

# **AUSTRALIA BUNKERING PTY LTD GENERAL TERMS AND CONDITIONS**

November 2016

## 1. Agreement

- (a) These General Terms and Conditions of Sale and Delivery (“GTC”) shall apply to all sale and delivery contracts for Marine Fuel entered into with Australia Bunkering Pty Ltd (the “Seller”) on or after 1 November 2016. Each sale and delivery shall constitute a separate Contract.
- (b) Where the Seller agrees in writing for a particular term(s) to be included in the Contract and such term(s) is inconsistent with these GTC, such term(s) shall prevail over these GTC only to the extent of such inconsistencies.
- (c) No binding agreement is entered into between the Seller and the Customer until the Seller has sent its Sales Confirmation by email or by fax.
- (d) The Seller reserves the right to update these GTC from time to time in its sole discretion without prior notice. In the event that any changes are made, the revised GTC shall be notified to the Customer by being made available on the Seller’s website immediately.

## 2. Definitions

- (a) In these GTC, unless the context otherwise requires, the following definitions and meanings shall apply:

“Customer” means the entity or person named in the Sales Confirmation who contracted to purchase, take delivery of and pay for the Marine Fuel or other services, and shall include its principal, servants, agents and designated representatives and the registered owner of the Vessel to which the Marine Fuel is being supplied, her master, owners, operators, charterers, and any party benefitting from consuming the Products, all of whom shall be jointly and severally liable as the Customer under each Contract.

“Contract” means the sale and delivery agreement entered into between the Seller and the Customer which consists of these GTC and the Sales Confirmation that is issued by the Seller for each supply of the Marine Fuel or other services.

“Delivery Port” means a port at which the Seller delivers or arranges for the delivery of Marine Fuel pursuant to a Contract.

“Marine Fuel” means the different grades of bunker fuel oil, intermediate bunker fuels, marine fuel oil, thin fuel oil, marine diesel oil, light marine diesel fuel, gas oil, or any other type or grade of oil, as stated in the Sales Confirmation.

“Seller” refers to Australia Bunkering Pty Ltd, its servants, agents, assigns, subcontractors, and any and all other persons acting under Australia Bunkering Pty Ltd’s instructions in fulfillment, compliance or observance of the Contract unless the context otherwise requires.

“Vessel” means the vessel, ship or craft duly nominated to receive Marine Fuels as specified in the Contract.

## 3. Pricing

- (a) The price of the Marine Fuel as specified in the Contract is quoted exclusive of any applicable taxes, VAT or other duties, unless otherwise agreed.
- (b) In addition to the price, the Customer shall also pay:
  - (i) all and any duties, levies, expenses, taxes, impositions, delivery charges, barging fees, road trucks, jetty fees, freights, premiums, overtime and other costs incurred by the Seller, or for which the Seller is accountable for in respect of delivery and arranging delivery of the Marine Fuel to the Customer;
  - (ii) all and any losses, costs and expenses incurred by reason of the master of the Vessel rejecting the whole or any part of the delivery of the Marine Fuel for any reason whatsoever;

