

# **B & L TRANSOIL (HOLDINGS) LIMITED**

## **of Limassol, Cyprus**

### **GENERAL TERMS AND CONDITIONS FOR THE SALE OF MARINE BUNKER FUELS, LUBRICANTS AND OTHER PRODUCTS, EFFECTIVE FROM JANUARY 2013.**

Except as otherwise may be agreed in writing between the Seller to the Buyer, all sales shall be governed by the following conditions.

These General Terms and Conditions ("these Conditions" or "this Agreement") shall form an integral part of any agreement for the sale of Goods and contain the terms which the Seller and the Buyer have agreed upon in relation to such sale of Goods and it is mutually agreed that none of the Parties has been induced to enter into this agreement by a statement or promise which are not contained hereinto. These Conditions have been given to the Buyer or made known to him. In any event, should a Buyer for any reason not have a copy of these Conditions, these are also publicly available at the internet site [www.transoil-holdings.com](http://www.transoil-holdings.com) which the Buyer is deemed to have visited before entering a sale contract. In the event of any conflict between these Conditions and any other agreement, custom or practice, these Conditions shall prevail. These Conditions apply to all offers, quotations, orders, agreements, sales, deliveries, services and all subsequent contracts of whatever nature, except where otherwise has been expressly agreed in writing by the Seller:

#### **1. DEFINITIONS**

1. "Agreement" shall mean the confirmation of bunkers or lubricants and these Conditions.
2. "Buyer" shall mean, jointly and severally, in any event the registered and/or actual owner of the Vessel and (as the case may be) the manager of the Vessel, her demise charterer and any other party which has contracted with the Seller for the particular supply of Goods and is stated as a buyer in the Seller's Nomination Confirmation. The manager of a Vessel shall, unless otherwise advising the Seller in writing before the latter dispatches its Nomination Confirmation, be deemed as acting both for himself and as the agent for the owner of the Vessel. The Buyer warrants that the Seller will have and may assert a maritime lien over the Vessel for the price of any Goods sold and delivered to the Receiving Vessel. If the Agreement is made or negotiated by or through an agent or agents for a principal so that the principal is the Buyer, then that agent or those agents expressly agree with the Seller that they shall be liable not only as agents but also jointly and severally as principals. The agent or agents shall be liable in full, as if they were themselves the principal, and they shall be deemed to be included within the term "Buyer" herein.
3. "Delivery Date" shall mean the date on which the Goods are to be delivered to the Vessel.
4. "Delivery Port" shall mean the port, berth, dock, anchorage, submerged line, single point or single berth mooring facility, off shore location or any other loading or discharge place as may be indicated by the Buyer, at which the Seller agrees to supply the Goods.
5. "Goods" shall mean bunkers (bunker fuel, marine diesel and/or gas oil), marine lubricants and other products purchased by the Buyer in connection with the Vessel.

7. **"Nomination Confirmation"** shall mean the relevant written instrument dispatched by the Seller via courier, fax or e-mail and containing confirmation of the order and the relevant terms of the sale agreement. An order may not be in writing. In any event every order of the Buyer shall be deemed confirmed in the terms of the respective Nomination Confirmation (see 2.3 below).
8. **"Parties"** shall mean the Buyer and the Seller.
9. **"Seller"** shall mean B & L TRANSOIL (HOLDINGS) LTD of Limassol, Cyprus.
10. **"Supplier"** or **"Physical Supplier"** shall mean the person or entity from which the Seller obtains the Goods for resale to the Buyer at the Delivery Port.
11. **"Vessel"** shall mean the Vessel named in the Nomination Confirmation to which the Goods purchased by the Buyer are to be delivered.

## **2. NOMINATIONS / CONFIRMATIONS**

- 2.1 The Buyer shall nominate each individual requirement to the Seller giving full details (such to include: full style of Buyer, Vessel, port, agent's name, approximate date of delivery, grades, quantities in metric tones, together with any other special instructions) and the maximum notice possible. In any case, orders are to reach the Seller, in writing, not less than two (2) working days prior to Vessel's arrival at the Delivery Port.
- 2.2 Should an order be received by the Seller at a shorter notice, the Seller will make any endeavor to arrange prompt delivery but in such cases, without responsibility for any consequent delays to the Vessel.
- 2.3 The Seller's written Nomination Confirmation dispatched by the Seller prior to delivery and which has not been contested in writing by the Buyer by 18:00 hours Cyprus time on the day of such dispatch (if same has been dispatched before 12:00 noon Cyprus time) or by 10:00 a.m. Cyprus time on the next day (if same has been dispatched after such time), or well before the delivery of the Goods to the Vessel, whichever the earliest, shall be conclusive evidence of the order for the Goods placed by the Buyer, the identity of the latter and the price and other details/terms of delivery thereof. The party(ies) stated in the relevant Nomination Confirmation of the Seller as buyer(s) shall be deemed to be the Buyer of the respective Goods on a joint and several basis.
- 2.4 All orders accepted by the Seller, shall be maintained for 2 days from the nominated delivery date, except if otherwise advised in the relevant Nomination Confirmation and the Seller may cancel same thereafter if Goods have not been booked as their price has changed. In any such case, the Buyer shall be liable for all and any costs incurred by the Seller.

