

# **ISLAND PETROLEUM LIMITED**

## **STANDARD TERMS AND CONDITIONS**

**FOR THE SALE OF MARINE BUNKER FUELS, LUBRICANTS AND OTHER PRODUCTS FOR PHYSICAL DELIVERIES IN CYPRUS.**

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**THE BUYER'S ATTENTION IS DRAWN TO CLAUSES IN THESE CONDITIONS WHICH EXCLUDE OR LIMIT THE COMPANY'S LIABILITY, REQUIRE THE BUYER TO INDEMNIFY THE COMPANY IN CERTAIN CIRCUMSTANCES AND/OR LIMIT TIME, BEING CLAUSES 5,8,9,13,15,16, 17 and 21**

**1. INTRODUCTORY** These are the standard terms and conditions which shall apply to all contracts entered into with **Island Petroleum Limited** of Christiel Building, 2nd Floor, 145-149 Chr. Hadjipavlou Street, 3036 Limassol, Cyprus. The present do not apply to deliveries made in Haifa, Israel, in respect of which the Company has separate general terms and conditions.

**2. DEFINITIONS** In these conditions the following words shall have the following meaning:

<b>'Agreement'</b>	The agreement between the Company and the Buyer evidenced by the Standard Terms and the Confirmation. If there is any conflict between the Standard Terms and the Confirmation, the terms of the Confirmation shall prevail.
<b>'Abatement Technology'</b>	Any fitting, material appliance or other procedures undertaken, or compliance methods used by the Vessel as an alternative to comply with its obligations under Regulation 4 of MARPOL Annex VI.
<b>'Basic Cost'</b>	Unit Price multiplied by the number of units delivered.
<b>'Buyer'</b>	The person(s) or entity(ies) so identified in the Confirmation and shall include, on a joint and several basis, any agent, principal, associate, manager, partner, servant, parent, subsidiary, owner or shareholder thereof and always any Vessel (as defined in Clause 2.18) to which it has been agreed for Product to be delivered and her registered owner.
<b>'Company'</b>	Island Petroleum Limited as aforesaid, its servants, agents, assigns, sub-contractors and any and all other persons acting under the Company's instructions in fulfillment, compliance or observance of the Agreement unless the context otherwise permits.
<b>'Confirmation'</b>	The Company's written confirmation of stem.
<b>'Delivery and delivery'</b>	As set out in Clause 8.
<b>' Due Date'</b>	The date specified in the Confirmation for payment of the Price or, in the absence of such date, the date of Delivery. In respect of Further Costs the Due Date shall be seven (7) days from notification to the Buyer of such costs.
<b>'Further Costs'</b>	As set out in Clause 11.2.
<b>'MARPOL Annex VI'</b>	Resolution MEPC. 176 (58) Amendments to the Annex of the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships 1973, as modified by Protocol of 1978 relating thereto.

<b>‘Notice of Claim’</b>	Written notice of any claim or potential claim by the Buyer to the Company.
<b>‘Physical Supplier’</b>	The person or entity that physically supplies the Product to the Vessel and shall include the Physical Supplier's servants, agents, successors, sub-contractors and assigns. The Physical Supplier may be the Company.
<b>‘Place of Supply’</b>	The port or other readily identifiable geographical location specified in the Confirmation wherein or adjacent to which is the Point of Delivery.
<b>‘Point of Delivery’</b>	The precise place at which delivery is to be effected as provided in the Confirmation or as thereafter confirmed, advised or revised by the Company or the Physical Supplier and which may be a berth, mooring, anchorage or other point within, adjacent to or associated with the Place of Supply.
<b>‘Price’</b>	The Basic Cost and Further Costs.
<b>‘Product’</b>	The fuels, oils, lubricants, goods, items, equipment and materials of whatever type and description as specified in the Confirmation.
<b>‘Standard Terms’</b>	These standard terms and conditions of the Company.
<b>‘Sanctions List’</b>	The lists of Specially Designated Nationals and Blocked Persons maintained published and amended from time to time by the United States of America (OFAC and/or any other agency) and any other equivalent lists published by the United Nations, the European Union and/or Cyprus.
<b>‘Trade Sanctions’</b>	Any trade sanctions, trade controls, export controls, non-proliferation, anti-terrorism and similar laws, regulations, decrees, ordinances, orders, demands, requests, rules or requirements issued or enacted by the United States of America, the United Nations, the European Union and/or Cyprus.
<b>‘Unit’</b>	One metric tone or such other unit of measurement as the Confirmation may specify.
<b>‘Unit Price’</b>	The rate of cost in United States Dollars (or such other currency as specified in the Confirmation) per metric tone (or such other unit of measurement specified in the Confirmation) of Product specified in the Confirmation.
<b>‘Vessel’</b>	The vessel, ship, facility, tank, container, or craft nominated in the Confirmation to receive Product.
<b>‘Working days’</b>	Monday to Friday inclusive but excluding all public and bank holidays in Cyprus and any other day designated as non-working from time to time as notified in writing by the Company to the Buyer.

**3. HEADINGS** The use of headings and sub-headings herein is for convenience and elucidation only.

**4. ENTIRETY AND VALIDITY** The Standard Terms together with the Confirmation constitute the entire Agreement and supersede all prior oral or written agreements, representations and/or warranties. No derogation, addition or amendment to the Agreement shall be of any

effect unless and until expressly confirmed in writing by the Company. If any provision of the Agreement shall to any extent be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby.