- (iii) if the Seller or its supplier does not have duty free stocks of Marine Fuel available and delivers from duty paid stocks to the Customer, the Customer shall be responsible for paying the amount of any such duty;
  - (iv) all and any additional fees, costs and charges identified in the relevant port guide applicable to the delivery port;
  - (v) all and any losses, costs, expenses and charges incurred by the Seller resulting from the Customer's failure and/or breach and/or non-compliance with its obligations under the Contract for whatever reason;
  - (vi) all and any losses, damages, demurrage, overtime and additional expenses incurred by the Seller by reason of the Customer's failure, or that of its representative and/or agents, to provide the Seller or its supplier with at least 48 hours' prior notice (which excludes Saturdays, Sundays and public holidays) of any changes to previously notified delivery times, grades, quantities or cancellations;
  - (vii) all and any extra costs arising out of and/or incurred in connection with deliveries made on Saturdays, Sundays and public holidays and outside of normal working hours at the delivery port or the place of delivery/work;
  - (viii) all and any losses, damages or demurrage, whatsoever and howsoever incurred by the Customer due to and/or arising out of and/or in connection with any delay or congestion at the shore terminal, or to any other commitment(s) of available barges in the delivery of the Marine Fuel under the Contract to the Customer. This condition will also apply where the delivery of the Marine Fuel is affected by public holidays and practices of the delivery port and/or the country where the delivery port is located; and
  - (ix) all applicable barging charges together with transportation taxes and pumping charges if applicable.
- (c) The Seller reserves the right to increase the price charged for the Marine Fuel if there is any increase in the costs incurred or to be incurred by the Seller in making the relevant supply due to factors beyond the Seller's control, including but not limited to, any increase in taxes or duties, the making of any law, order, by-law or other regulation, the occurrence of any currency fluctuation affecting the cost of any imported items and any increase in costs charged by the supplier for any reason whatsoever.

#### **4. Payment**

- (a) Payment shall be made by the Customer in the agreed currency within thirty (30) days from the date of delivery of the Marine Fuel or, if otherwise agreed, within the timeframe stated in the Sales Confirmation or relevant invoice. Payment shall be made in full, without set-off, counterclaim, deduction and/or discount, free of bank charges. Payment shall be deemed to have been made on the date the payment is credited to the bank account designated by the Seller.
- (b) Payment shall be made by the Customer to the Seller by bank transfer, according to the payment instructions contained in the relevant invoice or any copy hereof forwarded by fax, e-mail or by other means.
- (c) The Seller is entitled to, at its sole discretion, to specify any particular invoice, charges or part thereof to which any payment(s) shall be applied, including but not limited to interest charges and legal fees.
- (d) Any delay in payment by the Customer shall entitle the Seller to interest at the rate of two (2) percent per month or any part thereof or as otherwise stated in the Sales Confirmation or relevant invoice. In case the agreed purchase price including any additional costs or accrued interest is not paid when due, any fees, costs and expenses incurred in debt collection or legal action for recovery shall be paid for in full by the Customer. In particular, the Customer agrees to reimburse the Seller on a full indemnity basis for all legal costs incurred by the Seller in connection with enforcement of the Seller's rights under this Contract.
- (e) If at any time the Seller is of the opinion before delivery to the Customer that adequate assurance of the Customer's ability to perform its obligations under these GTC is lacking and/or has become doubtful, or that the financial ability of the Customer is impaired or unsatisfactory, the Seller may, in its sole and absolute discretion, request

the Customer to pay cash in advance or to put up security acceptable to the Seller, and the Seller may refuse and/or withhold delivery until the Customer complies with such requests. Failing the Customer's compliance with such request within three (3) working days from the date of request, the Seller shall be entitled to terminate the Agreement but without prejudice to the Seller's rights to claim damages from the Customer. Under such circumstances, the Customer shall have no recourse against the Seller.

- (f) In the event of any delay or failure in payment the Seller reserves the right to pursue such legal remedies as may be available to recover the amount owed. The Marine Fuel supplied to the Vessel are sold and delivered on the credit of the Vessel, as well as on the promise of the Customer to pay therefore, and the Customer agrees and warrants that the Seller shall have and may assert a maritime lien against the Vessel and may take such other action or procedure against the Vessel and any other vessel or asset beneficially owned or controlled by the Customer, for the amount due for the Marine Fuel and under the Contract. The Seller shall be entitled to rely on any provisions of law of the flag state of the Vessel, the place of delivery or where the Vessel is found and shall, among other things, enjoy the full benefit of local legislation granting the Seller a maritime lien on the Vessel and/or providing for the right to arrest the Vessel. Nothing in this Contract shall be construed to limit the rights and/or legal remedies that the Seller may enjoy against the Vessel or the Customer in any jurisdiction.
- (g) Notwithstanding any agreement to the contrary, payment will be due immediately and the Seller shall be entitled to cancel or withhold all outstanding or future deliveries in the case of:
- (i) winding up, dissolution, liquidation or bankruptcy of the Customer or if a receiver or administrator is appointed, or if the Customer suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors;
  - (ii) arrest of assets of the Customer;
  - (iii) arrest of the Vessel;
  - (iv) if the Customer fails to pay any invoice due to the Seller within the specified timeframe;
  - (v) if the Customer fails to comply with any other obligation pursuant to the Contract, including but not limited to the Customer's failure to take delivery of the Marine Fuel in full or in part; and
  - (vi) any situation, which in the Seller's sole discretion is deemed to adversely affect the financial position of the Customer.