## **3. NOTICE OF ARRIVAL TO DELIVERY PORT**

- 3.1 The Buyer must give to the Seller or the Physical Supplier at least two (2) working days notice of the exact time and location at which the Vessel shall be ready to receive the Goods. Notice must be given during the Seller's normal business hours, Monday to Friday inclusive, 08:00 – 18:00 Cyprus time. Notice given outside these hours will be deemed to have been given at 08:00 a.m. on the first working day thereafter.

Furthermore, it is in all circumstances and on all occasions the responsibility and duty of the Buyer to ascertain and where appropriate to comply with:

- a. the precise requirements of the Physical Supplier and any other person, body or authority in respect of the giving of notice of the Vessel's time of arrival at the Delivery Port;
- b. the exact location of the Delivery Port;
- c. any particular requirements to enable delivery of the Goods to be effected as efficaciously as possible.

It is the responsibility and duty of the Buyer to instruct its agent at the Delivery Port to timely liaise with the Physical Supplier so as to ensure compliance with these provisions.

3.2 The Seller shall not be liable for any delay which is caused by any reason whatsoever save for the proven gross negligence of the Seller/its executives or the intensive action thereof. Indicatively only, the Seller shall not be liable for any delay caused by strike, lock out or other actions of its employees or those of the port, refinery, barge, etc., shortage of the Goods, placement of the Vessel on a waiting list, non tendering or tendering of inaccurate/insufficient notices under clause 3.1 hereinabove, weather conditions, bureaucracy, formalities of any kind, etc.

3.3 In any event the Seller shall, under no circumstances, be liable for any loss of hire, income and/or profit or other consequential damages of the Buyer and the total liability of the Seller shall not exceed the proven actual running costs of the Vessel for the period of any delay for which the Seller may be liable (exclusive of any loan/finance servicing costs and any other expenses not directly connected to the actual running of the Vessel).

#### **4. QUANTITY MEASUREMENTS**

4.1 The quantities of Goods delivered shall be determined from the official gauge or meter of the delivery barge or truck or of the shore tank in case of delivery ex wharf. In the event flow meters are used instead of tank gauging, the flow meter readings from the meter fitted on board the delivery bunker barge or bunker tanker or truck or shore tank shall be used for determining the quantity delivered. Once the Vessel's representative or crew have accepted the quantity of the Goods delivered as evidenced by the Vessel's representative's or crew's signature on the respective delivery receipt or delivery note and there is no further written request from the Vessel to the delivery barge or truck prior to the disconnection of the supply hose, the quantity as shown on the delivery receipt or delivery note shall be deemed final and complete and there shall be no further obligation on the Seller and the Buyer shall not have any claims against the Seller for any short delivery. In the case of lubricants, their quantity shall be determined by the signing of the relevant delivery receipt(s) or delivery note(s).

4.2 The Chief Engineer of the Vessel or his representative shall, together with the Supplier's representative, measure and verify the quantities of Goods delivered from the facility from which the delivery is made.

- 4.3** The Buyer shall not be entitled to complain of an incorrect measurement of the Goods delivered when the Chief Engineer of the Vessel or his representative fail or decline to verify the quantities on delivery and has made the relevant complaint in writing thereafter. Therefore, in such case, the measurements of quantities made by the Supplier shall be final, conclusive and binding and the Buyer shall be deemed to have waived any and all claims in regard to the variance.
- 4.4** In respect of the quantity agreed upon, the Seller shall be at liberty to provide, and the Buyer shall accept a variation of 10% from the agreed quantity, with no other consequence than a similar variation to the corresponding value in the invoice of the Seller.
- 4.5** In any event the Buyer is not allowed to mark the delivery receipt or delivery note for bunkers or lubricants. The Buyer has the right to issue a letter of protest stating its complaint. A letter of protest in relation to quantity shall only be valid and admissible if it is made in writing and delivered to the Supplier immediately after the completion of the specific delivery. See also clause 8.10 hereinbelow.

