

**General Terms and Conditions of Sale for Marine Fuels – We-Refuel LTD latest edition 2024.2**

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## **1 APPLICABILITY**

- 1.1 These General Terms and Conditions of Sale for Marine Fuels (“Terms of Sale”) apply to all offers, quotations, orders, agreements, services and all subsequent contracts of whatever nature, except where expressly agreed in writing otherwise, made by or to or entered into by We-Refuel.
- 1.2 General trading conditions of another party shall not apply and are being rejected explicitly, unless expressly accepted in writing by We-Refuel Ltd.
- 1.3 A Buyer who has entered into an agreement with We-Refuel upon which these Terms of Sale are applicable, agrees to the applicability of these Terms of Sale to future agreements entered into with We-Refuel thereafter for the sale of Marine Fuels.
- 1.4 All offers and quotations submitted by We-Refuel are non-binding upon We-Refuel unless stated otherwise in writing. The acceptance of an offer or quotation by a Buyer or a request to provide Marine Fuels by a Buyer shall only be binding upon We-Refuel if We-Refuel has accepted such in writing and We-Refuel shall only be bound as set out in its written acceptance, or alternatively upon commencement by We-Refuel of the execution of any Marine Fuels Agreement.
- 1.5 These Terms of Sale in conjunction with a Marine Fuels Agreement shall collectively form the Contract and shall contain all agreements, arrangements and stipulations between the Buyer and We-Refuel in respect of the supply of Marine Fuels contemplated herein.
- 1.6 The Contract can only be amended or changed by written agreement of both Buyer and We-Refuel, and any attempt to do otherwise shall be considered null and void.
- 1.7 In the event of any conflict between the documents comprising the Contract, the Fuels Agreement and any amendments to the Fuels Agreement shall be given priority over the Terms of Sale.
- 1.8 The terms and conditions of the Contract shall not be varied by the inclusion of a Buyer’s purchase order number in the Marine Fuels Agreement or Confirmed Nomination, or by any terms and conditions that may be contained in any purchase order or other document issued by the Buyer.

## **2 DEFINITIONS AND INTERPRETATION**

### **2.1 Definitions**

- “Affected Party”** means the party affected by the Trade Restrictions as described in Clause 18.2.
- “Bunker Delivery Note”** means the document provided by We-Refuel after completion of Delivery of the Marine Fuels stating the quantity of Marine Fuels measured in accordance with Clause 5.3.
- “Buyer”** means any party asking offers or quotations for ordering Marine Fuels and any party on whose behalf the said offers, quotations, orders and agreements, such as the Marine Fuels Agreement, have been concluded.

<b>“Confirmed Nomination”</b>	means the written confirmation from We-Refuel of a nomination by Buyer under a Marine Term Fuel Agreement, as described in Clause 6.3.
<b>“Contract”</b>	means collectively a Marine Fuels Agreement and these Terms of Sale.
<b>“Control”</b>	means, with respect to the relevant person, (i) the direct or indirect ownership or control of more than 50% (fifty per cent) of the (a) ownership interests or (b) voting power at the general meeting or a similar body, of that person, or (ii) the right or ability to (a) appoint or remove or (b) direct the appointment or removal of, such number of the members of the management board or a similar body of that person with the decisive voting power in such body.
<b>“Days”</b>	means a calendar day.
<b>“Default Events”</b>	means the events described in Clause 20.1 which allow We-Refuel to terminate the Contract immediately or immediately suspend delivery under the Contract until further notice.
<b>“Delivery”</b>	means the delivery of Marine Fuels to the nominated Receiving Vessel by or on behalf of We-Refuel by whatever means to the permanent intake connections of the relevant Receiving Vessel and delivery is completed when the Marine Fuels pass the flange or valve (whichever is sooner) of the Receiving Vessel that is used to receive the Marine Fuels.
<b>“Delivery Window”</b>	means the date range designated in the Marine Spot Fuel Agreement or Confirmed Nomination (as applicable) which shall begin on the ETA and end on the ETD.
<b>“ETA”</b>	means the estimated date of arrival of the Receiving Vessel requiring the delivery of Marine Fuels.
<b>“ETD”</b>	means the estimated date of departure of the Receiving Vessel requiring the delivery of Marine Fuels.
<b>“HSE Data”</b>	means the Safety Data Sheets provided by We-Refuel and the health, safety and environmental information which is jointly provided by the Buyer to its employees, users and customers.
<b>“Land Tank Delivery Process”</b>	means delivery of Marine Fuels that have been stored in a land tank, directly to the nominated Receiving Vessel.
<b>“Marine Fuels”</b>	means (bio)distillate marine fuels, (bio)residual marine fuels, low/non carbon marine fuels and or any other (bio)fuels that could contain fossil, shale, biomass/fuels, organic, synthetic and/or renewable sources/compounds that will be solely used onboard the Receiving Vessel whilst engaged on a maritime voyage.

- “Marine Fuels Agreement”** means either a Marine Term Fuel Agreement or a Marine Spot Fuel Agreement.
- “Marine Spot Fuel Agreement”** means an agreement entered into between the Buyer and We-Refuel pursuant to which the Buyer makes a single purchase of Marine Fuels from We-Refuel.
- “Marine Term Fuel Agreement”** means an agreement entered into between the Buyer and We-Refuel pursuant to which the Buyer purchases Marine Fuels from We-Refuel over a period of time.
- “Receiving Vessel”** means the vessel which is nominated and used for receiving Marine Fuels.
- “Terms of Sale”** means these General Terms and Conditions of Sale for Marine Fuels.
- “Trade Restrictions”** means the actions, such as sanctions, controls and laws as described in Clause 18.1(b).
- “We-Refuel”** means We-Refuel Ltd.

## 2.2 Interpretation

2.2.1 Unless the context otherwise requires, the following rules of interpretation shall apply to this Terms of Sale:

- (i) words in the singular include the plural and in the plural include the singular;
- (ii) use of any gender includes the other genders and neuter;
- (iii) references to Clauses are to clauses of this Terms of Sale;
- (iv) references to a "person" shall be construed so as to include:
  - (A) any individual, firm, body corporate, authority, joint venture, association, undertaking, partnership or limited partnership (whether or not having separate legal personality); and
  - (B) a reference to the "successors", "permitted transferees" and "permitted assignees" of any of the same;
- (v) references to "written" or "writing" shall include all data in written form whether represented in hand-written, facsimile, printed or email (but excluding short-message-service ("SMS") and other electronic communications);
- (vi) references to any English legal term for any action, remedy, method of judicial proceedings, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction (other than England) shall be treated as a reference to any analogous term in that jurisdiction; and

2.2.2 The table of contents, headings and titles are for convenience only and do not affect the interpretation of this Agreement.

