or omission by either party to carry out or observe any of the terms or conditions of any agreement governed by Seller's Terms shall give rise to any claim (save as referred to in 13.2) against the party in question or be deemed a breach of the contract if such failure or omission arises out of a force majeure, which for the purposes of these terms shall be any occurrence reasonably beyond the control of the party claiming force majeure such as, but not limited to, Acts of God, war, whether declared or undeclared, civil disorder, riot, strike, lockout, sabotage, embargo, storm, earthquake, perils of the sea, accident of navigation, fire, breakdown or interruption of the functioning installation's production plant or machinery or other facilities of the Seller or of the means of transportation of the Marine Fuels, any curtailment, reduction in, interference with, failure or cessation of supplies of crude oil from any of the Seller's or the Seller's suppliers' sources of supply or by any refusal to supply crude oil whether lawful or otherwise by the Seller's suppliers, stoppage, restraint of labour in or about the plant of the Seller or its Supplier, governmental laws, regulations or directions or acts of any officer, department, agency, committee or similar bodies.

**13.2** Such force majeure shall not excuse Buyer of its obligation to make payment for Marine Fuels delivered. If Buyer claims force majeure, Buyer shall still be liable to Seller for any direct costs or expenses incurred by Seller relating to the intended delivery such as but not limited to hire/freight/demurrage costs for any delivery barge arranged by Seller.

**13.3** The party claiming force majeure shall give prompt written notice to the other party.

**13.4** The Seller shall not be required to make up deliveries omitted on account of the occurrence of incidents of force majeure.

#### **14. Payment Terms**

**14.1** Payment for the Marine Fuels and any other sums due under Seller's Terms shall be made in US Dollars by telegraphic transfer in immediately available funds, without any deduction, offset or counter-claim, at the counters of Seller's designated Bank, as stated in Seller's invoice. Payment shall be due with effect from the date of delivery stated on the Confirmation Note ("the Due Date"). Payment shall be made by means of electronic wire transfer of same day funds to the bank account stated on Seller's invoice no later than 30 days after the Due Date or such period as is agreed between Seller and Buyer ("the Payment Date") against presentation of Seller's commercial invoice.

**14.2** If the Payment Date falls on a Saturday or a New York Banking Holiday other than a Monday, payment will be effected on the preceding New York Banking Day. If the payment date falls on a Sunday or a Monday New York Banking Holiday, payment will be effected on the following New York Banking Day.

**14.3** Buyer shall pay an interest charge on late payments from the Due Date date until Seller receives payment at the lesser of 1) a rate of 4% over LIBOR or 2) the maximum rate of interest which Seller may lawfully charge to Buyer. Such interest shall be payable to the Seller on demand by the Seller and shall accrue until payment notwithstanding the termination of the Contract for any reason whatsoever. This provision shall not be construed as an indication of any willingness on the part of the Seller to provide extended credit as a matter of course and shall be without prejudice to any rights and remedies which the Seller may have under the Contract or otherwise.

**14.4** If Buyer has any claim of whatsoever nature against the Seller, the Buyer shall under no circumstances make any deduction from the invoice amount. Any deduction made from the invoice amount or payment of the full amount in Seller's invoice after the Payment Date for whatever reason shall be considered a breach of contract and in such event the Buyer shall be deemed to have automatically waived and lost its rights to make or pursue any claim against the Seller of whatsoever nature whether notified or not and shall be bound to pay the full invoice amount forthwith.

**14.5** If the Buyer has not by the expiration of the credit period referred to in this or any other contract between the Buyer and the Seller paid any amount due to the Seller in respect of any other delivery of Marine Fuels by the Seller to the Buyer, the Seller, in addition to and without prejudice to any other rights it may have shall have the right: (i) if the delivery hereunder has been made, notwithstanding the credit period referred to above, to notify the Buyer that the amount due in respect of the delivery hereunder is immediately due and payable whereupon it shall so be paid and (ii) if the delivery hereunder has not been made to notify the Buyer of the termination with immediate effect of the contract for such delivery whereupon it shall so terminate.

**14.6** If the Buyer's credit is deemed by the Seller to be impaired or unsatisfactory, the Seller may (without prejudice to its other rights) require the Buyer at the Seller's option either to pay cash before delivery or to provide security satisfactory to the Seller and to effect immediate payment of any outstanding amount due to the Seller in respect of any other delivery of Marine Fuels by the Seller to the Buyer. In the event of failure by the Buyer to comply with the Seller's requirement the Seller shall have no obligation to make delivery and may terminate the contract on giving notice to that effect to the Buyer.

