

**GENERAL TERMS AND CONDITIONS FOR THE SALE OF MARINE FUELS**

**CONTENTS PAGE**

**Preamble**

**Clause**

1. Application
2. Definitions
3. Price
4. Code of Practice for Bunkering
5. Quality
6. Sampling
7. Quantity
8. Nomination
9. Deliveries
10. Title and Risk
11. Payment
12. Credit and Security
13. Event of Default
14. Seller's Right of Set-Off
15. Claims / Liabilities / Indemnities
16. Force Majeure
17. Environmental Protection
18. Assignment
19. Effects of Waiver
20. Dispute Resolution
21. Governing Law
22. Trade sanction
23. Anti-corruption
24. Anti-money laundering
25. Other Provisions

## **PREAMBLE**

These are the General Terms and Conditions for the Sale of Marine Fuels ("**GTC**") of CHIMBUSCO (HONGKONG) LIMITED ("**CHIMBUSCO HONGKONG**").

The GTC shall apply to each and every transaction for the sale or supply of bunker fuel oil, intermediate bunker fuels, marine diesel oil, and marine gas oil (each, the "**Marine Fuels**") entered into by any member within the CHIMBUSCO Group (as defined in Clause 2) as seller or supplier (the "**Seller**") and any person as the buyer (the "**Buyer**") unless otherwise agreed in writing by the Seller.

## **1. APPLICATION**

- 1.1 Every agreement between the Seller and the Buyer for the sale or supply of the Marine Fuels (the "**Fuels Agreement**") shall be deemed to be concluded and binding upon the issuance by the Seller of a document or any written record confirming the sale or supply of the Marine Fuels (the "**Confirmation**") unless the Seller receives from the Buyer a written notification of any objections, errors or omissions within twenty-four (24) hours of the date and time that the Confirmation is issued or sent by the Seller to the Buyer. Every Confirmation issued shall be deemed to incorporate these GTC and shall be read in conjunction with the same. The Confirmation and the GTC shall together form the Fuels Agreement. If the Confirmation incorporates the Seller's supplier's terms and conditions (the "**Seller's Supplier T&C**"), the latter shall be incorporated into the Fuels Agreement only insofar as they do not conflict with or contradict the provisions of the Confirmation and the GTC.
- 1.2 In the event of any conflict or inconsistency between the provisions of the Confirmation, the GTC and the T&C, the conflict or inconsistency shall be resolved by giving precedence in the following order:
  - 1.2.1 The Confirmation;
  - 1.2.2 The GTC; and
  - 1.2.3 The Seller's Supplier T&C.
- 1.3 Any changes, addition, deletion, or other modifications to the provisions of the Fuels Agreement, shall only be effective if it is evidenced in writing and signed by the Parties' duly authorised representatives.
- 1.4 The Fuels Agreement shall constitute the sole and entire agreement between the Seller and the Buyer in respect of the sale or supply of Marine Fuels contemplated herein, and shall supersede any and all prior, and exclude any other, agreements, arrangements, understandings and stipulations which might have been made between the Parties with respect to the subject matter hereof, whether written or oral.
- 1.5 The provisions of the Fuels Agreement shall not be varied by the inclusion of the Buyer's purchase order number in the Fuels Agreement, or by any terms and conditions that may be contained in any purchase order or other document issued by the Buyer (the "**Buyer's T&C**").
- 1.6 Any additional terms not contained in the Fuels Agreement (including the Buyer's T&C) are expressly excluded and rejected, and shall not apply or be incorporated in the Fuels Agreement unless otherwise evidenced in writing and signed by the Parties' duly authorised representatives.
- 1.7 The Buyer acknowledges and confirms that in entering into the Fuels Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether or not made negligently) of the Seller or any other person, whether made in writing or not, other than as expressly set out in the Fuels Agreement. Any terms and/or conditions implied into the Fuels Agreement by any applicable statute or laws are hereby excluded to the extent

that such exclusion can legally be made.

- 1.8 The documents constituting the Fuels Agreement shall be read as a whole, and any definitions and abbreviations in any one of the documents shall have the same meaning and effect when it appears in the other documents unless otherwise expressly stated.

## 2. **DEFINITIONS**

- 2.1 Unless otherwise specified in writing or the context otherwise requires, the following expressions shall have the following meanings:

**"Affiliates"** means any legal entity which controls, is controlled by, or is under common control with, another legal entity, and "control" means legal or beneficial ownership of fifty percent (50%) or more of the shares in a legal entity entitled to appoint directors or the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity.

**"Buyer"** has the meaning ascribed to it in the Preamble. If the Buyer is the manager or agent of the Vessel, the Fuels Agreement is deemed to be entered into and made by the Buyer for and on behalf of itself and the registered owner or demise charterer of the Vessel.

**"Buyer's T&C"** has the meaning ascribed to it in Clause 1.5.

**"CHIMBUSCO"** refers to China Marine Bunker (PetroChina) Co., Ltd

**CHIMBUSCO HONGKONG** has the meaning ascribed to it in the Preamble.

**"CHIMBUSCO Group"** refers to CHIMBUSCO and its Affiliates including **CHIMBUSCO HONGKONG**. A **"member within the CHIMBUSCO Group"** refers to any one of the entities within the CHIMBUSCO Group.

**"Chimbusco Marine Spot Fuels Agreement"** means a Fuels Agreement entered into between the Buyer and Seller for the Buyer to make a single purchase of Marine Fuels from the Seller.

**"Chimbusco Marine Term Fuels Agreement"** means a Fuels Agreement entered into between the Buyer and the Seller for the Buyer to purchase Marine Fuels from the Seller over a period of time.

**"Credit"** and **"Credit Period"** have the meanings ascribed to them in Clause 11.3.

**"Delivery Window"** means the date range beginning on the ETA specified in the Confirmation and shall, unless otherwise specified in the Confirmation, end within three (3) days from the said ETA.

**"ETA"** means the estimated date of arrival of the Buyer's nominated Vessel receiving the delivery of Marine Fuels under the Fuels Agreement.

**"Event of Default"** has the meaning ascribed to it in Clause 13.1.

**"Fuels Agreement"** has the meaning ascribed to it in Clause 1.1.

**"GTC"** has the meaning ascribed to it in the Preamble.

**"MARPOL"** means the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978.

**"Party"** means the Buyer or the Seller and **"Parties"** mean the Buyer and the Seller collectively.

**"Price"** has the meaning ascribed to it in Clause 3.

“**Seller**” has the meaning ascribed to it in the Preamble.

“**Seller’s Supplier T&C**” has the meaning ascribed to it in Clause 1.1.

“**Sum**” and “**Sums**” have the meanings ascribed to them in Clause 11.2.