### **3 PRICE**

3.1 The price of the Marine Fuels shall be the amount expressed per unit, M/Tons, cub meters or liters and in the currency stated in the Marine Fuels Agreement for each grade of Marine Fuels. The price shall be valid for the Delivery Window. We-Refuel's quotations and invoice values are based on a so-called 0-tariff for excise duties and VAT, therefore any price will be increased when invoiced with applicable tariffs, excise duties, other duties, levies, VAT and additional taxes (as applicable).

3.2 In addition to the price quoted by We-Refuel and stated in the Marine Fuels Agreement, the Buyer shall pay any and all additional charges associated with the delivery, including but not limited to:

- (a) wharfage charges, barging charges including demurrage or other similar charges;
- (b) mooring charges or port duties incurred by We-Refuel in relation to the Marine Fuels Agreement;
- (c) any overtime charges incurred if delivery takes place outside of regular working days and hours at the relevant port of delivery, provided that such delivery is permitted by port regulations; and
- (d) duties, taxes, charges, freights or other costs in the country where delivery takes place which We-Refuel incurs in relation to the execution of the Marine Fuels Agreement. Where the Marine Fuels are supplied without payment by the Buyer of duties and taxes (which shall include, without limitation, customs duty, excise duty, VAT, GST or sales tax), the Buyer shall indemnify We-Refuel against any duties, taxes, charges, costs, liability, interest and penalties that may be incurred by We-Refuel, at any time, as a result of the failure of the Buyer, or the Receiving Vessel, to qualify for such treatment, or the failure of the Buyer to provide any necessary proof or other supporting documentation, within the requisite time period specified by the applicable law, regulation or procedure.

3.3 If the Buyer or the Receiving Vessel fails to take delivery within the Delivery Window, We-Refuel can at its sole discretion choose to:

- (a) deliver to the Buyer on a date of We-Refuel's choice at the price stated in the Marine Fuels Agreement plus compensation for suffered damages (including but not limited to lost profit, Marine Fuels storage and demurrage) and any additional costs incurred by We-Refuel in delivering outside the Delivery Window; or
- (b) accept a new Delivery Window as the basis of a new Contract for which a new price can be agreed upon with the Buyer; or
- (c) terminate the Contract and the Buyer shall pay to We-Refuel any costs resulting from the Buyer's cancellation or failure to take delivery in the Delivery Window, including without limitation, the lost fuel value and costs to return the Marine Fuels to storage including associated demurrage. For completeness sake it is noted that the option as

stated in art. 3.3(a) shall also be effective if We-Refuel and Buyer cannot agree upon a new Contract or price, as mentioned in art. 3.3(b) of these Terms of Sale.

#### **4 GRADES AND QUALITY OF MARINE FUELS**

- 4.1 The Marine Fuels supplied under these Terms of Sale shall be We-Refuel's commercial grades as determined in accordance with the ISO 8217 edition as set out in the Marine Fuels Agreement. All standard specifications are subject to quality tolerances as accepted within the reproducibility and repeatability of the applicable test methods described in Table 1 and/or Table 2 of ISO 8217. No other test method(s) and/or test result(s), which are not described and/or specified in Table 1 and/or Table 2 of ISO 8217 (GC-MS, FTIR, WAT, WDT and/or others) will be accepted or valid, unless such test method is described and/or specified as a test method(s) within Table 1 and/or Table 2 of ISO 8217. Any deviation of the Marine Fuels within such quality tolerances are accepted under the Marine Fuels Agreement and do not give rise to any compensation to or claim by Buyer. The delivered Marine Fuel(s) could contain fossil, shale, biomass/fuels, organic, synthetic and/or renewable sources/compounds.
- 4.2 The Buyer shall be solely responsible for nominating to We-Refuel the grade of Marine Fuels for each delivery from the range of Marine Fuels supplied by We-Refuel at the location in question.
- 4.3 The Buyer hereby warrants that it has not relied upon any representations made by or on behalf of We-Refuel but has relied exclusively on its own knowledge and judgement as to the fitness for its purpose of the Marine Fuels nominated. We-Refuel cannot be held responsible for any (incorrect) nomination by Buyer and We-Refuel doesn't provide any advice with respect to such nomination.
- 4.4 The quality of the Marine Fuels shall be determined in accordance with Clause 10 below and according the parameters and test methods as described in Table 1 and/or Table 2 of ISO 8217.
- 4.5 There are no conditions, guarantees or warranties, express or implied, by common law, statute, or otherwise as to the satisfactory quality, merchantability, fitness, durability or suitability of the Marine Fuel for any particular purpose or otherwise, which extend beyond the description as set out in the Contract.

#### **5 QUANTITY OF MARINE FUELS**

- 5.1 The quantities of Marine Fuels ordered by the Buyer for delivery shall be those quantities stated in the Marine Fuels Agreement, subject to confirmation of supply by We-Refuel as stated in Clause 6.4 or Clause 7.3. Any attempt to unilaterally change or modify the quantity of Marine Fuels to be delivered under the Marine Spot Fuels Agreement or Confirmed Nomination (whichever is applicable) by a representative of the Receiving Vessel prior to or during delivery shall be prohibited.
- 5.2 The quantity of Marine Fuels delivered shall be the quantity specified in the Marine Spot Fuel Agreement or in the Confirmed Nomination (whichever is applicable) with a tolerance at We-Refuel's option of +/- 5 %. Adjustment in volume owing to differences in temperature shall be made in accordance with the abridged volume correction table of the ASTM-IP Petroleum Measurement Tables.

- 5.3 The quantity of Marine Fuels delivered shall be determined by the gauge(s), (Mass) Flow Meter(s) and/or measurements of We-Refuel's vessels/barge tank(s), shore tank(s) road tank truck(s) or other means of Delivery, effecting Delivery and the Buyer (or its representative), at its own expense, shall have the right (and is invited) to witness such measurements. The Buyer will be charged for Marine Fuels on the basis of these measurements and determination of quantity shall be made solely by We-Refuel. All such measurements made by We-Refuel, with or without presence of the Buyer (or its representative) shall be final and binding and shall be deemed to be conclusive proof of the amount of Marine Fuels delivered to Buyer. We-Refuel shall record the quantity of fuel delivered according such measurements on the Bunker Delivery Note.