#### **15. Termination**

**15.1** The Seller, at its sole discretion, shall have the right to terminate the contract of sale forthwith and/or suspend delivery under the contract of sale on notifying the Buyer either orally (confirming such notification in writing) or by notice in writing in the event of any breach (including without limitation anticipatory breach) by the Buyer of the

contract of Sale and/or Seller's Terms and / or in the event the Buyer is threatened (or Seller has reasonable grounds for thinking Seller will be threatened) with insolvency ( howsoever evidenced ) or is in the process of liquidation, winding up and/or receivership.

**15.2** Whether or not Seller's exercise their option to terminate and /or suspend delivery shall be entirely without prejudice to and shall not effect Seller's other rights under the contract of sale and Seller's Terms, applicable law or otherwise.

## **16. Cancellation**

If subsequent to Seller's confirmation, the Buyer cancels a request for Marine Fuels or the Buyer fails to take the delivery of part or all of the Marine Fuels specified in the confirmation note by the end of the pricing date range, the Buyer shall be liable for cancellation or late delivery fees at USD5.00 per metric ton in respect of such Marine Fuel that Buyer did not take delivery of within that period. If Seller's actual losses exceed such amount, acceptance of the cancellation or late delivery fees shall be without prejudice to Seller's rights under the Seller's Terms to claim against the Buyer and the vessel.

## **17. Waiver, Amendments and Severability**

**17.1.** No waiver by either party of any provision of the contract shall be binding unless made expressly and expressly confirmed in writing. Any such waiver shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

**17.2.** No amendment to any provision of the contract shall be binding unless expressly confirmed in writing by the Seller.

**17.3.** If any provision of the contract is invalid, void or unenforceable, this will not affect the validity, legality or enforceability of any other provision of the contract.

## **18. Notice**

Any communication (including without limitation invoices) by either party to the other shall, unless otherwise provided herein, be sufficiently made if sent by post (by airmail where airmail is possible), postage paid or by telex or facsimile transmission to the address of the other party and shall, unless otherwise provided herein, be deemed to have been given on the day on which such communications ought to have been delivered in due course of postal, telex or facsimile communication.

## **19. Law and Jurisdiction**

The Seller's Terms and every offer and / or quotation and / or sale or delivery into which they are incorporated shall be governed by English law. Any controversy, dispute or claim whatsoever arising out of or in connection with the Seller's Terms and every offer and / or quotation and / or sale or delivery into which they are incorporated shall be subject to the exclusive jurisdiction of the High Court of Justice in London. For the avoidance of doubt this will not prevent either party from taking proceedings in any other jurisdiction to obtain security or ancillary relief or to enforce any order or judgment or for the Seller to enforce maritime liens in any appropriate jurisdiction.

Buyer further warrant that they will within 14 days of receipt from Seller's or Seller's solicitors of a request so to do, instruct solicitors to accept on behalf of the Buyers, service of proceedings brought by Sellers in the English High Court of Justice and to file acknowledgement of service thereof.

## **20. Assignment**

Seller may assign all or any of its rights and obligations without notice to Buyer. Buyer consents, irrespective of notice, to be bound to the assignee. Delivery of the Marine Fuels by the assignee shall constitute its consent to be bound to Buyer under the terms setout herein. Any assignment by Buyer without Seller's express written consent shall be void.

## **21. Other Terms**

**21.1.** The United Nations Convention on Contracts for the International Sale of Goods of Vienna 1980 shall not apply to any sale/delivery contracted by the Seller of Marine Fuels



**21.2.** Otherwise and where not in conflict with the other provisions in the Seller's Terms, Incoterms 2000 as amended to apply.

**21.3.** Notwithstanding anything to the contrary contained herein, nothing in the Seller's terms is intended, and nothing herein shall be so interpreted or construed, to induce or require either party hereto to act in any manner (including any failure to take any action in relation to a transaction) which is inconsistent with, penalised by or prohibited under any laws, regulations, or other official government, United Nations or European Union requirements applicable to such party, relating to foreign trade controls, export controls, embargoes or international boycotts of any type.

**21.4.** The heading of clauses are for convenience and are not to be considered part of the Seller's Terms.

**22. Iran destination restriction**

**22.1.** Without prejudice to clause 21.3 herein, the Buyer specifically guarantees that it shall not utilize any Marine Fuels purchased hereunder to transport petroleum products (diesel, gasoline, jet fuel (both naphtha-type and kerosene-type) and aviation gasoline directly or indirectly to Iran.