## **5. DELIVERY AND OBLIGATIONS OF THE PARTIES**

Delivery of the Goods to the Vessel shall be deemed completed and the risk of the Goods will pass onto the Buyer as the Goods pass the flange connecting the Seller's delivery facility with the receiving facility provided by the Buyer. Thereafter the Buyer shall assume all risks, including for loss, damage, deterioration, depreciation, evaporation or shrinkage as to the Goods delivered. However, the ownership of the Goods shall remain with the Seller and shall pass to the Buyer only after the sale price and any additional charges related to the sale and delivery which are due and payable by the Buyer shall have been fully paid (see clause 8 below). Connection and disconnection of delivery hoses are at the sole risk of the Buyer. Any deliveries are subject to weather permitting, vessels' priority, if any, and working hours. If the Vessel arrives out of working hours, unless otherwise agreed, all extra costs are for Buyer's account. Working hours are those indicated in the local port regulations; Seller/Supplier shall not be liable for any loss or demurrage due to congestion of the terminal or to lack of availability of barges for the Goods to be delivered or to barge's pumping rate in supplying the Goods. Deliveries off shore are in any case also subject to the delivering barge's captain confirmation that weather conditions permit delivery in conformity to port regulations on off shore bunkering. In case the Goods cannot be delivered because of the Port Authority regulations or the barge's captain refusal, Seller/Supplier will not be responsible for non-delivery or delay in the delivery of the Goods.

The Seller shall:

- i)** make the delivery timely subject to the availability of the particular Goods shown in the Nomination Confirmation and the availability of the facilities and means of delivery of each respective Supplier.
- ii)** make the delivery during normal working hours, prevailing at the Delivery Port, and in one or more consignments and by such means as the Supplier deems appropriate.
- iii)** in case it realizes that, at any time and for any reason beyond its control, there may be a shortage of Goods at the Delivery Port, allocate the available Goods among all its Buyers in a manner as the Seller may decide and in its absolute discretion. The Seller shall not be required to deliver

**Goods in respect of which a government or port or other permit is required and has not been obtained by the Buyer.**

**The Buyer:**

- i) shall be responsible for obtaining all necessary permits, licenses and approvals required to enable the Supplier to execute the delivery.**
- ii) certifies that the Delivery point shall be at a place permitted by the port regulations or authorities concerned.**
- iii) accepts and agrees that, subject to the availability of the Goods, the availability of facilities at the Delivery Port and the Buyer providing the required notices, the Supplier will use its best endeavours to ensure that the Goods will be delivered promptly upon the Vessel's arrival but the Seller/Supplier shall not be responsible for any loss, expense, damage, demurrage, detention or increased costs incurred in consequence of the Vessel not being supplied promptly or otherwise being delayed or detained or increased costs incurred in consequence of the Vessel not being supplied promptly or otherwise being delayed or restrained for any reason whatsoever.**
- iv) shall at its own expense provide a clear and safe berth or safe anchorage for the bunker barge or bunker tanker to proceed and remain safely alongside the Vessel and shall provide all necessary facilities and assistance required to effect delivery. The Buyer agrees to pay and indemnify the Seller / Supplier against all claims and expenses in respect of any loss, damage or delay caused by the Vessel to the delivering bunker barge or bunker tanker.**
- v) shall assist in the safe mooring of the bunker barge or bunker tanker and make connection/disconnection between the delivery hoses or the pipelines and the intake pipe of the Vessel. The Buyer shall render all necessary assistance and provide sufficient tank space and equipment to promptly receive each and every consignment of the Goods. It is the Buyer's and the Vessel's responsibility to ensure that the Goods are received at a safe rate and pressure and that all receiving equipment utilized is fully functional, oil tight, and in good working order and condition and in every way fit to receive the Goods safely.**
- vi) shall ascertain and guarantees that Vessel's tanks are clean and cargo worthy under all respects at the time of delivery.**
- vii) shall verify that bunkers which may be already onboard are consistent with those ordered to and delivered by the Seller. Seller/Supplier not to be liable or in any way responsible for any problems due to the incompatibility between the Goods delivered and quantities pre-existing on the Vessel.**
- viii) shall communicate to Seller/Supplier the exact time of delivery of the Goods. The failure by the Buyer to give such communication shall release the Seller/Supplier of their obligation to deliver the Goods and the relevant order shall be deemed cancelled. With regards to Buyer's request for information on the Delivery Port, the Seller/Supplier shall use best endeavours to obtain and provide the information requested. Whilst every care will be taken by the Seller/Supplier that such information is accurate and up to date, it is the Buyer's responsibility to countercheck the accuracy of any information provided and such information is furnished to**