## **6 NOMINATION OF VESSELS UNDER MARINE TERM FUEL AGREEMENT**

- 6.1 Under a Marine Term Fuel Agreement, vessels requiring delivery of Marine Fuels shall be nominated no later than seven (7) Days prior to the arrival of the Receiving Vessel at the supply port. The Buyer shall send We-Refuel a notice specifying the following:

- (a) vessel name and IMO number;
- (b) supply port;
- (c) ETA and ETD of the Receiving Vessel at the supply port;
- (d) the name and contact details of the vessel agents;
- (e) the grade(s) (as referred to in Clause 4);
- (f) quantities and method of delivery of Marine Fuels required.

In such notice, the Buyer shall also advise We-Refuel 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 Fuels.

- 6.2 Notwithstanding anything to the contrary express or implied elsewhere in the Contract, We-Refuel shall have the right at We-Refuel's sole discretion to decline the nomination of any vessel notified by the Buyer.

- 6.3 No vessel shall be deemed to have been nominated unless and until all information as set out in Clause 6.1 has been provided and until We-Refuel has confirmed the nomination by sending a notice in writing (a "**Confirmed Nomination**") to the Buyer within forty-eight (48) hours of Buyer's notice. The Confirmation Nomination will be deemed to include the information as provided by Buyer in accordance with Clause 6.1.

- 6.4 Upon the issue of We-Refuel's Confirmed Nomination, the Receiving Vessel shall be treated as if the nomination had been specified in the Marine Term Fuel Agreement.

## **7 NOMINATION OF VESSELS UNDER A MARINE SPOT FUEL AGREEMENT**

- 7.1 Under a Marine Spot Fuel Agreement *inter alia* the following shall be specified:

- (a) the vessel name and IMO number;
- (b) supply port;

- (c) ETA and ETD of the vessel at the supply port;
- (d) the grade(s) (as referred to in Clause 4) and maximum sulphur content (either as agreed or as per the applicable regulations of fuel grade);
- (e) the quantity and method of Delivery;
- (f) 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 Fuels.

7.2 Prior to the issue of that Marine Spot Fuel Agreement the Buyer shall have provided We-Refuel with the name and contact details of the vessel's agent or any other person(s) authorized to represent the Receiving Vessel.

7.3 The Receiving Vessel nomination shall be deemed confirmed by We-Refuel issuing the Marine Spot Fuel Agreement.

## **8 DELIVERY OF MARINE FUELS**

8.1 The Marine Fuels shall be Delivered to the Receiving Vessel at the port or place stated in the Marine Spot Fuel Agreement or Confirmed Nomination (whichever is applicable) and such Delivery shall be subject to the regulations of such port or place.

8.1.1 We-Refuel shall not be liable for any inability to Deliver on public/dock holidays and the Buyer shall accept actual Delivery of the Marine Fuels at the permanent intake connections of the relevant Receiving Vessel at wharf or marine loading terminal at the port of delivery or, as the case may be, alongside barges, whichever is the earlier.

8.1.2 Receiving Vessels shall be supplied as promptly as circumstances permit. Supply within the contract is not guaranteed and We-Refuel cannot guarantee timely Delivery, but We-Refuel will use its commercially reasonable efforts to Deliver within the Delivery Window.

8.1.3 We-Refuel shall not be liable for demurrage or for any losses due to congestion at We-Refuel's storage or delivery facilities or due to any prior commitment or unforeseen inflicted delay of available transportation. We-Refuel can only be held liable for damages due to late Delivery, when after a renewed and explicit notice from Buyer issued in writing after the end of the Delivery Window, We-refuel fails to effect Delivery within a reasonable period of time.

8.2 The Receiving Vessel's ETA and ETD shall be as stated in the Marine Spot Fuel Agreement or Confirmed Nomination (whichever is applicable) and this defines the Delivery Window. We-Refuel shall use its reasonable efforts but 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.

8.3 The Buyer, or its agent at the port or place of delivery, shall give We-Refuel, or its representatives at the port or place of delivery, a written notice of not less than forty-eight (48) hours (the running of which shall exclude non-working days (i.e. Saturdays, Sundays and public/dock holidays)) before arrival of the Receiving Vessel, indicating the exact location at the port of delivery, the time within the Delivery Window that the Delivery is required and confirmation of the receiving rates, grades and quantities of Marine Fuels that are required and if the MARPOL sample is to be drawn in accordance with the MARPOL guidelines.



- 8.3.1 This notice must be received by We-Refuel or its representative during its regular working hours and business days.
- 8.3.2 If the Buyer or its agent for whatever reason fails to make this notice and/or fails to accept the Marine Fuels in full or in part at the place or time designated for Delivery, We-Refuel shall, without prejudice to all its other rights, be at liberty to either dispose or store the Marine Fuels or take any other action which it may deem appropriate, such as at We-Refuel's sole discretion, leaving unaffected all We-Refuel's rights as set out in the Contract (including the right to claim damages) and We-Refuel shall not be liable for any resulting delay in Delivery and the Buyer shall reimburse any costs incurred by We-Refuel and lost profits related to the missed Delivery of Marine Fuels.
- 8.4 On receipt of the notice referred to in Clause 8.3, We-Refuel or its representative shall, unless explicitly otherwise agreed, upon specific written request provide the agent or the Buyer with an estimate of the date and time of the Delivery.
- 8.5 The Buyer warrants that the Receiving Vessel can safely receive Marine Fuels and shall ensure that the Receiving Vessel has all certificates, knowledge and experience required to comply with all relevant regulations relating to Delivery of the Marine Fuels at the port or place of delivery. The Buyer (or its representative) shall, by completion of We-Refuel's bunker requisition form prior to Delivery of the Marine Fuels:
- (a) confirm the quantity and grade of Marine Fuels to be supplied and, if more than one grade of fuel is to be supplied, the order in which the grades are to be supplied; and
  - (b) inform the maximum allowable pumping rate and pressure that the Receiving Vessel requires and agree on communication and emergency shutdown procedures; and
  - (c) advise of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of, and particular to, the Receiving Vessel and which might adversely affect the delivery of the Marine Fuels; and
  - (d) provide either, a free side of the Receiving Vessel for barge deliveries or a prompt and safe passage between public roadway and the actual place of delivery for road vehicles.
- 8.6 The Buyer and Receiving Vessel shall render all necessary assistance which may reasonably be required to moor or unmoor the supply vessel. The Buyer and Receiving Vessel shall be responsible for all connections and disconnections between the delivery hose(s) and the Receiving Vessel's manifold and shall, under supervision of the officer(s) of the Receiving Vessel, require the hose(s) to be properly secured and connected to the Receiving Vessel's manifold prior to the commencement of delivery of Marine Fuels. If in We-Refuel's opinion the Receiving Vessel cannot safely receive Marine Fuels, then We-Refuel has the option to either suspend Delivery until, in We-Refuel's opinion, the Receiving Vessel can safely do so or terminate the Delivery or the Contract in which case Buyer is required to reimburse all costs related thereto incurred by or on behalf of We-Refuel.
- 8.7 The Receiving Vessel shall provide sufficient segregated tankage to receive the quantity of Marine Fuels stated in the Marine Spot Fuel Agreement or Confirmed Nomination (whichever is applicable). The Buyer shall pay any cost or expenses incurred by We-Refuel as a result of the Buyer failing to take the specified quantity.