“**US\$**” means the lawful currency of the United States of America.

“**Vessel**” means the vessel nominated by the Buyer to receive delivery of Marine Fuels under the Fuels Agreement.

“**Working Day**” means any week day (excluding gazetted public holidays at the place of delivery).

2.1 Unless otherwise specified in writing or the context otherwise requires:-

- 2.1.1 words importing the singular number include the plural number, and vice versa;
- 2.1.2 references to the masculine shall include references to the feminine and vice versa;
- 2.1.3 the words "hereof", "herein", "hereon" and "hereunder" and words of similar import, when used in the Fuels Agreement, refer to the Fuels Agreement as a whole and not to any particular provision of the Fuels Agreement;
- 2.1.4 the headings are inserted for convenience only and shall not be taken in consideration in the interpretation or construction of the Fuels Agreement;
- 2.1.5 any reference herein to Clauses is a reference to Clauses of the GTC;
- 2.1.6 any reference to a time of day is to Singapore GMT time, using the 24 hour clock;
- 2.1.7 any reference to a “year” shall be to a calendar year, to a “quarter” shall be to a calendar quarter, to a “month” shall be to a calendar month and to a “day” shall be to a calendar day;
- 2.1.8 any reference to the word “including” shall be construed as “including without limitation”;
- 2.1.9 any reference to “writing” or similar expressions includes a reference to a letter, fax, email or comparable written means of communication, unless specifically provided otherwise;
- 2.1.10 references herein to statutes and other legislation include re-enactments and amendments thereof and include any subordinate legislation made under any such statute;
- 2.1.11 references to a person include an individual, firm, company, corporation, unincorporated body of persons and any government entity; and
- 2.1.12 references herein to a party include its permitted assigns, its successors-in-title and personal representatives.

### **3 PRICE**

- 3.1 Unless otherwise specified in the Confirmation , The price to be paid to the Seller for the sale or supply of the Marine Fuels shall be as agreed between the Parties in the Confirmation (the “**Price**”). Unless otherwise specified in writing, the Price shall be on ‘ex-wharf’ terms and shall represent only the purchase price of the Marine Fuels. If the Price is agreed in writing between the Parties to be on ‘delivered’ terms, then in addition to the purchase price of the Marine Fuels, the Price shall include only the cost of transportation of the Marine Fuels.
- 3.2 The Price shall be valid for delivery in the Delivery Window.
- 3.3 Unless otherwise specified in the Confirmation, the Buyer shall be fully and solely responsible to pay for any and all applicable duties, goods and service tax, taxes of whatsoever nature, fees, costs (including those imposed by government

authorities), port dues, lighterage and wharfage charges (if applicable), barging fees, delivery charges, mooring charges, insurance, pilotage, freight, demurrage, and all other costs, expenses and charges whatsoever relating to or arising out of or in connection with the supply and/or delivery of the Marine Fuels.

#### **4** Code of Practice for Bunkering

- 4.1 Bunkering operations shall be carried out in accordance with the standards applicable at the place where the bunkering operations are carried out (the "**Applicable Standards**"). For instance, if the bunkering operations contemplated in the Fuels Agreement are carried out in Singapore, the Applicable Standards shall be the Singapore Standard SS600: 2014 – Code of Practice for Bunkering (the "**SS 600**") which is published by the Singapore Shipping Association in conjunction with the Maritime and Port Authority of Singapore. If the bunkering operations contemplated in the Fuels Agreement are carried out in PRC, the Applicable Standards shall be GB/T25346-2020. Where there is any conflict or inconsistency between the provisions of the Applicable Standards and Clause 5 below, the former shall apply. However, should there be any conflict or inconsistency between the provisions of the Applicable Standards and any other provisions of the Fuels Agreement, the latter shall prevail.

#### **5** **QUALITY**

- 5.1 Unless otherwise specified in writing in the Confirmation, the Marine Fuels sold or supplied to Buyer under the Fuels Agreement shall be the commercial grades of Marine Fuels generally offered by the Seller or the Seller's supplier to their Marine Fuels customers at the time and place of delivery.
- 5.2 Unless otherwise indicated to the Buyer in writing by the Seller, any information provided to the Buyer regarding the characteristics of Marine Fuels at any delivery location shall not be construed as specifications of the Marine Fuels to be delivered hereunder, but only as indications of the general characteristics of the Marine Fuels available at that location from time to time.
- 5.3 The Buyer shall bear the sole responsibility for the selection of proper or suitable Marine Fuels for receipt and/or use in the Vessel or other receiving facility. The Buyer represents and warrants to the Seller that the Marine Fuels ordered by the Buyer are suitable for receipt and/or use in the Vessel or other receiving facility.
- 5.4 The Seller shall have no responsibility or obligation to deliver Marine Fuels with any characteristics or specifications that are not expressly agreed to and described in writing in the Confirmation.
- 5.5 EXCEPT AS STATED IN THIS CLAUSE 5, THE MARINE FUELS ARE SOLD OR SUPPLIED "AS IS"; THERE ARE NO OTHER WARRANTIES OR CONDITIONS WHETHER EXPRESS OR IMPLIED THAT SHALL APPLY TO THE SALE OR SUPPLY OF THE MARINE FUELS, AND THE SELLER MAKES NO REPRESENTATIONS AND GIVES NO GUARANTEES OR WARRANTIES, AS TO THE QUALITY, MERCHANTABILITY, FITNESS, SUITABILITY OR COMPATIBILITY OF THE MARINE FUELS FOR ANY PARTICULAR PURPOSE; AND ALL EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OBLIGATIONS, REPRESENTATIONS OR LIABILITIES WITH REGARD TO THE QUALITY, MERCHANTABILITY, FITNESS, SUITABILITY OR COMPATIBILITY OF THE MARINE FUELS FOR ANY PARTICULAR PURPOSE HOWSOEVER ARISING WHETHER BY CONTRACT, ANY APPLICABLE STATUTE OR LAW OR OTHERWISE ARE EXPRESSLY EXCLUDED AND THE BUYER WAIVES AND RELEASES THE SELLER FROM ANY RIGHT OR REMEDY THAT THE BUYER HAS OR MAY HAVE IN RELATION TO THE SAME.

#### **6** **SAMPLING**

- 6.1 Sampling of the Marine Fuels shall be performed throughout the Marine Fuels delivery process. The Seller shall take four (4) representative samples of each

grade of Marine Fuels delivered. The Buyer shall have the right to have its representative witness the drawing of the samples.