**the Buyers on the strict understanding that it is not a contractual representation and that no responsibility of whatsoever nature will attach to the Seller for its accuracy or completeness.**

- ix) acknowledges and accepts that in event the Vessel arrives earlier or later than the date of delivery as stated in the Nomination Confirmation or she is unable or refuses to receive the Goods, the Goods will be delivered on a best endeavour basis. The Seller/Supplier being under no obligation whatsoever to effect prompt delivery and any guarantee or warranty given expressly or impliedly as to prompt delivery shall be expressly excluded. Seller/Supplier reserve the right to claim from the Buyer and the Vessel all losses, additional expenses and charges arising there from including, without limitation, demurrage at Supplier's established rates and any increase in the price of the Goods.**
- x) shall take prompt delivery of the Goods. Buyer to indemnify Seller/Supplier for all costs and expenses of barge demurrage or truck overtime due to its delay in taking delivery.**

## **6. QUALITY AND SAMPLING**

- 6.1 The quality of the Goods shall be that generally offered and available to Seller at the Delivery Port for similar use. It is the sole responsibility of the Buyer to ensure that the Goods tendered for delivery are those that are required by the Vessel and are delivered into the appropriate tanks of the Vessel.**
- 6.2 In case a particular grade is not available, the Seller shall discharge its obligations by supplying another similar product or one of another brand name, provided that such substitute product is suitable for the known purposes of the Buyer.**
- 6.3 Where standard specifications are given, tolerance of 5% in quality are to be accepted by the Buyer without any liability on the part of the Seller. Moreover, local specifications supersede any other specifications which may be agreed to by the Seller in good faith.**
- 6.4 In case where the Buyer mixes the Goods with other products existing in the tanks of the Vessel, no quality claims shall be made or allowed against the Seller.**
- 6.5 Representative official and binding samples of the bunkers supplied are those only taken at delivering barge's manifold/hose connection during the delivery by dripping method. Three (3) such samples shall be taken and sealed/signed/stamped by Supplier's and Buyer's representatives (in the latter case by an officer of the Vessel); one to be kept by the Buyer, one for Marpol for fuel oil, and one by the Supplier/Seller.**
- 6.6 No complaint as to the quality or the quantity of the Goods nor any claim in relation thereto shall be admissible unless notified to the Seller in writing within fourteen (14) running days from the date of delivery, such notification to include (otherwise it will be invalid) the alleged deficiency and the description of any damage caused. Following the lapsing of the said fourteen (14) days all quality and quantity claims relating to the particular delivery shall be inadmissible as groundless and in any event time-barred.**
- 6.7 In case of a dispute as to quality the only conclusive evidence/proof shall be the result of the joint (between Seller and Buyer) analysis of the aforesaid**

official samples (sealed, signed and stamped by both parties) which will take place at the port of supply at a mutually accepted first class laboratory.

- 6.8 Clause 4.5 hereinabove applies, mutatis mutandis, in case where the Buyer alleges any issue relevant to the quality of the Goods.

## **7. PRICES**

- 7.1 The price for the Goods is that stated in the Nomination Confirmation. In the event that the price specified in the Nomination Confirmation is related to a posted price, then the actual price charged and payable shall be based on the posted price ruling on the Delivery Date at the Delivery Port.
- 7.2 The Buyer agrees to pay for any changes raised in respect of taxes, freight, barge, vehicle, wagon or clean up costs including overtime or other like payments; insurance; pilotage; port dues and any and all other like costs and expenses incurred by or charged to the Seller or the Physical Supplier. Such charges, costs and expenses will be passed on to the Buyer at the rates charged to the Seller as and when they are advised to the Seller and together with the price of the Goods shall for all purposes constitute the total price due from the Buyer to the Seller for the Goods supplied.
- 7.3 The prices quoted for any deliver of Goods, unless otherwise stated in any written quotation or confirmation of the Seller, are:
- (a) valid only for the date(s) of the expected delivery of the Goods as same appear(s) in the relevant quotation or confirmation or -in the lack thereof- as provided by the Buyer and agreed by the Seller. Outside such date(s), the Seller shall notify in writing the Buyer of the availability or not of the Goods and the new price thereof.
  - (b) wharfage, barging and/or pipeline dues (as may be applicable at the place of delivery), overtime, any environmental surcharges, as well as any and all taxes or other charges imposed on any Goods shall be paid extra by the Buyer together with the price of the Goods.
  - (c) Any increase in the prices of the Goods following agreement of such price and before delivery, due to the change of the legislation or of the refinery prices or of the market conditions, shall be added to the price and paid by the Buyer to the Seller together with the original price.