- 8.8 We-Refuel shall not be responsible for on-board safety or storage failures that may affect the Delivery and We-Refuel shall have the right to recover from the Buyer any resulting cost incurred. In the event of delay in the use of Delivery or barging facilities due to the Buyer or to the Receiving Vessel for any reason whatsoever, the Buyer shall reimburse We-Refuel for any expenses, including demurrage, incurred due to such delay.
- 8.9 We-Refuel reserves the right to have the Delivery made by a third party supplier if for any reason delivery cannot be made from its own supply; however, We-Refuel shall remain responsible for the performance of the Contract.
- 8.10 The Bunker Delivery Note will be handed to the Receiving Vessel's representative. An electronic copy may be forwarded to the Buyer by telefax, email or in hardcopy by mail at Buyer's request. Failure to produce the second copy does not exempt Buyer from his obligation to pay the invoiced amount in full within the agreed term.

## **9 SPILLAGE DURING DELIVERY OF MARINE FUELS**

- 9.1 If a spill occurs during delivery of Marine Fuels, the Buyer shall promptly take all action reasonably necessary to remove the spillage and mitigate its effect. If the Buyer fails to promptly take such action, We-Refuel may, at its option, take such measures it considers to be necessary or desirable in connection with the removal of the spillage and the mitigation of its effects by employing its own resources or contracting with others.
- 9.2 The Buyer shall promptly provide We-Refuel with any requested documents and information regarding a spill including the Receiving Vessel's spill contingency plan or any other applicable program for the prevention or mitigation of pollution as required by any applicable laws or regulations.
- 9.3 Without prejudice to the first sentence of Clause 9.1, We-Refuel shall indemnify the Buyer against all liability, costs and expenses (including but not limited to those incurred by the Buyer in accordance with this Clause 9) arising from any spillage to the extent that such spillage has been caused or contributed to by the negligence of We-Refuel or failure of or defect in We-Refuel's equipment.
- 9.4 The Buyer shall indemnify We-Refuel against all liability, costs and expenses (including but not limited to those incurred by We-Refuel in accordance with the provisions of this Clause 9) arising from any spillage, except to the extent that such spillage has been caused by the negligence of We-Refuel or failure of or defect in We-Refuel's equipment.

## **10 SAMPLING OF QUALITY**

- 10.1 Unless quality shall compulsorily be determined at the Receiving Vessel's manifold (but only to the extent that this is the case and such is mutually agreed between parties or such is required on the basis of mandatory laws or regulations), sampling by We-Refuel shall be accomplished during the Marine Fuels delivery process as set out in this Clause 10. We-Refuel or its representative shall take two (2) sample sets consisting of at least four (4) samples of each grade of Marine Fuels delivered. However, in case of a Land Tank Delivery Process only one sample shall be taken in accordance Clause 10.4.
- 10.2 The first sample set shall be taken during or after loading the means of supply with Marine Fuels directly from the loaded bunkers to be Delivered. This first sample set shall be taken by a third party or by representatives of We-Refuel, up to the sole discretion of We-Refuel, by

means of a so-called 'continuous drip sample' or 'composite sample' of the bunkers to be delivered to the Receiving Vessel(s).

- 10.3 The second sample set shall be taken from We-Refuel's means of supply during the Delivery to the Receiving Vessel. The Buyer shall have the right (and is invited) to have its representative witness the drawing of the second sample set. This second sample set taken from the means of supply during to the actual Delivery shall be regarded as the relevant sample and the analysis thereof will be binding upon We-Refuel and Buyer.
- 10.4 In case of a Land Tank Delivery Process the only and relevant samples shall be taken directly from the land tank containing the Marine Fuels.
- 10.5 The aforementioned samples shall be securely sealed and labelled by We-Refuel and at least two (2) of these representative samples per sample set shall be given to the Buyer, one (1) of which is for MARPOL compliance purposes only. Two (2) samples shall be retained by We-Refuel or its representative for ninety (90) Days following the date of Delivery in a safe place for subsequent verification of the quality thereof, if required, after which these samples may be destroyed.
- 10.6 In case the Buyer takes a (third) sample set after the Marine Fuels have passed the flange or valve (whichever is sooner) of the Receiving Vessel, but during Delivery of the Marine Fuels into the Receiving Vessel, the Buyer shall invite We-Refuel to have its representative witness the drawing of the third sample set and two of these samples will be given to We-Refuel. This sample will not be binding between the Parties unless clause 10.7 applies.
- 10.7 In case of any defect with the sampling equipment and/or a human error at the above mentioned moments for taking the relevant sample We-Refuel may at its sole discretion appoint another sample (of the sample sets to be taken in accordance with this Clause 10 ) as the relevant and binding sample.
- 10.8 If the Buyer issues a claim regarding the quality of the Marine Fuels in accordance with Clause 11.2 below, and provided the claim is legitimate in accordance with ISO 8217 parameters described in Table 1 and/or Table 2, one of the two of We-Refuel's retained relevant samples of the applicable and binding sample set (in accordance with this Clause 10) shall be submitted by We-Refuel for relevant analysis on the alleged off-spec parameter(s) only within 30 days after date of delivery to a local independent accredited laboratory. In case Buyer declines to request in performing this final and binding counter analysis, on the alleged off-spec parameter(s) only within 30 days after date of delivery, such request shall be deemed waived and forever barred and will close this alleged off-spec complaint/claim accordingly.
- 10.8.1 The independent laboratory's analysis shall, absent manifest error or fraud, be conclusive and final and binding on both Buyer and We-Refuel as to the quality of the Marine Fuels delivered. The analysis shall be established by tests methods in accordance with ISO 8217 Table 1 and/or Table 2 parameters and/or any other tests method as agreed to between the Buyer and We-Refuel in writing. Unless otherwise agreed, all related costs of the counter analysis shall be for Buyers account.
- 10.8.2 Any costs 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.