- 6.2 The samples shall be securely sealed and labelled, numbered and identified by the name of the Vessel, the delivering facility, the Marine Fuels type, the delivery date and the place of delivery by the Seller. One (1) of these representative samples shall be given to the Buyer for MARPOL compliance purposes; one (1) sample shall be given to the Buyer for quality determination purposes; two (2) samples shall be retained by the Seller for at least thirty (30) days following the date of delivery in a safe place for subsequent verification of the quality thereof, if required. If the Buyer issues a claim regarding the quality of the Marine Fuels delivered in accordance with Clause 15.1.3 below, one (1) of the two (2) Seller's retained samples shall be submitted by the Seller for relevant analysis to a mutually agreed independent laboratory.
- 6.3 The independent laboratory's analysis shall, absent manifest error or fraud, be conclusive, final and binding on the Parties as to the quality of the Marine Fuels delivered. The analysis shall be established by tests in accordance with ISO 8217-2010 and/or any other tests agreed to between the Buyer and the Seller in writing.
- 6.4 Unless otherwise agreed, the costs of the analysis by the independent laboratory shall be solely borne by the Party at fault.
- 6.5 Any cost associated with the Buyer appointing a representative to witness the sample seal-breaking and/or analysis at the independent laboratory shall be the sole responsibility of the Buyer.
- 6.6 When the Buyer (or its representative) or the Master of the Vessel requests that sampling is carried out in accordance with the MARPOL guidelines and the Seller confirms it is safe to do so, the Seller reserves the right to appoint an independent surveyor to take such sample. The costs incurred by the Seller for this service and any consequential costs shall be for the Buyer's account. In making such arrangements, no liability for delaying the Vessel (including demurrage claims) shall be imposed on the Seller.
- 6.7 Samples other than those drawn by the Seller shall not be admissible for the purposes of determining quality of the Marine Fuels.

## **7 QUANTITY**

- 7.1 The quantity of Marine Fuels sold or supplied to the Buyer shall be determined, at the Seller's option, by taking measurement readings of either the official gauge of the barge or vessel effecting delivery of the Marine Fuels or the gauge of the Seller's or Seller supplier's shore tanks or oil meter. The Buyer shall have the right, at its own risk and expense, to have its representative or an independent inspector present when the measurements are taken. If the Buyer elects not to be present or be represented at the time of measurement, the Seller's determination of the quantity of Marine Fuels shall be deemed to be correct, conclusive and binding on the Buyer, and any complaint of wrong measurement or short delivery shall be deemed to be waived and released by the Buyer.
- 7.2 The determination of the quantity of Marine Fuels sold or supplied to the Buyer shall be carried out, at the sole discretion of the Seller, either under the prevailing ISO standard or ASTM-IP Petroleum Measurement Standards or any other recognised standards.

## **8 NOMINATION**

- 8.1 The Buyer shall give the Seller: -
  - 8.1.1 at least forty-eight (48) hours advance written notice (the running of which shall exclude non-Working Days), such notice to be received by the Seller on a Working Day, of the exact time and location within the

agreed delivery port or place at which delivery is required together with the name and particulars of the Vessel, the name and contact particulars of the Vessel's local agent, the quantity type and grade of Marine Fuels and any other details required by the Seller (the "**Notice**")

- 8.2 The Buyer warrants that the Vessel nominated by the Buyer to receive the Marine Fuels under the Fuels Agreement is suitable, fit and capable in all aspects to receive the Marine Fuels; that the Vessel can safely receive the delivery of the Marine Fuels; that the Vessel is in full compliance with all applicable local, national and international regulations and requirements including the Vessel having all certificates required to receive delivery of the Marine Fuels; and that the Vessel is free of any and all conditions, difficulties, peculiarities, deficiencies or defects that might impose any hazards or give rise to any liabilities in connection with her mooring, unmooring or bunkering.

## **9 DELIVERIES**

- 9.1 The Marine Fuels shall be delivered to the Vessel at the port or place stated in the Confirmation and, unless otherwise agreed by the Seller in writing, within the established port limits and such delivery shall be subject to the applicable laws, rules and regulations of such port or place.
- 9.2 It is a condition precedent (unless waived by the Seller) to the Seller's obligation to deliver the Marine Fuels under the Fuels Agreement that: -
- 9.2.1 the Seller receives from the Buyer the Notice in accordance with Clause 8.1 above; and
- 9.2.2 if any government or port permit is required by the Buyer or the Seller for the delivery of the Marine Fuels, such permit has been so issued.
- 9.3 Unless otherwise agreed by the Seller in writing, the Seller shall not be obliged to or be liable for any inability to make a delivery on non-Working Days.
- 9.4 Where the Buyer requires the Marine Fuels to be delivered outside Working Days, and such delivery is agreed to by the Seller and permitted by the applicable laws, rules and regulations at the delivery port or place, the Buyer shall be fully responsible for and pay all costs and expenses (including overtime charges) incurred by the Seller in making such a delivery.
- 9.5 The Seller shall be under no obligation to make the delivery if the Buyer or its agent requests the delivery to be made outside the Delivery Window. The Seller may, in its sole discretion, decide whether to accept a revised delivery date or Delivery Window proposed by the Buyer or its agent and, if so, whether on terms as may be required by the Seller including a change in the Price of the Marine Fuels.
- 9.6 Subject to the compliance by the Buyer of all of its obligations in the Fuels Agreement, the delivery will be made as promptly as the circumstances reasonably permit. It is acknowledged by the Buyer that circumstances adversely affecting the time which the delivery may be made include congestion at the delivery location or at the facilities of the Seller's or Seller's supplier, prior commitments of available bunkering barges or tankers, any circumstance or cause beyond the control of the Seller or the Seller's supplier, or any event arising without the fault of the Seller. The Seller shall not be liable for any demurrage, losses, damages, costs, expenses or penalties of whatsoever nature arising out of any delay or delivery being affected as a result of the foregoing list of circumstances.
- 9.7 The Buyer shall make all connections and disconnections between the delivery hose and the Vessel's intake pipe and shall render all necessary assistance to, and provide sufficient and suitable equipment, to receive promptly the delivery of the Marine Fuels.
- 9.8 The Buyer and the Vessel shall be responsible for all connections and

disconnections between the delivery hose(s) and the Vessel's manifold and shall require the hose(s) to be properly secure and connected to the Vessel's manifold prior to the commencement of delivery of the Marine Fuels. If in the Seller's opinion the Vessel cannot safely receive Marine Fuels, the Seller is entitled to suspend the delivery without liability until, in the Seller's opinion, the Vessel can safely receive the Marine Fuels. Alternatively, the Seller may terminate the delivery or the Fuels Agreement without liability.