## **8. PAYMENT – RETENTION OF OWNERSHIP**

- 8.1 Unless otherwise expressly agreed, the Buyer will pay the respective invoice(s) of the Seller net in cash within thirty (30) running days from delivery in the currency stipulated by the Sellers in the Nomination Confirmation.
- 8.2 In the event of the Buyer not making payment in full by the due date, the Buyer shall be charged and obliged to pay to the Seller default interest/late payment charges at the rate of 2% per month on the principal amount due from the due date of payment to the date of actual full payment of the principal, without prejudice to the Seller's right to claim full payment forthwith. The Buyer hereby agrees and accepts that the quantum of the default interest/late payment charges as calculated hereinabove in this sub-clause, is not a penalty, but constitutes the

agreed damages suffered by the Seller as a result of the latter being deprived of the timely payment of the principal amount (inclusive of, but not limited to, the element of interest), without prejudice to all other rights and entitlements of the Seller under the present Terms and Conditions or under the applicable Law or otherwise.

- 8.3 If at any time before the delivery the financial standing of the Buyer appears to the Seller (in its absolute discretion) to have become impaired or unsatisfactory, the Seller may require cash payment or security to be provided by the Buyer prior to delivery, failing which the Seller may cancel the delivery without any liability on the part of the latter or its subcontractors.
- 8.4 If at any time after delivery but before the due date the financial standing of the Buyer appears to the Seller (in its absolute discretion) to have become impaired or unsatisfactory, the Seller may require immediate full payment of all its invoices due and/or of those not yet due, or such security, as it shall deem to be satisfactory.
- 8.5 In the event that the Buyer shall default in making any payment due, the Seller may suspend deliveries of Goods until such payment has been made in full (together with default/delay compensation and costs), or the Seller may, in its discretion, elect to treat such default as a serious breach of the contract and thereupon terminate the contract in whole or in part without prejudice to any claim against the Buyer for damages. Such suspension or termination shall not relieve the Buyer of any obligation undertaken by virtue of a contract so terminated.
- 8.6 Where the Seller has extended any kind of credit to a group of companies or associated companies, default by any one relevant Buyer in respect to any one invoice of the Seller shall give the right to the Seller to cancel all credit arrangements of the entire group or of all the associates, whereupon sub-clauses 8.4 and 8.5 shall apply as appropriate.
- 8.7 Where the Buyer fails to pay timely, the Seller has the right to (without prejudice to its right to receive default/delay compensation) take all appropriate steps to secure and enforce its claim; the Seller may also unilaterally cancel any credit arrangements agreed with/extended to the Buyer.
- 8.8 All judicial and extrajudicial costs and expenses, including pre-action costs, expenses and disbursements of Seller's lawyers, incurred in connection with non payment or delayed payment or by any other breach by the Buyer of these conditions, shall be for the Buyer's account, immediately payable by the latter to the Seller. In case of litigation, the Buyers shall also pay all the relevant expenses of the Seller, including but without limitation all his legal/lawyers' costs.
- 8.9 All Goods supplied/delivered shall remain the property of the Seller until the Buyer has fully made all the payments for them to the Seller. Until such time the Buyer shall hold the Goods as bailee, store them in such a way so that they can be identified as Seller's property; they shall however remain on the Vessel at Buyer's sole risk and expense and without any cost for the Seller, until such full payment and the Buyer shall insure them

against all risks, the Seller having also the right to receive the relevant insurance proceeds directly from the insurers.

The Buyer's right to possess the Goods during such period shall cease if:

- (a) the Buyer has not paid for the Goods in full by the expiry of any credit period agreed; or
- (b) the Vessel is arrested for the purpose of or in any way becomes the object of an auction, judicial, Court or other kind of compulsory sale; or
- (c) the Buyer is declared bankrupt or makes any proposal to its creditors for reorganization or other voluntary arrangement or seeks such protection from any Court; or
- (d) a receiver, administrator or liquidator is appointed in relation to the Buyer.

Upon the cessation of the right to possess the Goods, the Buyer shall at its own time and expense make the Goods available to the Seller allowing it to repossess same and remove them from the Vessel at a suitable place, without prejudice to all other rights of the Seller, who shall always be entitled to also claim and receive any removal expenses and all other losses and expenses whatsoever.

The Buyer hereby grants to the Seller and its agents irrevocable authority to board the Vessel or enter any other premises where the Goods are stored for the purpose of repossessing same.