- 10.9 Samples other than those drawn by We-Refuel or its representative shall not be admissible for the purposes of determining quality, even if such samples are signed by an agent or representative of We-Refuel, unless this has been expressly agreed in writing in the Marine Fuels Agreement or in case Clause 10.7 is applicable.
- 10.10 In case of de-bunkering the quality determination of the de-bunkered product will only take place by sampling the respective vessels/barge tank(s) in which the product has been loaded. The sampling procedure will be performed by an independent, but mutual agreed, surveyor by means of composite sampling onboard of the receiving barge.

## **11 COMPLAINTS**

- 11.1 Complaints concerning quantity must be submitted to We-Refuel in the following manner:
- (a) Quantity complaints relating solely to the density of the Marine Fuels delivered shall be submitted fully documented by the Buyer to We-Refuel in writing within fourteen (14) Days of the date of Delivery. Failing to submit this quantity complaint within said period results in any claim being deemed waived and forever barred.
  - (b) Quantity complaints relating to the quantity, other than mentioned under Clause 11.1(a) above, shall be submitted fully documented by the Buyer to We-Refuel at the time of the delivery. Failing to complain upon Delivery, results in any claim from Buyer being deemed completely waived. Such claim is also deemed waived in case Buyer fails to (timely) appoint a representative of Buyer that will and is present with the measurements as mentioned in Clause 5.3.
- 11.2 Complaints concerning quality must be submitted by the Buyer to We-Refuel in writing and fully documented within fourteen (14) Days of the date of Delivery, failing which such claim shall be deemed waived and forever barred. The Buyer shall promptly furnish We-Refuel with the analysis results of the relevant sample taken in accordance with Clause 10 as well as (if applicable, the analysis results of the sample taken by the receiving vessel) and shall provide full supporting evidence of its claim within fourteen (14) Days of Delivery to enable We-Refuel to properly evaluate the claim failing which such claim shall be deemed waived and forever barred. Parties agree that no claim can or shall be submitted in case the sample taken by or from the Receiving Vessel, if applicable, complies with the applicable Table 1 and/or Table 2 parameters as described in the mutual agreed ISO8217 specifications.
- 11.3 Despite the provisions of Clause 4, Buyer shall take all reasonable measures, including retention and/or burning of Marine Fuels in accordance with We-Refuel's instructions, to eliminate or minimize any costs associated with an off-specification or suspected off-specification supply of Marine Fuels.
- 11.4 We-Refuel shall be entitled and the Buyer shall allow, or where the Buyer has chartered the Receiving Vessel, shall obtain the owners' authorization to allow We-Refuel or We-Refuel's agent or representative to board the Receiving Vessel and investigate Buyer's claims of Marine Fuels that were Delivered not being in accordance with the specifications, including but not limited to the inspection of the master's logs and/or the Receiving Vessel's engine record books, and taking copies of these or any documents and allow sampling/sounding of all vessels bunker tanks which We-Refuel considers necessary for its investigations, and We-Refuel or We-Refuel's agent or representative shall have access to the Receiving Vessel's engine spaces. The Buyer shall under no circumstances deny We-Refuel access to such documents and/or refuse copies to be produced or reject sampling/sounding of the bunker

tanks. Failure by Buyer, charterer(s), owner(s) or Receiving Vessels representative officer(s) to allow boarding, access and/or to produce copies of documents and or permission for sampling/sounding of We-Refuel's representative shall void any claim of Buyer and shall constitute to a complete rejection of any claim brought by Buyer.

11.5 Should any claim submitted by Buyer in accordance with this Clause 11 not be settled to Buyer's satisfaction, any legal action against We-Refuel in that respect shall be time-barred unless commenced within six (6) months:

- (i) after the date of Delivery; or
- (ii) in the case of non-delivery, after the date of the end of the Delivery Window.

## 12 LIABILITY

12.1 In case of a claim resulting from a valid complaint, We-Refuel's liability will be limited to:

(a) the removal at the port of Rotterdam, the port of Antwerp or in case agreed by We-Refuel another port, to be agreed between We-Refuel and Buyer of any Marine Fuels delivered which is not in accordance with the Contract and is unsuitable for use onboard the Receiving Vessel, and either:

- (i) the replacement by We-Refuel of such Marine Fuels, or
- (ii) reimbursement of the invoice value of such Marine Fuels (provided that the Marine Fuels were actually returned to We-Refuel); and

(b) those losses, damages, claims or expenses arising from the death or personal injury to any person caused by We-Refuel's sole negligence.

12.2 We-Refuel shall not be liable for any further damages unless these damages are caused by the gross negligence or willful misconduct of We-Refuel. Anyhow will We-Refuel's liability be limited to the amount paid out under the insurance policy or the value of the invoice, whichever the lowest.

12.3 We-Refuel's obligation to compensate the Buyer, as described in Clause 12.1, shall exclude and never include the following:

- (a) indirect, special, punitive, exemplary, incidental or consequential losses, damages or expenses; or
- (b) loss of actual, projected and/or prospective profits, cash, anticipated cost savings, contracts or financial or economic loss and/or loss of opportunity and/or any penalties incurred by Buyer and/or loss of cargo; or
- (c) any demurrage or deviation costs.

12.4 We-Refuel shall not be responsible for any claim arising from commingling, commixtion or confusion of Marine Fuels delivered by We-Refuel with other fuel(s) after Delivery.