- 9.9 The Buyer shall be responsible for any liabilities, damages, losses, costs, expenses or penalties incurred by the Seller arising out of and/or in connection with any special conditions, difficulties, peculiarities, deficiencies or defects in respect of or particular to the Vessel which in the opinion of the Seller adversely affects the delivery of the Marine Fuels to the Vessel. Alternatively, the Seller may, at its sole discretion, terminate the delivery or the Fuels Agreement without liability.
- 9.10 In the event of any breach by the Buyer of any of its obligations resulting in delay or slow delivery, the Buyer shall be solely responsible for any demurrage and/or other costs or expenses that may be imposed by the barging operator and any and all losses, damages, costs, expenses or penalties that are incurred by the Seller.
- 9.11 If the Buyer cancels or terminates the Fuels Agreement or the Buyer fails or refuses to take delivery, in whole or in part, of the quantity of Marine Fuels agreed in the Confirmation within the Delivery Window or such other date or period as agreed in writing between the Parties, the Buyer shall be responsible for any and all losses, damages, costs, expenses, and/or penalties incurred by the Seller arising out of and/or in connection with the cancellation, termination, refusal or failure, including loss of profits, loss of market, loss of opportunities, loss of goodwill or reputation, all of which whether direct or indirect, or for any indirect, special or consequential loss or damage suffered by the Seller. In addition, save as otherwise stated in the Confirmation, the Seller shall be entitled to impose a cancellation fee equivalent to ten (10) percent of the price of the Marine Fuels under the relevant Fuels Agreement (subject to a minimum fee of US\$5,000.00), or a charge of US\$4.50 per metric tonne of the agreed quantity of the Marine Fuels, whichever is higher.

## **10 TITLE AND RISK**

- 10.1 Risk in the Marine Fuels under the Fuels Agreement shall pass from the Seller to Buyer upon delivery of the Marine Fuels. Delivery of Marine Fuels shall be deemed to be complete when the Marine Fuels reached the flange connecting the delivery hose provided by the Seller and the Vessel or the receiving facilities provided by the Buyer at the agreed place where delivery of the Marine Fuels is to be effected.
- 10.2 Notwithstanding the passing of risk and delivery of the Marine Fuels to the Buyer as stated in Clause 10.1, the legal and beneficial ownership in and title to the Marine Fuels delivered shall remain fully vested in the Seller and shall pass from the Seller to the Buyer only upon the Seller's receipt of full payment of the Price.
- 10.3 The Seller has the right to repossess and resell the Marine Fuels immediately upon the occurrence of an Event of Default or when the Price is due and unpaid in whole or part. In such event, the Buyer shall, upon demand, return and deliver up the Marine Fuels to the Seller and if the Buyer fails to do so, the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the Marine Fuels is situated and repossess the Marine Fuels without further notice or demand to the Buyer.
- 10.4 Until and unless the title and property in the Marine Fuels passes from the Seller to the Buyer, which shall occur only upon the Seller's receipt of full payment of the Price, the Buyer shall not sell, pledge, charge, allow the creation of a lien over or otherwise dispose of, use as security or deal with the Marine Fuels, or assign to any third party the right to receive the proceeds of any resale of the Marine Fuels otherwise than in accordance with the Seller's authority set out in Clause 10.5 and Clause 10.7. Any unauthorised dealings by the Buyer shall be wholly void.



- 10.5 Until and unless the title and property in the Marine Fuels passes from the Seller to the Buyer, which shall occur only upon the Seller's receipt of full payment of the Price, the Buyer has possession of and holds the Marine Fuels as a fiduciary to the Seller and save as provided in Clause 10.7, the Buyer shall not be entitled to use or deal with the Bunkers in any way other than (a) for the propulsion of the Vessel or (b) to resell the Marine Fuels in the ordinary course of the Buyer's business but only upon and subject to these conditions: -
- 10.5.1 The resale is to be made by the Buyer with its sub-buyer(s) not as the Seller's agent but by the Buyer as principal;
- 10.5.2 The Buyer shall indemnify the Seller fully against any claims that may be made against the Seller by the sub-buyer(s) in respect of or arising out of the resale by the Buyer of the Marine Fuels;
- 10.5.3 The Buyer shall at the time of resale, give notice to the sub-buyer(s) of the Seller's title to the Marine Fuels and include provisions giving effect to the Seller's retention of title and the Seller's rights in relation thereto; and
- 10.5.4 The Buyer's resale of the Marine Fuels shall be on terms that the proceeds of resale are assigned to the Seller to the extent of the Price that is payable but unpaid to the Seller. Immediately upon a resale of the Marine Fuels by the Buyer, the assignment is deemed automatically to have been made by the Buyer to the Seller. The Buyer acknowledges and agrees that the Seller shall have a beneficial interest in such proceeds of resale of the Marine Fuels and that if such proceeds are received by the Buyer, they shall be held by the Buyer on trust for the Seller in a separate bank account.
- 10.6 Prior to the Buyer making payment of the Price for the Marine Fuels and any resale as set out in Clause 10.5, the Buyer shall:-
- 10.6.1 store the Marine Fuels (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that the Marine Fuels is clearly identified as the Seller's property; and
- 10.6.2 nevertheless, where the Marine Fuels are commingled with other goods (including but not limited to other marine petroleum products), the Seller shall have the right to trace its proprietary interest in the Marine Fuels into the commingled goods and/or the Seller shall have a right of lien to such part of the said commingled goods corresponding to the quantity or value of the Marine Fuels delivered.
- 10.7 Only if the Marine Fuels are delivered by the Seller to, and received by the Vessel, pursuant to the Fuels Agreement for the Vessel's use for her propulsion, then until and unless the title and property in the Marine Fuels passes from the Seller to the Buyer (which shall occur only upon the Seller's receipt of full payment of the Price), the Vessel shall not be entitled to deal with or use the Marine Fuels in any way other than for the said purpose.
- 10.8 The authority given to the Buyer to resell the Marine Fuels set out in Clause 10.5 above or the Seller's consent for the Vessel's use of the Marine Fuels for her propulsion in Clause 10.7 above terminates automatically upon the occurrence of an Event of Default or it may be immediately withdrawn by the Seller by notice to the Buyer. The termination shall be without prejudice to any of the Seller's rights and remedies or of the Buyer's liabilities.
- 10.9 The provisions of this Clause 10 are without prejudice to any other rights or remedies that the Seller may have under any applicable laws. Nothing in the GTC shall prejudice or in any way limit the Seller's right to arrest or attach the Vessel or her sister vessel or any associate ship and/or any other assets of the Buyer (or the

registered owner or demise charterer of the Vessel or any other party liable), wherever situated in the world, without prior notice.