In any of the foregoing situations, the Seller shall have the option to cancel the Contract; to store the Marine Fuel in full or in part for the Customer's account and risk; to demand that the Customer complies with its obligations under the Contract; or to make use of any other remedy available under law.

## 5. Cancellation or Changes

- (a) In the event of cancellation, rescheduling, or any other special request in relation to a delivery, the Customer shall be liable to pay the applicable charges, costs and expenses incurred.
- (b) The Customer shall be responsible for all consequences, costs and expenses, including but not limited to the Vessel's demurrage costs, arising from any changes in the Vessel's arrival or departure timing.
- (c) The Customer shall be responsible for any changes in the timing of the scheduled delivery of the Marine Fuel to the Vessel which resulted from a decision, act or omission of the Customer, the Vessel, the master, agents or representatives. Any costs and expenses incurred by the Seller in this regard shall be borne by the Customer and reimbursed in full to the Seller.

## 6. Nomination

- (a) The Customer shall have the sole responsibility for the nomination of the specifications and grades of Marine Fuel fit for use by the Vessel. Any implied warranties, including the warranties of merchantability and fitness for a particular purpose that the Seller may be deemed to have made, are expressly excluded and disclaimed.
- (b) The Seller shall not have any responsibility or liability for the choice and nomination of Marine Fuel made by the Customer or its suitability for the Vessel, including compatibility with other marine fuel products already on board. The Seller does not warrant and is not under any obligation to inspect whether the Customer's selection and nomination is suitable for use by the vessel in question or any other receiving facility.
- (c) The Seller shall not be responsible for any claim as to quality arising from the co-mingling of the marine fuel with other products or materials by the Customer on board the Vessel.