- 8.10 The Buyer or any other party is not entitled to place any markings on the delivery notes or delivery receipts as to non-liability on its part to pay for the Goods, unless such marking has been agreed in writing between the Seller and the Buyer in advance of the delivery. Any such marking placed without agreement shall have no validity or effect whatsoever; where such marking is placed before the completion of the delivery of the Goods, the Seller has the right to withhold or interrupt the supply/delivery, with all relevant delay being for the exclusive account of the Buyer.

## **9. CLAIMS AND DISPUTES**

Any and all claims arising out or in connection with the Goods supplied shall be time barred and/or null and void if not submitted by Buyer to Seller within fourteen (14) days after the Goods has been delivered or such shorter period as specified in the Sales Confirmation.

### **9.1 Information to be provided**

It is mutually agreed and accepted that, in order to enable the Seller to investigate and (as appropriate) pursue a claim, no claim by the Buyer shall be admissible/valid unless the Buyer timely provides the Seller with sufficient information on the nature of the complaint, the loss and damage alleged together with all relevant supporting documents. Furthermore, the Buyer must provide full and complete responses to all questions, enquiries and requests made by the Seller relating to the claim and all matters relevant thereto.

### **9.2 Claims for Quantity**

- i) The Seller will not accept a claim for short delivery based upon figures obtained by measuring Goods in the Vessel's tanks or by

any other manner other than as provided hereinabove in these Conditions.

- ii) The Buyer must provide a formal written letter of protest by the Captain, prior to the Vessel sailing from the Delivery Port, setting out in detail the alleged different quantity loaded (see also Clause 4.5 hereinabove).

### **9.3 Claims for Quality**

In the event that the Buyer has good grounds to believe that the Goods supplied does not accord with the relevant description in the Nomination Confirmation or are defective, the Buyer shall immediately:

- i) Take all necessary and reasonable steps to mitigate the consequence of having been supplied with possibly defective Goods as alleged.
- ii) Timely (see Clause 6.6. hereinabove) give written notice to the Seller with full details of the alleged deficiency of the Goods together with the Vessel's present location and her full itineraries, details of all similar products remaining on board prior to receiving the alleged defective Goods (and in case of bunkering, quantities and location of all bunkers on board, rate of consumption and voyage hours since delivery of the Goods).
- iii) Attend the seal opening and testing of a representative sample retained by the Physical Supplier/Seller at a reputable independent testing laboratory, in accordance with established procedures of the Delivery Port, in the presence of a representative of the Supplier and another from the Buyer.

**9.4** The Buyer agrees that the sealed samples provided in Clause 6 hereinabove are the only representative samples of the Goods delivered and that the Seller has no duty to consider any other independently produced samples, whilst the result of the analysis of the representative samples shall be final and binding on all parties concern (see also Clause 6.7 hereinabove).

**9.5** If it is alleged that any equipment or machinery of the Vessel has been damaged by the defective Goods, full details must be given to the Seller immediately and the specific item of the equipment or machinery must be preserved and made available for inspection on demand, at any reasonable time or times, by the Seller and or its representative. If inspection is required to be carried out on board the Vessel by the Seller, the Buyer shall allow the Seller or its representative unhindered access onboard the Vessel to carry out an inspection.

## **10. FORCE MAJEURE**

Neither the Seller nor the Supplier shall be liable for any failure to fulfill their obligations (including, but not limited to any loss, damage, expense or liability) under this contract if such failure has been delayed, hindered, interfered with, curtailed, prevented by or resulted from:

- a. Any circumstances of whatsoever nature whether foreseeable or unforeseeable, beyond the control of the Seller or the Supplier such

as: refinery congestion, shortage of Goods, off spec Goods, barge congestion, barge break down, barge non availability, port congestion, barge's low pumping rate of delivery, any strikes, industrial actions, blockade, lockout, riot, outbreak of war or hostilities or warlike operations or civil war or civil commotion or revolutions, labour dispute or reasonable apprehension thereof, fire, flood, accident, storm or any act of God, any duly constituted authority or governmental order, request or restriction statutes, rules, regulations or bye-laws, any restriction, limitation or interruption to existing or contemplated sources of supply of Goods or the means of supply thereof.

- b. Any curtailment, failure or cessation of the supply of the Goods to be delivered or of the petroleum from which such Goods are derived or of any of the Seller's or Supplier's sources of supply (whether the Goods to be delivered are to be obtained or derived from such a source or not);

#### **11. ASSIGNMENT**

The Seller may assign all or any of its rights and/or obligations hereunder by giving written notice to the Buyer. Any assignment by the Buyer of its rights and/or obligations without Seller's express prior written consent shall be null and void.