12.5 If the Buyer removes Marine Fuels without prior written consent of We-Refuel, all removal and related costs shall be for the Buyer's account. Nothing in the Contract shall in any way limit the Buyer's obligations to mitigate any of its losses suffered in connection with any Delivery.

- 12.6 The Buyer shall indemnify and hold We-Refuel, We-Refuel's affiliates, contractor's used by We-Refuel and the directors, employees and agents of We-Refuel and We-Refuel's affiliates harmless against all claims, liabilities, loss, damage, costs, fines, penalties and expenses whatsoever and by whomsoever brought arising in connection with any Delivery of Marine Fuels except to the extent that such claims, liabilities, loss, damage, costs, fines, penalties and expenses are caused by the gross negligence or willful intent of We-Refuel or We-Refuel's affiliates, or breach by We-Refuel of its obligations under the Contract.
- 12.7 The provisions of Clause 11 and this Clause 12 shall continue to apply notwithstanding the termination or expiry of the Contract for any reason whatsoever.

### **13 TITLE, RISK AND PROPERTY**

- 13.1 The risk of the Marine Fuels delivered under the Contract shall pass to the Buyer as per Delivery.
- 13.2 Title in and to the Marine Fuels Delivered and property rights in and to such Marine Fuels delivered shall be retained by We-Refuel (retention of title) until full payment of these Marine Fuels, previously delivered Marine Fuels or subsequently delivered Marine Fuels, has been received by We-Refuel in full, including all amounts due in connection with the delivery of Marine Fuels.
- 13.3 Until full payment of everything due to We-Refuel, for whatever nature, has been made, the Buyer shall not be entitled to use the Marine Fuels Delivered by We-Refuel other than for the propulsion of the Receiving Vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the Marine Fuels Delivered by We-Refuel to third parties.
- 13.4 In case of breach of Contract by Buyer, We-Refuel is entitled to take back the Marine Fuels without prior judicial intervention, notwithstanding all We-Refuel's other rights under the Contract of the applicable laws. In case the Marine Fuels, in part or in full, are no longer (definable) present, We-Refuel has the right to attach the Receiving Vessel to which the Marine Fuels have been Delivered and/or any other vessels owned, operated or controlled by the Buyer, and/or any other assets of the Buyer wherever situated in the world without prior notice.

### **14 PAYMENT**

- 14.1 Payment for the Delivery of the Marine Fuels and all other charges shall be made in full (without any abatement, deduction, set-off or counter claim whatsoever) in cleared funds in EURO's (or such other currency as may be stated in the Marine Fuels Agreement).
- 14.1.1 Unless otherwise established in the Marine Fuels Agreement, payment shall be due with effect from the date of Delivery and shall be made by means of telegraphic transfer, automated credit transfer or electronic transfer of same day funds quoting We-Refuel's invoice number and the Buyer's name to the account specified by We-Refuel in its invoice to the Buyer, value dated no later than twenty-one (21) Days (or such other period as is agreed in the Marine Fuels Agreement) from completion of Delivery. If, however, We-Refuel's bank is closed for business on the last Day of the applicable credit period, the Buyer shall make its payment by the last Day within such credit period when We-Refuel's bank is open for business. All bank charges in respect of such payments shall be for Buyer's account.

- 14.2 Delivery documents may be provided to the Buyer if requested but payment shall not be conditional upon the Buyer's receipt of such documents.
- 14.2.1 The Buyer shall notify (or shall instruct its bank to notify) We-Refuel as soon as payment has been made, quoting the date on which payment was made, the amount, the name of the bank effecting payment and details of each invoice to which the payment relates. Such notification shall be sent to We-Refuel's contact as stated in the Marine Fuels Agreement.
- 14.2.2 Without limitation to the foregoing or to We-Refuel's other rights under the Contract or otherwise, an interest of 1,5% per month or a part thereof will be due in case of payment later than the 21th Day after Delivery, (or such other period as is agreed in the Marine Fuels Agreement) such interest to run from the due date until the date payment is received in cleared funds by We-Refuel's bank.
- 14.2.3 Should any claim or dispute arise between the Buyer and We-Refuel in relation to any item on an invoice under this Contract, the Buyer shall make payment in full (without any set-off or deduction or compensation) as set out above. The claim or dispute will be resolved separately and if appropriate, We-Refuel will issue a debit or credit note to the Buyer when the dispute is resolved.
- 14.3 We-Refuel's invoice(s) (which may be sent by e-mail, mail or courier) shall be based on the quantity delivered as determined in accordance with Clause 5 and shall contain other applicable charges associated with the delivery and additional cost (including, but not limited to, costs made for due to the Buyer failing fails to accept the Marine Fuels in full or in part at the place or time designated for delivery). Charges to be paid by the Buyer which have been incurred other than in EURO's (and such other currency which is not stated in the Fuels Agreement) shall be converted using a reasonable rate based on the date of delivery. If no rate is available on the date of delivery the last available rate will be used.
- 14.4 Where the applicable pricing mechanism does not allow for the preparation of a final invoice prior to the payment due date, We-Refuel may issue and the Buyer shall make payment against a provisional invoice. The provisional invoice shall be based upon:
- (a) the pricing information available to We-Refuel at the time it issues such provisional invoice; and/or
  - (b) the mean of any minimum or maximum quantity specified in the Fuels Agreement. Payment of any balance due by either party to the other shall be made immediately upon receipt of We-Refuel's final invoice which shall be prepared as soon as practicable after all the relevant pricing and/or quantity information becomes available to We-Refuel.
- 14.5 If, in the sole opinion of We-Refuel, the Buyer's credit is deemed to be impaired or unsatisfactory; and/or We-Refuel's credit risk towards the Buyer will exceed We-Refuel's internal credit limit (which can be amended by We-Refuel at any time), We-Refuel may (without prejudice to its other rights) require the Buyer at We-Refuel's option to pay cash before delivery of any future deliveries of Marine Fuel and/or to provide security satisfactory to We-Refuel (which can cover both future deliveries and deliveries made but not yet paid for) and/or to effect immediate payment of any outstanding amount due to We-Refuel in respect of any other delivery of Marine Fuels by We-Refuel to the Buyer. In the event of failure by the Buyer to comply with We-Refuel's requirement We-Refuel shall have no obligation to make

any (future) Delivery and may suspend its obligations or terminate the Contract on giving notice to that effect to the Buyer.