## 7. Delivery

- (a) Wherever the Seller accepts a delivery nomination, such delivery shall be within port limits, unless delivery outside of such port limits is agreed in advance in writing by the Seller.
- (b) All deliveries shall be made ex-wharf or ex-light/barge in accordance with the instructions given by the Customer or the master of the Vessel, subject to the Seller's agreement to such instructions, which agreement shall be reached before the delivery is commenced by the Seller pursuant to the Contract. Without recourse available to the Customer, the Seller is entitled to suspend delivery of the Marine Fuel under the Contract until such agreement is reached, and if no such agreement is reached within fourteen (14) days from the date of delivery intended under the Contract, the Seller shall be entitled to terminate the Contract but without prejudice to the Seller's rights to claim damages from the Customer.
- (c) The Customer shall give the Seller, unless otherwise agreed or requested by the Seller, at least five (5) working days' advance notice of the requested date of delivery (which excludes Saturdays, Sundays and Public Holidays) and provide the details of the delivery between 0900 and 1700 hours (Australia time) by email, telex or telefax, unless waived by the Seller in writing. Such notice shall identify the Customer and the Contract and shall specify all delivery details, including but not limited to, the port, name of Vessel, the agent of Vessel, its estimated time of arrival, approximate date of delivery, location of Vessel, method of delivery and confirmation of the grade and quantity of Marine Fuel ordered. The Customer and/or agent of the Vessel shall give the Seller at least forty-eight (48) hours confirmation notice (which excludes Saturdays, Sundays and Public Holidays) between 0900 and 1700 hours (Australia time) by email, telex or telefax, unless waived by the Seller in writing, of the exact quantity of Marine Fuel required and the exact location and exact time at which the delivery is required. If the Customer makes any changes after the Sales Confirmation, such bunker delivery shall be subject to clauses 3 and 5 herein.
- (d) Delivery of Marine Fuel by the Seller to the Customer shall be carried out, inter alia, subject to any regulations, requirements and procedures (including any amendments and revisions thereof) as may be prescribed from time to time by any governmental or port authority at the port at which the Seller accepts delivery nominations. The Customer shall, in any event, be solely responsible for ascertaining, acquainting itself and complying with inter alia, all such regulations, requirements and procedures which are applicable at the Delivery Port and in complying with all relevant berth restrictions and requirements. The Customer agrees to indemnify the Seller for any losses, costs and expenses which have been incurred by the Seller following the Customer's failure to comply with such regulations, requirements and procedures.
- (e) The Customer shall make all necessary connections and disconnections between the delivery hose(s) and the Vessel's intake pipe and ensure that the delivery hose(s) are properly connected to the Vessel's intake pipe prior to the commencement of delivery. The Customer shall render all other necessary assistance and provide sufficient tankage and equipment to receive all the delivery promptly under the Contract. Where delivery is undertaken ex-wharf, the Customer shall promptly receive the delivery and withdraw the Vessel from the shore terminal or wharf once the delivery has been completed.

- (f) The delivery date shall be deemed to be the date of completion of delivery as stated on the relevant bunker delivery note.
- (g) The Customer shall ensure that the Vessel is in possession of all certificates, permits and licenses required to comply with all relevant regulations pertaining to delivery of the Marine Fuel at the port or place of delivery and that the master of the Vessel shall:
  - (i) advise the Seller in writing, prior to delivery, of the maximum allowable pumping rate and pressure and agree on communication and emergency shut-down procedures;
  - (ii) notify the Seller in writing, prior to delivery, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Marine Fuel; and
  - (iii) render all necessary assistance which may reasonably be required and provide a safe and practicable access to the Vessel, in compliance with all applicable laws and regulations so as to allow for smooth delivery of the Marine Fuel, taking into consideration the mode of delivery requested.
- (h) The Customer shall be responsible for any and all demurrage, detention or additional expenses incurred by the Seller if the Customer or the Vessel fails to receive the Marine Fuel at the time for delivery. In addition, if the Vessel fails to take delivery of the Marine Fuel or any part thereof for whatever reason, the Customer shall compensate the Seller for any loss or damage which the Seller may suffer as a result of such failure. The Customer shall also bear the risk of the return transport, storage or selling of the Marine Fuel, including but not limited to any loss of profit on any resale of the Marine Fuel.
- (i) In case of delay or failure to deliver the Marine Fuel, the Seller shall not be liable to the Customer or any other entity for any claim, loss, demurrage or damage unless such delay or failure to deliver is caused by the Seller's negligence. Further, the Seller shall not be liable to the Customer for any claim, loss, demurrage or damage due to congestion of the terminal, shortage of fuel, weather conditions, prior commitments of the available barges, or any conditions beyond the Seller's control.
- (j) Parties agree to use reasonable efforts to obtain the required certificates, permits and licenses for the delivery in a timely manner. The Seller's obligation to deliver the Marine Fuel is conditional upon parties having obtained such certificates, permits and licences, and the Seller shall not be required to deliver or arrange to deliver (and shall bear no liability hereunder for failure to deliver) the Marine Fuel where any required certificate, permit or licence has not been obtained.