#### **12. LIABILITY – LIMIT TO SELLER'S LIABILITY**

Without prejudice to any other provision in these terms and conditions.

- 12.1 Under no circumstances shall the Seller or its servants, subcontractors and/or agents be liable for any physical injury or damage, including but without limitation for the consequences of any damage to the Vessel's machinery or equipment caused by Goods which do not correspond to the description ordered by the Buyer.
- 12.2 The Buyer shall be solely liable for making the hose connections on board the Vessel and generally to accept the Goods on board; therefore the liability for any loss or spillage of Goods overboard the Vessel shall be solely with the Buyer, the Seller or the Supplier not having any liability whatsoever.
- 12.3 The Seller shall, under no circumstances, be liable for loss of hire, income and/or profit or any consequential damages of the Buyer. Where the Seller is liable for any delay caused to the Vessel, its liability shall be limited to the proven actual running costs of the Vessel for the period of any such delay (exclusive of any loan/finance servicing costs in relation to the Vessel and/or any other expenses not directly connected to the actual running of the Vessel). Where Goods are proven to be off-specifications to the extend of not being able to be used in the Vessel and the Seller is liable, the liability of the latter in respect of the value of the replacement product cannot exceed the price of the Goods replaced as invoiced by the Seller.
- 12.4 The Seller shall not be liable for negligence on the part of its employees, servants and/or agents or on the part of the Supplier and/or its employees, servants and/or agents.

**12.5 The Seller's liability for any claim whatsoever, whether based in tort or contract, shall be limited to the value of the Goods as set out in Seller's invoice for the particular transaction.**

**12.6 The Supplier and the employees, representatives, subcontractors, servants and/or agents of the Supplier and/or the Seller shall enjoy the benefit of all rights afforded to the Seller under this agreement.**

### **13. INDEMNITY**

**The Buyer shall defend, indemnify and hold the Seller totally harmless in respect of any claim(s) of whatever kind (whether civil, administrative, penal or other) lodged by any third party(ies) –being private, governmental or other- against the Seller, bearing any direct or indirect relation and/or connection to any agreement governed by these Conditions.**

### **14. CANCELLATION / TERMINATION**

**14.1 The Seller shall have the option, charging also the Buyer with all the expenses incurred (including but without limitation the damages which the Supplier suffered), to immediately cancel the agreement in full or in part, or to preserve the Goods in whole or in part for the account and risk of the Buyer, or to take any other measures which the Seller deems appropriate, without prejudice to its rights of indemnification, without any liability on the side of the Seller, in any one of the following cases, set out indicatively below:**

- a. when the Buyer, for whatever reason, fails to accept the Goods in part or in full at the place and time designated for delivery;**
- b. when the Buyer, fails in part or in full to comply with its obligations to pay any amount due to the Seller and/or provide security as set out herein;**
- c. when, before the date of delivery, it is apparent in the opinion of the Seller that the financial position of the Buyer entails a risk for the Seller;**
- d. when, in case of force majeure, the Seller is of the opinion that the execution of the agreement shall be impossible.**
- e. When the Buyer goes into bankruptcy or liquidation or becomes subject to any other form of insolvency procedures.**

**14.2 The Seller may terminate any agreement with the Buyer in whole or in part, in its full discretion, upon the breach of any provisions hereof by the Buyer and in all other circumstances stated elsewhere in these Conditions.**

**14.3 Termination will come into effect upon the written notice of the Seller to the Buyer indicating the grounds of the notice of termination.**

**14.4 Termination will be without prejudice to any other remedy (including compensation for damages) to which the Seller is entitled to by contract or by law. Termination will be without prejudice to the rights and obligations already arisen**

### **15. TAXES AND OTHER CHARGES**

**Should any kind of tax (including but without limitation VAT), due, stamp duty, surcharge, freight, insurance premium, pilotage, port dues or other kind of additional expense be imposed or incurred by the Seller at any time in relation to the Goods or their delivery, same shall be borne by the Buyer who shall be**

obliged to forthwith pay same directly or to reimburse the Seller, as the case may be.

#### **16. MARITIME LIEN**

Where Goods are supplied to a Vessel, in addition to any other security, the agreement is entered into and the Goods are supplied upon the faith and credit of the Vessel. It is agreed and acknowledged that the sale of Goods to the Buyer and/or their acceptance on the Vessel create a maritime lien over the Vessel for the price of the Goods, such maritime lien afforded to the Seller over the Vessel. In any event any applicable law shall not prejudice the right of the maritime lien of the Seller afforded hereunder or by any other applicable Law, be it of the place of delivery, of the flag of the Vessel, of the place of jurisdiction, and/or of an arrest of the Vessel, or otherwise howsoever.