- 14.6 Deliveries of Marine Fuel under the Contract are made not only to the credit of Buyer but also on the faith and credit of the Receiving Vessel which uses the Marine Fuel and it is agreed that We-refuell will have and may assert a lien for the price of the Marine Fuel delivered.

## **15 HEALTH, SAFETY AND THE ENVIRONMENT**

- 15.1 We-Refuel shall provide the Receiving Vessel with Safety Data Sheets appropriate to the grade of Marine Fuels delivered. Buyer shall provide its employees, users and customers with health, safety and environmental information, such information together with the Safety Data Sheets shall hereinafter be jointly referred to as the "HSE Data". Buyer shall ensure that its employees comply fully with all requirements, obligations and recommendations relating to the handling and use of the Marine Fuels delivered hereunder and shall impose upon all of its customers to whom the Marine Fuels are to be supplied the same obligation to comply fully with the requirements, obligations and recommendations of HSE Data.

- 15.2 Except for death or personal injury caused by We-Refuel's negligence, We-Refuel shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of any Marine Fuels.

- 15.3 The Buyer and We-Refuel shall each, at all times, comply with any obligations, requirements or recommendations contained in any law or regulations applicable to such party such as, but not limited to, those related to fire, transportation, handling and storage or spillage or loss of Marine Fuels. Compliance by Buyer with the recommendations in HSE Data shall not excuse the Buyer from its obligations under this Clause 15.3.

- 15.4 The Buyer shall indemnify and keep indemnified We-Refuel against any liability, claim or proceedings whatsoever arising out of or in connection with any failure by the Buyer to comply with its obligations under Clause 9 or this Clause 15.

## **16 FORCE MAJEURE**

- 16.1 In addition to any other relief provided by law, no failure or omission by either Party to comply with any of its obligations under the Contract (save for any obligation to make payment) shall give rise to any claim against that Party, or be deemed to be a breach of contract, insofar as the failure or omission is caused by force majeure, which is defined as any cause not reasonably within the control of that Party, whether or not foreseen, including (without limitation and to the extent that they are not reasonably within the control of the relying Party) such causes as labor 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 anybody 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, pandemics or any act of nature. Any curtailment, failure or cessation of supplies of Marine Fuels from any of We-Refuel's sources of supply (whether in fact sources of supply for the purpose of any Contract or not), provided that such curtailment, failure or cessation is related to a circumstance which is outside the control of We-Refuel, shall be considered as an event of force majeure for the purpose of the Contract.



- 16.2 If by reason of any event of force majeure, either the availability from any of We-Refuel'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 We-Refuel shall be at liberty to withhold, reduce or suspend deliveries under any contract to such extent as We-Refuel may in its absolute discretion think fit and We-Refuel shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers. Any additional quantities which We-Refuel does acquire from other suppliers or from alternative sources may be used by We-Refuel at its complete discretion and need not to be taken into account by We-Refuel for the purpose of determining the extent to which it is to withhold, reduce or suspend deliveries under any contract. 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 We-Refuel shall not be responsible for any additional cost thereby incurred by the Buyer.
- 16.3 We-Refuel 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 We-Refuel in making the relevant supply due to factors which constitute a force majeure event pursuant to Clause 16.1.
- 16.4 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 We-Refuel, each of them may then terminate the Contract, by written notice to the other. Such termination shall not give rise to any liability, compensation or indemnity of any kind. In the case of a Marine Term Fuel Agreement, such termination shall apply only in respect of deliveries at ports affected by the force majeure event.

## **17 JURISDICTION AND LAW**

- 17.1 The Contract shall be governed by and construed in accordance with laws of the English Law (UK). The United Nations Convention on Contracts for the International Sale of Goods of Vienna, 11th April 1980 shall not apply to the Contract and therefore CISG is excluded.
- 17.2 Any dispute arising out of or in connection with this Contract, which cannot be resolved between the Parties, shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced and the proceedings shall take place in English.
- 17.3 The reference shall be to three (3) arbitrators. A 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) days specified. If the other Party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the Party referring the 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 upon both Parties as if he has been appointed by agreement.

17.4 In cases where neither the claim nor any counterclaim exceeds the sum of US \$100,000 the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

17.5 All arbitration awards shall be final and binding on the Parties. By agreeing to arbitration under the LMAA Terms, the Parties undertake to carry out any award immediately and without delay; and the Parties also waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority, insofar as such waiver may be validly made.

## 18 SANCTIONS AND BOYCOTTS

18.1 Notwithstanding anything to the contrary elsewhere in the Contract:

(a) Nothing in the Contract is intended, and nothing herein should be interpreted or construed, to induce or require either party hereto to act in any manner (including failing to take any actions in connection with a transaction) which is inconsistent with, penalized or prohibited under any laws, regulations, decrees, ordinance, order, demand, request, rules or requirements of the United States of America applicable to such party which relate to international boycotts of any type.

(b) Neither Party shall be obliged to perform any obligation otherwise required by the Contract (including without limitation an obligation to (i) perform, deliver, accept, sell, purchase, pay or receive monies to, from, or through a person or entity, or (ii) engage in any other acts) if this would be in violation of, inconsistent with, or expose such party to punitive measure under, any laws, regulations, decrees, ordinances, orders, demands, requests, rules or requirements of the European Union, any EU member state, the United Nations or the United States of America applicable to the parties relating to trade sanctions, foreign trade controls, export controls, non-proliferation, antiterrorism and similar laws (the "**Trade Restrictions**").

18.2 Where any performance by a party would be in violation of, inconsistent with, or expose such party to punitive measures under, the Trade Restrictions, such party (the "**Affected Party**") shall, as soon as reasonably practicable give written notice to the other party of its inability to perform. Once such notice has been given the Affected Party shall be entitled:

(a) immediately to suspend the affected obligation (whether payment or performance) until such time as the Affected Party may lawfully discharge such obligation; and/or

(b) where the inability to discharge the obligation continues (or is reasonably expected to continue) until the end of the contractual time for discharge thereof, to a full release from the affected obligation, provided that where the relevant obligation relates to payment for goods which have already been delivered, the affected payment obligation shall remain suspended (without prejudice to the accrual of any interest on an outstanding payment amount) until such time as the Affected Party may lawfully resume payment; and/or

(c) where the obligation affected is acceptance of the vessel, to require the nominating party to nominate an alternative vessel; in each case without any liability whatsoever (including but not limited to any damages for breach of contract, penalties, costs, fees and expenses).