## 8. Quantity and Quality

- (a) The quantity of marine fuel delivered shall be measured by the Seller or its Supplier by the barge effecting delivery or by gauging in the supplier's store tank or oil meter, in accordance with the ASTM-IP Petroleum Measurement Tables, or the methods of any other recognised standards authority at the discretion of the Seller or its supplier. Such measurements shall be conclusive evidence of the quantities delivered to the Customer, and shall be included in the bunker delivery note or delivery receipt note which shall be signed by a representative of the Seller. Absence of signature from the representative of the Customer shall not deem the measurements void. Measurements taken by any other means, including those taken on board the Vessel, shall not be binding on the Seller and shall have no evidential value between the Seller and the Customer.
- (b) Subject to the Customer bearing all related costs and expenses, the Customer shall have the right to call upon an independent surveyor to measure the quantities of Marine Fuel delivered. Such independent surveyor shall be appointed by the Seller, or jointly appointed by both the Seller and the Customer, and shall only take measurements as permitted at sub-clause (a) above to determine the quantities and issue a survey report. Both the Seller's and the Customer's representatives shall have the right to witness the measurement operations. The measurements taken by the independent surveyor shall be conclusive evidence of the quantities delivered to the Customer, and shall be included in the bunker delivery note or delivery receipt note which shall be signed by a representative

of the Customer. Measurements taken by any other party other than the said independent surveyor, or taken by any other means, shall not be binding on the Seller and shall have no evidential value between the Seller and the Customer.

## 9. Sampling

- (a) The Seller or its supplier or their agents or representatives shall take one primary sample of each grade of Marine Fuel at the time of delivery from which four representative samples shall be taken and be used. Upon completion of sampling, all samples are to be sealed, labelled and signed by both the Seller or its representatives and the Customer or its representatives. The samples shall be conclusively deemed to be representative of the quality of the Marine Fuel supplied to the Vessel. Three of those samples are taken for quality purposes and the fourth is to be the MARPOL Control Sample. One sealed quality sample and the MARPOL Control Sample shall be handed to the master of the vessel and the other two quality samples shall be retained by the Seller or its supplier for a thirty (30) day period.
- (b) The Customer or its agent or representative shall be at liberty to witness the sampling, but their absence during all or any part of the sampling process shall not prejudice the validity of the samples.
- (c) In the event of a dispute concerning the quality of the Marine Fuel, the results of analysis of the Seller's or its representative's drawn samples, performed in accordance with ISO 8217 or any other specification as agreed between the Seller and the Customer, by an independent laboratory mutually appointed by the Seller and the Customer shall be conclusive to determine the quality of the Marine Fuel supplied. The results of analysis of any other sample shall not be binding on the Seller and shall have no evidential value between the Seller and the Customer.
- (d) In the event that the Seller makes a proposed appointment of an independent laboratory, this shall be notified to the Customer by fax or email. The Customer shall reply to the Seller within seven (7) days from receipt of such notice, otherwise the Customer shall be deemed to have accepted the Seller's proposal and the independent laboratory proposed by the Seller will be appointed. Both the Seller and the Customer agree to be bound by the results of the tests performed by the independent laboratory so appointed, which shall be final.
- (e) If the Seller and the Customer cannot agree on an independent laboratory to perform mutual analysis, or if the Customer fails to reply to the Seller's notice hereof within seven (7) days from receipt of such notice, the Seller can at its sole discretion decide which laboratory to perform the analysis, the results of which shall be final and binding for all parties involved.
- (f) The test results produced by the independent laboratory appointed under sub-clauses (c), (d) or (e) herein shall be interpreted in accordance with ISO 4259 Sections 9 and 10 and shall be conclusive as to the quality of Marine Fuel delivered. The costs and expenses incurred in conducting such tests and analysis shall be borne by the Seller if the results are in favour of the Customer, or borne by the Customer if the results are in favour of the Seller.
- (g) In the event of any claim as to the quality of the Marine Fuel delivered under the Contract, the Seller shall be entitled to and the Customer shall permit or obtain permit to allow the Seller or its supplier and/or its agents and/or its representatives to attend on board the Vessel to carry out all necessary inspections and investigations, including but not limited to the inspection of the master's logs and/or the Vessel's engine records, taking copies of such documents, accessing the Vessel's engine spaces and taking samples. In the event that the Seller is denied any permit or access, the Seller shall be deemed to have a complete defence against such claim and the Customer shall have no recourse.