## 11 **PAYMENT**

- 11.1 Unless otherwise specified in the Confirmation, all sales or supplies by the Seller shall be either on the basis of cash on advance or irrevocable letter of credit received by the Seller in advance. All letters of credit procured by the Buyer in favour of the Seller shall be in a form and substance acceptable to the Seller and issued only by a bank acceptable to the Seller.
- 11.2 The Buyer shall make payment to the Seller the Price for the Marine Fuels delivered, all other charges and expenses incurred by the Seller arising out of and/or in connection with the delivery of the Marine Fuels and all other amounts that are payable to the Seller under the Fuels Agreement (collectively, the "Sums" and each, the "Sum") in full as and when each Sum falls due in immediately available US\$ (or such other currency as may be stipulated by the Seller) and in such manner as the Seller may designate without discount, set-off, withholding, deduction, or deferment whether on account of any claim or counterclaim or any other dispute (including any dispute regarding quality, quantity or any other matter). The Buyer shall be responsible for all banking charges and commission in effecting payment of the Sums to the Seller. Payment of a Sum is not deemed to be made to the Seller until the Sum is actually received by the Seller or credited in its designated bank account.
- 11.3 Where the Buyer is not required to make payment of any Sums by cash or irrevocable letter of credit in advance but on credit terms granted by the Seller (the "Credit"), the Buyer shall make payment to the Seller within thirty (30) days (or such other period as is agreed in writing by the Buyer and Seller) from the date of completion of delivery of the Marine Fuels as provided in Clause 10.1 above (the "Credit Period"). If, however, the last day of the Credit Period falls on a weekend or any bank holiday where the Seller's bank is closed (other than a Monday), the payment is due to be made by the Buyer on the first prior available banking day within the Credit Period. If the last day of the Credit Period falls on a Monday bank holiday, the Buyer may make the payment on the next available banking day.
- 11.4 If the Buyer has any dispute with any of the invoices issued by the Seller, the Buyer shall notify the Seller in writing of the dispute within fourteen (14) days from the date of each invoice, failing which, the Buyer shall be deemed to have conclusively accepted the accuracy of the invoice.
- 11.5 For all Sums due and unpaid to the Seller, the Buyer shall pay interest at a rate per month equal to 1.5 percent (1.5%) or the maximum rate permitted by the applicable law. Interest shall be calculated on a daily basis from the date on which each Sum falls due for payment to the date of actual payment (irrespective of whether the date of payment is before or after any judgment or award in respect of the same).
- 11.6 Any and all amounts received by the Seller from the Buyer for an invoice that is overdue shall be applied, at the Seller's sole discretion, towards the payment of interest accrued on that invoice, followed by any legal costs and administrative fees incurred by the Seller in respect of recovery of payment of the overdue invoice, before the amounts will be applied towards the principal sum invoiced. Any waiver by the Seller of interest charges, legal costs or administrative fees on any particular overdue invoice shall not be construed as a waiver by the Seller of its right to require payment of such charges for any other invoice.
- 11.7 Where there is more than one invoice of the Seller due and owing by the Buyer at any one time under any number of Fuels Agreements, the Seller shall be entitled, at its sole discretion, to apply any amounts received from the Buyer to the oldest overdue invoice. Any designation by the Buyer of the application of the funds shall not be effective to prevent the Seller's exercise of its right provided in this Clause 11.7.

## 12 CREDIT AND SECURITY

- 12.1 If the Credit granted to the Buyer is exceeded as at the time delivery of any parcel of Marine Fuels is required to be made under any particular Fuels Agreement, the Buyer shall, on demand by the Seller, forthwith make advance payment of the said parcel of Marine Fuels by cash or irrevocable letter of credit in a form and substance acceptable to the Seller and issued only by a bank acceptable to the Seller. Unless and until such advance payment is received by the Seller, delivery will be suspended and the Seller shall not be obliged to deliver the said parcel of Marine Fuels. If the advance payment demanded is still not received by the Seller by the end of the Delivery Window, the Seller is entitled to cancel or terminate the particular Fuels Agreement without liability. This shall be without prejudice and in addition to any other rights or remedies that the Seller may have including any right to claim losses and damages from the Buyer.
- 12.2 Notwithstanding the Credit that may have been granted to the Buyer, the Seller is entitled at any time to require the Buyer to provide satisfactory security on demand in any of the following circumstances: -
- 12.2.1 if the Vessel is arrested or attached by the Seller or any other third party;
- 12.2.2 if the Seller, at its sole discretion, determines that the financial condition of the Buyer, any of the Buyer's Affiliates or the Buyer's guarantor (if any) is impaired or is unsatisfactory in that it gives rise to a reasonable belief on the part of the Seller that its likelihood of receiving payment from the Buyer is at risk; or
- 12.2.3 or for any other reason, the Seller determines, in its sole discretion, that it is necessary to obtain security.
- 12.3 Satisfactory security may, at the Seller's option, take the following form: -
- 12.3.1 advance cash payment or irrevocable letter of credit for any parcel of Marine Fuels to be delivered under any particular Fuels Agreement; or
- 12.3.2 a guarantee in the form and substance acceptable to the Seller issued by a bank, the Buyer's parent company or any other entity acceptable to the Seller.
- 12.4 If a demand for satisfactory security is made by the Seller under Clause 12.2 and no such satisfactory security is received by the Seller within seven (7) days from the date of the demand, the Seller is entitled to
- 12.4.1 terminate any Fuels Agreement with the Buyer, whereupon it shall be immediately terminated; and/or
- 12.4.2 withdraw or cancel any Credit that has been extended to the Buyer and/or declare that all liabilities of the Buyer under any Fuels Agreement and/or all Sums payable by the Buyer to the Seller (whether invoiced or not) shall become immediately due and payable, whereupon all such liabilities and/or sums shall become immediately due and payable to the Seller.

The Seller's exercise of any of the abovementioned rights shall be without prejudice to any rights or remedies that the Seller may have.

## 13 EVENT OF DEFAULT

- 13.1 "Event of Default" refers to one or more of the following events: -
- 13.1.1 When the Buyer commits a material breach of any Fuels Agreement and,

if such breach is capable of being remedied, such breach is not remedied within fourteen (14) days upon receipt of a written notice to do so from the Seller; or

13.1.2 When the Buyer or the Buyer's guarantor: -

13.1.2.1 is or becomes insolvent or is likely, as determined by the Seller in its sole discretion, to be or become insolvent or unable to pay its debts;

13.1.2.2 threatens to pass or passes a resolution for winding up, bankruptcy, judicial management, administration, composition or scheme of arrangement with its creditors or any equivalent or similar process or has an application filed or proceedings commenced (or threatened to be filed or commenced) in respect of any of the foregoing in any jurisdiction;

13.1.2.3 has a receiver or other similar officer appointed respect of all or any part of its business, assets, undertakings or revenue; or

13.1.2.4 has any distress, execution or any other equivalent or similar legal process in any jurisdiction threatened, levied or enforced upon any of its assets.