#### **17. ENVIRONMENTAL PROTECTION**

In the event of any leakage spillage or overflow of Goods whilst they are delivered to the Vessel, causing or likely to cause pollution occurring at any stage, the Buyer shall, regardless as to whether Buyer or Seller is responsible, immediately take such actions as are necessary to effect clean up and failing prompt action, the Buyer hereby authorizes the Seller to take whatever measures the latter deems fit (whether by employing its own resources or by contracting with others) as are necessary in the judgment of the Seller. The Buyer shall cooperate and render such assistance as is required by the Seller in the course of such actions. All relevant expenses, claims, losses, damages, liability and penalties arising in relation to spills shall be borne by the Buyer. The burden of proof to show any liability of the Seller shall be solely on the Buyer. The Buyer shall have available and give the Seller all documents and other information concerning any spill or any program for the prevention thereof, as required by the Seller, or by Law or by any regulation applicable at the time and place of delivery, to effect clean up at Buyer's expense. The Buyer warrants that the Vessel at all material times will be in compliance with all national and international regulations and shall ensure that its employees comply fully with all requirements, obligations and recommendations relating to the handling and use of the Goods delivered hereunder. It shall be the responsibility of the Captain of the Vessel to notify the Seller of any special conditions, difficulties, peculiarities, deficiencies or defects with respect to the Vessel or any part thereof that might adversely affect the delivery of Goods. The Buyer shall fully indemnify and keep the Seller harmless against any liability, claim or proceedings whatsoever arising out of or in connection with any failure by the Buyer to comply with its obligations under this clause. The Seller has the right to refuse to deliver Goods to the Vessel if it is probable that such delivery will result in adverse consequences of any kind whatsoever.

#### **18. BROKERS AND AGENTS**

Unless a party involved specifically declares in writing to the Seller prior to the dispatch by the latter of the Nomination Confirmation, that it is acting as a broker or agent for another party (in such case clearly identifying its principal by way of name, capacity, address and contact particulars), such party shall be deemed to be a Buyer, on a joint and several basis with another Buyer.

#### **19. MISCELLANEOUS**

19.1 Any breach on the part of the Buyer shall give the right to the Seller (at its absolute sole discretion) to cancel the relevant contract for supply, without prejudice to all its other rights against the Buyer.

- 19.2 Failure by the Seller to exercise or enforce any rights shall not be construed as a waiver of such rights or in any way affect the validity of the contract.**
- 19.3 The headings herein are only indicative and do not limit the interpretation of these terms and conditions.**
- 19.4 If any provision of this Agreement becomes or is found to be invalid, illegal or unenforceable in respect of any Law, the validity, legality and enforceability of the remaining provisions hereof shall in no way be affected or impaired.**
- 19.5 It is mutually agreed that the Goods provided by the Seller to the Buyer under the terms of this Agreement have been ordered by the Buyer in the ordinary course of business between Seller and Buyer. All payments from the Buyer to the Seller for Goods supplied under this Agreement are deemed to have been made in the ordinary course of business between the Seller and the Buyer, according to these ordinary business terms agreed between them.**

**20. LAW AND JURISDICTION**

- 20.1 These Conditions and the agreement governed by them and/or to which they apply, as well as any disputes, differences, claims and/or other matters relevant hereto, shall be governed by the Law of the United States of America.**
- 20.2 Without prejudice to the provisions of clause 20.3 herebelow, any disputes and/or claims arising in connection with these Conditions and/or any agreement governed by them, shall be submitted to the competent Courts of Limassol, Cyprus.**
- 20.3 For the sole benefit of the Seller, it is further agreed that the Seller, without prejudice to any of its rights, has the right to proceed against the Buyer and/or the Vessel and/or any other party in such jurisdiction worldwide as the Seller in its sole discretion sees fit, inter alia, for the purpose(s) of securing any payment due to it or proceeding in the main or any other proceedings in order to enforce and/or collect any claim or cause the issuance of any Court judgment whatsoever. The Buyer agrees and acknowledges that the nature of the transaction and of the respective business concerned is such, to the effect that the foregoing which are set for the benefit of the Seller, are absolutely reasonable and fully acceptable by the Buyer, which hereby confirms that it will also be liable for all costs of the Seller including but without limitation Attorneys' fees.**

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