## 10. Documentation

- (a) Once the delivery is completed and quantities measured, a bunker delivery note or delivery receipt note as the case may be shall be signed and stamped by the master of the Vessel or the master's authorised representative, and returned to the Seller or its representative, and a duplicate copy shall be retained by the master of the Vessel.
- (b) In the event the master of the Vessel is not satisfied with the sampling, quantity or any other matter concerning the Marine Fuel or their delivery, the master shall on completion of delivery issue a separate letter of protest detailing the complaints, receipt of which shall be acknowledged in writing by the Seller or its representative. No comments are allowed on the bunker delivery note or delivery receipt note.
- (c) No disclaimer notice or stamp of any type if applied by the Customer or its representative to the bunker delivery note or delivery receipt note will change, affect or waive the Seller's rights against the Vessel or waive the Vessel's ultimate responsibility for the debt incurred pursuant to the Contract.

## 11. Claims

- (a) Any dispute as to the quantity delivered must be noted at the time of delivery prior to the signing of delivery receipts verbally as well as in writing by the Customer to the Seller, failing which any such claim shall be deemed to be waived and barred. Any separate letter of protest handed to the supplier at the time of delivery shall under no circumstances qualify as valid notice under this section.
- (b) Any claim as to the quality or specification of the Marine Fuel must be notified in writing by the Customer to the Seller promptly after the circumstances giving rise to such claim have been discovered. In any event, if no such claim is presented in writing with full details and the relevant supporting documentation to the Seller within fourteen (14) days from the date of delivery, any such claim shall be deemed to be waived and barred.
- (c) In the event of any claim presented to the Seller under sub-clauses (a) or (b) above, the Customer agrees to take all reasonable steps and actions to mitigate any damages, losses, costs and expenses related to any such claim. The Customer shall fully cooperate with the Seller and make all necessary arrangements for the Seller or its representatives to ensure the existence of the necessary evidence and investigate such claim, including but not limited to the boarding and inspection of the Vessel, the interviewing of crew and the review and copy of the Vessel's documents, failing which any such claim shall be deemed to be waived and barred.
- (d) Subject always to any other term of this Contract which provides for a different period, the Seller shall be discharged from all liability whatsoever in arising out of or in connection with the Marine Fuel and/or this Contract, whether arising in contract, tort, under statute or otherwise and any claim against the Seller shall be time barred unless the relevant court or arbitral proceedings have been commenced in accordance with the terms herein and served on the Seller within three (3) months of the date of delivery of the Marine Fuel or the date on which the Marine Fuel should have been delivered.

## 12. Risk and Title

- (a) Delivery of Marine Fuel shall be deemed to be complete and risk in the Marine Fuel shall pass from the Seller or its supplier to the Customer once the Marine Fuel passes the flange connecting the delivery facilities provided by the Seller or its supplier and the receiving facilities provided by the Customer.
- (b) Title to the Products shall pass to the Customer upon full payment for the Marine Fuel delivered pursuant to the Contract hereunder. Until such time as payment is made, on behalf of themselves and the Vessel, the Customer agrees that it is in possession of the Marine Fuel solely as bailee for the Seller. If, prior to payment, the Seller's Marine Fuel is commingled with other marine fuel products on board the Vessel, title to the Marine Fuel shall remain with the Seller corresponding to the quantity of Marine Fuel delivered. The above is without prejudice to such other rights as the Seller may have under the laws of the governing jurisdiction or the Vessel in the event of non-payment.