13.2 Upon and at any time after the occurrence of an Event of Default, the Seller may by notice to the Buyer: -

13.2.1 terminate any Fuels Agreement with the Buyer, whereupon it shall be immediately terminated; and/or

13.2.2 withdraw or cancel any Credit that has been extended to the Buyer and/or declare that all liabilities of the Buyer under any Fuels Agreement and/or all Sums payable by the Buyer to the Seller (whether invoiced or not) shall become immediately due and payable, whereupon all such liabilities and/or sums shall become immediately due and payable to the Seller.

The Seller's exercise of any of the abovementioned rights shall be without prejudice to any rights or remedies that the Seller may have.

#### **14 SELLER'S RIGHT OF SET-OFF**

14.1 The Seller is entitled to combine, consolidate or merge all or any of the liabilities of the Seller and/or any Seller's Affiliates (collectively the "**Seller's Group**") and set off or transfer any sums owed by the Seller's Group to the Buyer and/or any Buyer's Affiliates (collectively the "**Buyer's Group**") towards the satisfaction or payment of any of the liabilities of the Buyer to the Seller under any Fuels Agreements with the Buyer. Notwithstanding that the Buyer's liabilities may not be expressed in the same currency, the Seller is authorised to effect any necessary currency conversions at the rates then prevailing as at the date of the set-off or transfer.

#### **15 CLAIMS / LIABILITIES / INDEMNITIES**

15.1 The Seller shall be discharged of any and all liability whatsoever in respect of the following, and any claim arising out of and/or in connection with the same shall be deemed extinguished, waived and forever barred, if:-

15.1.1 With respect to any claim against the Seller as to the quantity of the Marine Fuels based on the density of the Marine Fuels delivered, unless the Buyer submits to the Seller within fourteen(14) days from the date

of completion of delivery a claim in writing relating to the same.

- 15.1.2 With respect to any claim against the Seller as to short delivery of the Marine Fuels which does not fall within Clause 15.1.1 above, unless the Buyer or its representative witnessed the measurement of the Marine Fuels delivered in accordance with Clause 7.1 above, and at the time of delivery initialled on the bunker delivery receipt or in a letter of protest such short delivery and presented the said receipt or letter to the Seller at the time of delivery.
- 15.1.3 With respect to any claim against the Seller as to the quality of the Marine Fuels delivered, unless the Buyer submits to the Seller in writing together with the results of the testing of the retained sample provided to the Vessel by the Seller and the full supporting evidence of the Buyer's claim within thirty (30) days from the date of completion of delivery.
- 15.1.4 In addition, in all cases, with respect to any and all claims of whatsoever nature against the Seller including any claim for delay and those specified in Clause 15.1.1 to Clause 15.1.3 above, unless legal proceedings are filed or commenced by the Buyer in the proper forum within \_\_forty (40) days\_\_] from the date of completion of delivery or if there is no delivery, the last day of the Delivery Window or if there is no Delivery Window, the event giving rise to the claim.
- 15.2 Notwithstanding the provisions of Clause 5 above, the Buyer shall take all reasonable measures, including retention and/or burning of Marine Fuels in accordance with the Seller's instructions, to eliminate or minimise any costs associated with an off-specification or suspected off-specification supply of Marine Fuels.
- 15.3 Notwithstanding any other provisions in the Fuels Agreement and where liability of the Seller is not excluded hereunder, the Seller's liability to the Buyer howsoever arising (including claims arising out of and/or in connection with quality and quantity of the Marine Fuels delivered and delay in delivery of the Marine Fuels) and notwithstanding that such liability may have arisen from any negligence on the part of the Seller, its agents, employees or contractors, shall not exceed the Price of the portion of the Marine Fuels sold or supplied under the Fuels Agreement in respect of which liability is being asserted against the Seller.
- 15.4 The Seller shall have no obligation to make any payment to the Buyer on any claim made by the Buyer unless and until the Seller has received full payment of all Sums due and owing from the Buyer for the Marine Fuels delivered under the Fuels Agreement in accordance with Clause 11.
- 15.5 Notwithstanding any other provisions in the Fuels Agreement, the Seller shall not in any circumstances whatsoever and howsoever arising, including without limitation any negligence on the part of the Seller, its agents or sub-contractors be liable to the Buyer for any demurrage incurred by the Buyer's Vessel, loss of profits, loss of market, loss of opportunities, loss of goodwill or reputation, all of which whether direct or indirect, or for any indirect, special or consequential loss of damage.
- 15.6 It is expressly agreed that no Seller's supplier, servant, agent, contractor or other person acting on the instructions of the Seller in respect of the Fuels Agreement shall in any circumstances be under any liability to the Buyer for any loss or damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on its part while acting in the course of or in connection with its employment or as agent, supplier or contractor of the Seller or otherwise in excess of the liability of the Seller under the provisions of the Fuels Agreement. Without prejudice to the generality of the foregoing, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity applicable to the Seller shall also be available and shall extend to protect every such Seller's supplier, servant, agent, contractor or other

person and for the purposes of this Clause 15.6, the Seller is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such servants, agent or other persons and all such persons shall to this extent be or deemed to be parties to the contract between the Buyer and the Seller.

- 15.7 The defences and limitation of liability provided herein shall apply in any action for loss of or damages of whatsoever nature, whether the action be founded in contract, in tort, or otherwise.
- 15.8 The Buyer shall indemnify and hold harmless the Seller, the Seller's supplier, the Seller's Affiliates, and the directors, employees and agents of the Seller and Seller's Affiliates (collectively the "**Indemnified Parties**") against any and all liability, loss, damage, cost (including reasonable cost of any settlement and legal costs and expenses on a solicitor and own client basis), fines, penalties, compensation, or expenses whatsoever incurred by the Indemnified Parties arising out of and/or in connection with any breach by the Buyer of the Fuels Agreement or act, omission, neglect or default on the part of the Buyer, its servant, agent or sub-contractors relating to and/or arising out of the receipt, use, dealing, storage or transportation of the Marine Fuels delivered under the Fuels Agreement.
- 15.9 The Buyer shall also indemnify and hold harmless the Seller against all legal costs and expenses on a solicitor and own client basis and administrative fees incurred by the Seller in enforcing any of its rights under the Fuels Agreement including any steps taken to recover any overdue Sums from the Buyer.