18.3 Nothing in this Clause 18 shall be taken to limit or prevent the operation, where available under the governing law of the Contract, of any doctrine analogous to the English Common Law doctrine of frustration.

## **19 ANTI-CORRUPTION**

19.1 Buyer and We-Refuel each agree and undertake to the other that in connection with the Contract, they will each respectively comply with all applicable Law(s), rules, regulations, decrees and/or official government orders of the United Kingdom, European Union and the United States of America or any other relevant jurisdiction relating to anti-bribery and anti-money laundering and that they shall each respectively take no action which would subject the other, to fines or penalties under such laws, regulations, rules or requirements.

19.2 Buyer and We-Refuel each represent, warrant and undertake to the other that they shall not, directly or indirectly pay, offer, give or promise to pay or authorize the payment of any monies or the transfer of any financial or other advantage or other things of value to:

- (a) a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
- (b) an officer or employee of a public international organization;
- (c) any person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality of such government or of any public international organization;
- (d) any political party or official thereof, or any candidate for political office;
- (e) any director, officer, employee or agent/representative of an actual or prospective counterparty, supplier or customer of Buyer or We-Refuel; or
- (f) any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities; or
- (g) engage in other acts or transactions;
- (h) in each case if this is in violation of or inconsistent with the anti-bribery or anti-money laundering legislation of any government, including without limitation the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010, the U.K. Anti-Terrorism, Crime and Security Act 2001, the Money Laundering Regulation 2007 and the Proceeds of Crime Act 2002 and the applicable country legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

19.3 In particular, We-Refuel represents and warrants to the Buyer that it has not made any payments or given anything of value to officials, officers or employees of the government of the country in which the Marine Fuels originated or any agency, department or instrumentality

of such government in connection with the Marine Fuels which is the subject of the Contract which would be inconsistent with or contravene any of the above-referenced legislation.

- 19.4 The Buyer or We-Refuel may terminate the Contract forthwith upon written notice to the other at any time, if in their reasonable judgement the other is in breach of any of the above representations, warranties or undertakings.

## **20 TERMINATION**

- 20.1 Notwithstanding anything to the contrary, express or implied herein, We-Refuel, without prejudice to its other rights, may at its sole discretion either terminate the Contract immediately or immediately suspend delivery under the Contract until further notice, on notifying the Buyer either orally (confirming such notification in writing) or by notice in writing, if one of the below Default Events occurs. The following events and circumstances shall constitute "Default Events" with respect to the Buyer:

- (a) The Buyer or its immediate or ultimate parent or the party which has issued any credit support in favor of the Buyer:
- (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
  - (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
  - (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
  - (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and is not withdrawn, dismissed, discharged, stayed or restrained within fifteen (15) Days of the institution or presentation thereof;
  - (v) has a resolution passed for its winding up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
  - (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
  - (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) Days thereafter;
  - (viii) causes or is subject to any event with respect to it, which, under the applicable law(s) of any jurisdiction, has an analogous effect to any of the events specified in sections (1) to (7) above; or
  - (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

- (b) The Buyer commits a material breach of the Contract;
- (c) The Buyer fails to deliver to We-Refuel any credit support complying with the requirements of the Contract within the time set out in Contract;
- (d) The Buyer fails to take Delivery in accordance with the quantity or delivery provisions of the Contract; or
- (e) A change of Control of the Buyer occurs, save where it is a transfer of Control to an entity which is itself subject to the direct or indirect Control of an entity that currently has direct or indirect Control of the Buyer.

20.2 In the case of multiple deliveries under the Contract, notwithstanding anything else to the contrary express or implied elsewhere herein, (but always without prejudice to We-Refuel's other rights at law and under the Contract including, without limitation, We-Refuel's rights under Clauses 14.2.2 14.5 and 14.6) We-Refuel may at its sole discretion either terminate the Contract immediately or immediately suspend delivery under the Contract until further notice, on notifying the Buyer either orally (confirming such notification in writing) or by notice in writing, if the Buyer fails to make any payment due to We-Refuel under the Contract in full and punctually by the due date.

## **21 MISCELLANEOUS**

- 21.1 If any provision of the Contract is declared illegal, invalid or otherwise unenforceable by a court of competent jurisdiction the remainder of such provision and the Contract shall remain in effect to the fullest extent permitted at law.
- 21.2 if the Buyer has not by the expiration of the applicable credit period, or any credit period in any other Contract between We-Refuel and the Buyer, paid any amount due to We-Refuel in respect of any Delivery of Marine Fuels by We-Refuel to the Buyer, We-Refuel, in addition to and without prejudice to any other rights it may have, shall have the right set-off any amounts the Buyer may be owed by We-Refuel and/or an affiliate of We-Refuel up to the amount the Buyer owes the Seller:
- 21.3 A waiver by either Party of any right or remedy or of any breach of the Contract shall be effective only if given in writing and shall in no way preclude or restrict the further exercise of that or any other right or remedy, nor constitute a waiver of any subsequent breach.
- 21.4 Assignment of any right or delegation of any obligation hereunder by the Buyer without We-Refuel's prior written consent shall be void. We-Refuel may assign any of its rights or, delegate or sub-contract any of its obligations hereunder to others, including any affiliate of We-Refuel, however, We-Refuel shall remain responsible for the performance of the Contract. We-Refuels may assign invoices under the contract to financing institutions and partners. Buyers may not assign any rights, title or Maritime Lien of the supply receivables under the contracts to financial institutions, partners or third parties.
- 21.5 The Contract contains the entire Agreement of the Parties and supersedes all prior Agreements whether oral or written with respect to the delivery of Marine Fuels under this Contract and there are no other promises, representations or warranties affecting it. This Contract shall not be modified or amended in any way unless mutually agreed between the Buyer and We-Refuel and evidenced in writing. Each Party warrants that it has not entered

into the Contract in reliance on any representation, whether oral or in writing, which is not set out in the Contract.

- 21.6 If any order shall be placed by an agent for a principal as the Buyer hereunder, then such agent shall be liable not only as agent but also for the performance of all obligations of the principal hereunder.

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