### 13. Liability

- (a) Neither the Seller nor its supplier shall have any liability to the Customer, whether in contract, tort, under statute or otherwise, under or in connection with this Contract for:
  - (i) any loss of hire and/or loss of freight;
  - (ii) demurrage;
  - (iii) any act or omission of the Seller and/or its supplier and/or their agents and/or subcontractors, including but not limited to those transporting the Marine Fuel and/or fueling agents;
  - (iv) any loss of actual or anticipated profit or loss of production;
  - (v) losses caused by business interruption;
  - (vi) loss of goodwill and/or reputation;
  - (vii) any indirect, punitive, speculative, special or consequential cost, expense, loss or damage, even if such costs, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by the Seller or its supplier and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise.
- (b) In the event that price controls are imposed at the Delivery Port, the Seller and/or its supplier shall be entitled to suspend or withhold the delivery. In such circumstances, the Customer shall have no recourse against the Seller.
- (c) Notwithstanding any of the provisions in these GTC, the Seller's liability for any losses or damages that may be suffered by the Customer or the Vessel or any third party whatsoever under all circumstances, whether based in tort or contract or otherwise, shall be limited to the value of the Marine Fuel contracted to be delivered as confirmed in the Seller's Sales Confirmation.
- (d) Any liability for damages to the Vessel shall in any event be reduced by twenty (20) percent of the invoice value of spare parts for each year or fraction thereof in which the relevant part has been in use.
- (e) The Customer shall defend, indemnify and hold the Seller and/or its supplier harmless against any claims, losses, costs (including costs as between attorney or solicitor and client), damages, liabilities, fines, penalties and expenses incurred or sustained, arising out of or in connection with the Contract howsoever except to the extent that such claims, losses, costs, damages, liabilities and expenses arise through the negligent act or omission of the Seller.
- (f) If the Contract is entered into by the Customer as an agent for a principal, whether such agency is disclosed or undisclosed, then the Customer shall, together with the principal, be jointly and severally liable for the performance of all obligations under the Contract.

### 14. Force Majeure

- (a) The Seller shall not be liable for any loss, damage or demurrage howsoever arising and/or for any breach, delay failure or non-performance of its obligations under the contract if it is prevented or hindered from doing so by reasons of:
  - (i) acts of God;
  - (ii) any Government requisition, control, intervention, requirement or interference;
  - (iii) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;
  - (iv) riots, civil commotion, blockades or embargoes;
  - (v) epidemics;

- (vi) earthquakes, landslides, floods or other weather conditions;
  - (vii) strikes, lockouts or other industrial action;
  - (viii) fire, accident, explosion, breakdowns;
  - (ix) any circumstance whatsoever which is not within the Seller's control;
  - (x) the interruption, unavailability or inadequacy of Marine Fuel, or any constituent thereof, or of any facility of production, manufacture, storage, transportation, distribution or delivery;
  - (xi) the curtailment, failure, termination or cessation in whole or in part of any of the existing or contemplated sources of the Seller's supply of Marine Fuel, or the crude oil or petroleum form which such Marine Fuel is derived;
  - (xii) compliance with any law, regulation or ordinance, or with any order, demand or request of any 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 corporation directly or indirectly controlled by any of them whether or not such order or request is later determined to be invalid.
- (b) The Seller shall not be required to remove any such cause or replace the affected source of supply or facility, and in the event of an actual or anticipated shortage of supply that directly or indirectly prevents the Seller from fulfilling its own requirements as well as those of other buyers and the Customer, the Seller may allocate available quantities of Marine Fuel to itself, the other buyers and the Customer in its absolute discretion.
- (c) In the event that any governmental authority imposes any form of price control, rationing, allocation or other emergency measures on the Seller's sales of Marine Fuel at the port where the Customer desires to take delivery of the Marine Fuel and has contracted with the Seller for the same, the Seller shall have the right to take the following action without recourse to the Customer:
- (i) suspend delivery of any Marine Fuel under the Contract for such periods as the Seller may determine are required to resolve uncertainties raised by such governmental actions, alternatively to cancel such delivery and/or terminate the Contract if the Seller is of the opinion that the period of time required for such uncertainties to be resolved may be indeterminate or unforeseeable. In the event of such termination of the Contract, the Seller shall be relieved of its obligations to perform hereunder; or
  - (ii) allocate such quantities of Marine Fuel to the Customer as the Seller may determine to be appropriate in its absolute discretion and in respect of any shortfall of the quantity contracted for, and the Seller shall be entitled to suspend delivery of such shortfall for such period as the Seller may determine is required to resolve uncertainties raised by such governmental actions or alternatively to cancel any further delivery of such shortfall if the Seller is of the opinion that the period of time required for such uncertainties to be resolved may be indeterminate or unforeseeable, in which event the Seller shall be relieved of any such further obligations to perform under the Contract in respect of this shortfall.
- (d) Where the Seller exercises the right to cancel or suspend any further delivery of such shortfall, the Customer shall only be liable to pay for the quantity delivered and if full payment has already been made by the Customer in respect of the contractual quantity, the Seller shall refund the Customer the value of such shortfall from the contractual price which has been paid.