## **16** **FORCE MAJEURE**

- 16.1 In addition to any other relief provided by law, no failure or omission by the Seller to comply with any of its obligations under the Fuels Agreement shall give rise to any claim against the Seller, or be deemed to be a breach of the Fuels Agreement, insofar as the failure or omission is caused by *force majeure*, which is defined as any cause not reasonably within the control of the Seller, whether or not foreseen, including (without limitation) such causes as contagious disease, labour disputes, strikes, governmental intervention, compliance with any law, regulation or ordinance or with any order, demand or request of an international, national, port, transportation, local or other authority or agency or of any body or person purporting to be or to act for such authority or agency or any other corporation directly or indirectly controlled by any of them, acts of administrative authorities, decisions of the courts, riot, wars, military operations, terrorism actions, civil commotion, hijacking, fire, explosion, flood, storm, natural disasters or any act of God. Further any curtailment, failure or cessation of supplies of Marine Fuels from any of the Seller's sources of supply (whether in fact sources of supply for the purpose of any Fuels Agreement or not), provided that such curtailment, failure or cessation is related to a circumstance which is outside the control of the Seller, shall be considered as an event of *force majeure* for the purpose of the Fuels Agreement.
- 16.2 If by reason of any event of *force majeure*, either the availability from any of the Seller's sources of supply of Marine Fuels or the normal means of transport of such Marine Fuels is delayed, hindered, interfered with, curtailed or prevented, then the Seller shall be at liberty to withhold, reduce or suspend deliveries under any Fuels Agreement to such extent as the Seller may in its absolute discretion think fit and the Seller shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers.
- 16.3 Any additional quantities which the Seller does acquire from other suppliers or from alternative sources may be used by the Seller at its complete discretion and need not to be taken into account by the Seller for the purpose of determining the extent to which it is to withhold, reduce or suspend deliveries under any contract.
- 16.4 The Buyer shall be free to purchase from other suppliers any deficiencies of deliveries of Marine Fuels caused by the operation of this Clause 16 but the Seller shall not be responsible for any additional cost thereby incurred by the Buyer.

- 16.5 The Seller reserves the right to increase the price charged for any Marine Fuels if there is any increase in the costs incurred or to be incurred by the Seller in making the relevant supply due to factors which constitute a force majeure event pursuant to Clause 16.1 above.
- 16.6 Where the event of *force majeure* continues for a continuous period of more than one (1) month, and unless agreed otherwise between the Buyer and the Seller, the Seller may then terminate the Fuels Agreement, by written notice to the Buyer. Such termination shall not give rise to any liability, compensation or indemnity of any kind. In the case of a Chimbusco Marine Term Fuels Agreement, such termination shall apply only in respect of deliveries at delivery places or ports affected by the *force majeure* event.

## **17 ENVIRONMENTAL PROTECTION**

- 17.1 If a spill occurs while Marine Fuels are being delivered to Buyer, the Buyer shall promptly take all action reasonably necessary to remove the spillage and mitigate its effects.
- 17.2 All expenses, claims, loss, damage liability and penalties arising from any spillage shall be borne by the Party who caused the spillage through its, its servants, agents or sub-contractor's negligence. Where the Parties both contributed to the spillage, all expenses, claims, loss, damage liability and penalties shall be borne by the Parties in accordance with the extent that such spillage was caused or contributed to by the negligence of the respective Party and/or the failure of or defect in the respective Party's equipment.

## **18 ASSIGNMENT**

- 18.1 The Seller may assign, charge, transfer or otherwise deal in any or all of its rights and obligations under the Fuels Agreement, and the Buyer consents to all such dealings.
- 18.2 The Buyer shall not assign any of its rights under the Fuels Agreement without the prior written consent of the Seller.
- 18.3 Notwithstanding any assignment or rights granted by the Seller under Clause 18.2, the Buyer shall remain fully responsible to the Seller for the performance of the Fuels Agreement.

## **19 EFFECTS OF WAIVER**

- 19.1 No relaxation, forbearance, delay or indulgence by the Seller in enforcing any of the terms and conditions of the Fuels Agreement or the granting of time by the Seller to the Buyer shall prejudice, affect or restrict the rights of the Seller under the Fuels Agreement, nor shall any waiver by the Seller of any breach of the Fuels Agreement operate as waiver of any subsequent or continuing breach. Any failure or delay on the part of the Seller in exercising any power or right under the Fuels Agreement shall not operate as a waiver of such power or right.

## **20 DISPUTE RESOLUTION**

- 20.1 Any claim or dispute arising out of or in connection with the Fuels Agreement (including any question regarding its existence, interpretation or termination) shall be referred to and finally resolved by arbitration in Hong Kong as follows:
- 20.1.1 The arbitration shall be administered by the Hong Kong International Arbitration Centre (the "HKIAC") and conducted in accordance with the arbitration rules of the HKIAC for the time being in force, which rules are deemed to be incorporated by reference in this clause.
- 20.1.2 The arbitral tribunal shall comprise of two (2) arbitrators and an umpire.

- 20.1.3 The Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party requiring the other Party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) calendar days specified. If the other Party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) calendar days specified, the Party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be binding on both Parties as if he had been appointed by agreement.
- 20.1.4 Where the Parties have appointed their respective arbitrators, the two said arbitrators may appoint an umpire at any time after they themselves are appointed and shall do so before any substantive hearing or forthwith if they cannot agree on any matter relating to the arbitration, and if the two said arbitrators do not appoint an umpire within fourteen (14) days of one calling upon the other to do so, the Registrar of the HKIAC shall on the application of either arbitrator or of a Party, appoint the umpire. The umpire shall attend any substantive hearing and shall following his appointment be supplied with the same documents and other materials as are supplied to the other arbitrators. The umpire may take part in and, if the original arbitrators so agree, chair the hearing and deliberate with the original arbitrators. Decisions, orders and awards shall be made by the original arbitrators unless and until they cannot agree on a matter relating to the arbitration. In that event they shall forthwith give notice in writing to the Parties and the umpire, whereupon the umpire shall replace them as the tribunal with power to make decisions, orders and awards only in respect of the matter the original arbitrators cannot agree upon as if he were the sole arbitrator.
- 20.1.5 The language of the arbitration shall be English.
- 20.1.6 The tribunal shall give a written record of the award and reasons thereof. The award of the tribunal shall be final and binding and shall be enforceable in any court of competent jurisdiction.
- 20.1.7 Any costs related to the arbitration including the tribunal's fees, HKIAC's fees and reasonable legal costs shall be borne by the losing Party.
- 20.1.8 This Clause 20.1 shall not be construed as preventing any court having jurisdiction from issuing injunctions, attachment orders or orders for other similar relief in aid of any arbitration commenced (or to be commenced) by the Seller which seeks the recovery or collection of any monies owed to the Seller (whether in the form of debt, damages, interest or costs).
- 20.2 Notwithstanding Clause 20.1 above, it is agreed that the Seller shall have the exclusive right, at its option, to refer any claim or dispute arising out of or in connection with the Fuels Agreement (including any question regarding its existence, interpretation or termination) to the non-exclusive jurisdiction of the Hong Kong Courts and that accordingly, proceedings in respect of the foregoing (the "**Proceedings**") may be brought by the Seller in the Hong Kong Courts. This Clause 20.2 is for the benefit of the Seller only and shall not limit the right of the Seller to bring the Proceedings against the Buyer in connection with the Fuels Agreement in any other court of competent jurisdiction or concurrently in more than one jurisdiction.
- 20.3 In relation to Clause 20.2, the Buyer: -



- 20.3.1 irrevocably submits to the jurisdiction of the Hong Kong Courts;
- 20.3.2 waives any objections which it may have to the Hong Kong Courts on the ground of venue or *forum non conveniens* or any similar grounds as regards any Proceedings;
- 20.3.3 agrees that a judgement or order of a Hong Kong Courts is conclusive and binding on the Buyer and may be enforced against the Buyer in the courts of any jurisdiction; and
- 20.3.4 consents to the service of process by delivering it by hand or by post to the address of the Buyer stipulated above in the Confirmation (or the last known address of the Buyer) or in any manner permitted by the relevant law.

## **21 GOVERNING LAW**

- 21.1 The Fuels Agreement, and all claims, disputes and differences arising thereunder shall be governed by and interpreted in accordance with the laws for the time being in force in Hong Kong.

## **22 TRADE SANCTION**

- 22.1 Each party acknowledges and understands that the performance of the parties respective obligations arising out of the Fuels Agreement shall be in compliance with any United Nations resolutions or any regulations which have the force of law in People's republic of China (P.R.C), Switzerland, the EU, the United states of America, the United Kingdom, Japan and /or the country or countries in which the product may be loaded, delivered, discharged stored or transit during the performance of the agreement and/or the country of origin of the product, and which: are directly or indirectly applicable to one or both of the parties or to the transaction contemplated under Fuels Agreement; relate to foreign trade controls, export controls, embargoes or internal boycotts of any type (applying, without limitation, to the financing, payment, insurance, transportation, delivery or storage of the product) .
- 22.2 In addition each party also acknowledges and understands that both parties or de facto controller or an affiliate or subsidiary or any of their respective agents, directors, officers, employees or advisors shall comply with all other applicable UN resolution or regulations in People's republic of China (P.R.C), Switzerland, the United Kingdom, Japan and/or the country or countries regarding trade sanctions whether before or during the duration of the Fuels Agreement.
- 22.3 In the event performance by either party would result in a prohibited action as aforementioned, such affected party must as soon as reasonably practicable give written notice to the other party of its inability to perform. Immediately upon such written notice has been given with supported by credible evidence, subject to mutual agreement, the affected party shall be entitled:
- 22.4 To either immediately suspend the prohibited action (whether payment or performance) until such time as the relevant prohibition is lifted without any liability whatsoever to the affected party (including but not limited to any damages for breach of contract, penalties, expenses, fees and costs); and/or where the inability to discharge the obligations continues (or is reasonably expected to continue) until the end of the contractual time for discharge therefore, to a full release from the prohibited action, provided that where the relevant obligation relates to payment for goods which have already been delivered, the affected payment obligation shall remain suspended; or to terminate the Fuels Agreement and/or the performance hereunder.
- 22.5 Neither party shall be in breach of the Fuels Agreement nor be liable for any delay in performance or failure to perform, any of its obligations under the Fuels Agreement if such delay or failure results from such events, circumstances or causes arising from the trade restrictions or any prohibited action, save as

expressly set out ahead in this clause.

- 22.6 Notwithstanding aforementioned the party which fails of being in compliance with trade sanctions regulations set out in this clause and result in suspension or termination of the Fuels Agreement, shall hold the other party harmless from any and all expense, claims, loss, damage and liability (including attorney's fees) arising out of or in connection with its breach of representation contained in this clause.

## **23 ANTI-CORRUPTION**

- 23.1 None of the parties or any of their affiliates, directors, officers, employees, representatives, consultants, advisors have made or will make, with respect to the Fuels Agreement, any offer, payment, promise to pay or authorization of the payment of any money, or any offer, gift, promise to give or authorization to the giving of:
- 23.2 Any official or employee of any governmental entity or public international organization;
- 23.3 Any political party, official, or candidate;
- 23.4 Any directors, officers, employees or representatives of the other party; or
- 23.5 Any other relevant parties.
- 23.6 Unless such offer, payment, gift, promise or authorization is not in violation of applicable laws.
- 23.7 Each party acknowledges that any breach of the anti-corruption clause above by such party will cause damages to the other party and it agrees to pay in such circumstance to the other party a reasonable amount as compensation.

## **24 ANTI-MONEY LAUNDERING**

- 24.1 The parties agree that in connection with the Fuels Agreement, they will comply with all treaties and regulations of the United Nations, European union, Chinese government and, as the case may, be any other legislation or requirements that could be applicable to such party relating to anti-money laundering and anti-terrorism financing.
- 24.2 In particular each party represents to the other that they shall not employ in transactions in connection with the agreement any financial resources, assets or securities originated or derived from:
- 24.3 unlawful activity of any nature;
- 24.4 terrorists or terrorist organizations or
- 24.5 persons or entities subject to sanctions, and as the case may be, any other legislation or requirements that could be applicable to such party.
- 24.6 Either party may terminate the Fuels Agreement forthwith upon written notice to the other party at any time. If in its reasonable judgment, supported by credible evidence, the other party is in breach of any of the above representations, warranties or understandings in this clause.

## **25 OTHER PROVISIONS**

- 25.1 If any provision of the Fuels Agreement turns out to be invalid, illegal or unenforceable in any respect under any law the validity of the other provisions shall not be affected or impaired. Further, the Parties shall in good faith negotiate a replacement provision that is as close as possible from a legal and economic

standpoint to the provision that has been invalidated.

- 25.2 Any notice or request to be given pursuant to the Fuels Agreement shall be in writing and may be effected by way of sending the notice either by hand, courier, registered post, facsimile or electronic email. If sent by courier or registered post, the notice shall be deemed to be delivered three (3) days after the date of posting.
- 25.3 On expiration or termination of the Fuels Agreement, any parts of the Fuels Agreement that, by their nature, are intended to survive the termination or expiration of the Fuels Agreement shall so survive.

*[The remainder of this page is deliberately left blank]*