## 15. Sanctions Compliance

- (a) Without prejudice to any other remedies and rights, the Seller shall have the option immediately to terminate the Contract in full or in part, for the account and risk of the Customer and to charge the Customer the loss, damages and expenses thereby incurred, or take any other measures which the Seller deems appropriate, without any liability on the Seller, if at any time during the performance of this Contract the Seller in its sole discretion has reasonable grounds to believe that the Customer, the Vessel, the charterer of the Vessel, the full or part owner(s)

of the Vessel, any officers of the Vessel, the operator and/or manager of the Vessel or if any other person or entity in any way related to the Contract is subject to any sanction, prohibition, restriction or designation under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union or the United States of America.

## 16. Safety and Environmental Protection

- (a) It shall be the sole responsibility of the Buyer to ensure that the Vessel, its crew and those responsible for its operation and management, observe and comply with all health, safety and environmental laws and regulations with regard to the receipt, handling and use of the Marine Fuel. The Customer warrants that the Vessel is in compliance with all national and international trading and pollution regulations and free of all conditions, deficiencies or defects. The Seller and/or its supplier reserve the right not to commence delivery or to terminate delivery without recourse to the Customer in the event that they deem the environment for delivery of the Marine Fuel to be unsafe.
- (b) In the event of any escape, spill or discharge occurring before, during or after the delivery of the Products, the Customer shall, in addition to any other obligations imposed by law, immediately notify the appropriate governmental authorities and take or arrange whatever action is necessary to respond and clean up such spill or discharge, and pay all costs and expenses in connection therewith. If the Customer fails to take such prompt action, the Seller or its representatives shall be authorised to take such action on behalf of the Customer at the Customer's risk and expense. The Customer shall indemnify and hold the Seller and its representatives harmless against any damages, expenses, claims or liabilities of whatever nature, unless such escape, spill or discharge is proven to be caused solely by the Seller's negligence.

## 17. Law and Jurisdiction

- (a) This Contract shall be governed by the laws of the United States of America ("U.S. law"). U.S. law shall apply with respect to the existence of a maritime lien, regardless of the country in which the Seller takes legal action. Both the Customer and the Seller shall submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia.
- (b) Clause 16 herein is for the sole benefit of the Seller, and the Seller may apply and benefit from any law granting a maritime lien and/or right to arrest the Vessel in any country as provided for herein. Nothing herein shall affect or prejudice the right of the Seller to take any legal action before the courts in any country to pursue the merits of a claim against the Buyer before such courts or to seek an interim measure of protection in order to secure payment of any amount due from the Buyer.
- (c) Should any provision hereof be finally determined to be inconsistent with or contrary to applicable laws, such provisions shall be deemed amended or omitted, but only to the extent necessary to conform with such application laws and this shall not affect any other provision hereof or the validity of the Contract.