**5. FORCE MAJEURE** The Company shall not be liable for any loss, damage, costs or expenses arising from the Company's failure to fulfil or comply with any term or condition of the Agreement if fulfilment or compliance has been delayed, hindered or prevented by any circumstance whatsoever which is not within the immediate and reasonable control of the Company including, but without limiting the generality of the foregoing, any acts of God, fires, floods, perils of sea, war (declared or undeclared), hostilities, embargoes, accidents, strikes, lockouts or labour disputes or reasonable apprehension thereof, any government order, request or restriction, or acts in compliance with requests of persons purporting to act on behalf of a government authority, or any other similar causes, any limitation, restriction or interruption to existing or contemplated sources of supply of Product and/or the means of supply and/or the means of delivery.

## **6. BROKERS AND AGENTS**

6.1 Unless the person or entity with whom the Company is corresponding specifically declares in writing to the Company prior to dispatch by the Company of the Confirmation that it is not the Buyer and at the same time provides in writing to the Company the full name and address of the Buyer, then the person or entity with whom the Company is corresponding shall be deemed to be the Buyer.

6.2 Without prejudice to the provision of Clause 6.1, in the event that the person or entity with whom the Company is corresponding is an agent of the Buyer, then such person or entity shall be jointly and severally liable with the Buyer to perform the Buyer's obligations under the Agreement notwithstanding that such person or entity purports to contract as a mere agent.

**7. ASSIGNMENT** The Buyer shall not assign its interest in the Agreement without the prior written approval of the Company. The Company may assign the Agreement or any part of its performance thereof to any third or associated with the Company party.

## **8. DELIVERY**

**8.1 Allocation** If the Company at any time and for any reason believes that there may be a shortage of Product at the Place of Supply it may allocate its available and anticipated supply of Product among its buyers in such a manner as it may in its absolute discretion determine. Any such allocation shall constitute full and proper performance of the Company's obligations.

**8.2 Restrictions** The Company shall not be required to deliver Product to any Vessel in tanks or spaces which are not designated for storage of bunkers or lubricants or other products, as the case may be and shall not be required to deliver any Product for export for which a government permit is required and has not been obtained by the Buyer.

**8.3 Means of Delivery** Delivery shall be effected in one or more consignments at the Point of Delivery by such means as the Company shall deem appropriate in the circumstances or as may be available at the time of Delivery.

**8.4 Barging** In the event of delivery by barge the Buyer shall, as its own expense, provide a clear and safe berth for the barge(s) alongside the Vessel's receiving lines and shall provide all necessary facilities and assistance required to effect promptly and safe delivery. The Buyer shall pay and indemnify the Company against all claims, costs, losses and expenses in respect of any loss, damage or delay caused by the Vessel and/or the Vessel's personnel to any barge and/or its equipment and any injury and/or death caused by the Vessel and/or the Vessel's personnel to any of the personnel effecting delivery in the course of or in connection with delivery of Product.

**8.5 Connection/Disconnection** The Buyer shall be responsible for making all connections and disconnections between the pipelines or delivery hoses and the Vessel's intake line and shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly each and every consignment of Product. The Buyer shall be responsible for ensuring that Product is delivered at a safe rate and pressure and that all equipment utilised is in a safe and satisfactory condition.

**8.6 Delivery** Shall be deemed complete when the Product has passed the flange connecting the Physical Supplier's delivery facilities with the Vessel provided by the Buyer and/or, where appropriate, has passed the Vessel's rail.

**8.7 Risk** The Company's responsibility for the Product shall cease and the Buyer shall assume all risks and liabilities relating thereto, including loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage of Product and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties at the time Product leaves the Physical Supplier's fixed depot or wharf facilities, irrespective of whether the Product is delivered by ship, barge or truck. The Buyer agrees to indemnify without limit the Company in respect of any liability, loss, damages, costs, expenses, claim or demand arising in connection with the Product after risk has passed to the Buyer.

**8.8 Title** Ownership of the Product shall remain with the Company and shall pass to the Buyer only after the Price and all other amounts due in relation to the particular delivery have been received by the Company as provided in Clause 12.1. Until such time as the full Price and all other monies due are received by the Company, the Buyer and any person or entity in possession of the Product delivered shall hold the Product as a mere bailee, without any charge to the Company and shall hold the Product on behalf of the Company and to the Company's order, at Buyer's sole risk and expense, storing it in a way so that it can be identified as the Company's property and not being entitled nor permitted to use or in any way consume the Product or

any part of it. In case of non or short payment for the Product by the Buyer, the Company is entitled (but not obliged) to repossess the Product without prior juridical

intervention, without prejudice to all other rights or remedies available to the Company. In the event that the Product has been mixed with other products on board the Vessel, the Company shall have the right to trace its proprietary interest in the Product into the mixed product and/or to exercise a lien on such part of the mixed product as corresponds to the quantity or net value of the Product delivered. The provisions of this Clause do not prejudice or in any way limit the Company's right to arrest/attach the Vessel and/or any other assets, wherever situated in the world, without prior notice and/or to exercise any other right under the Agreement or the Law. Repossession of the Product shall take place at a port and place where the removal of the Product can safely take place, at Buyer's expense and risk. The Buyer shall agree such place with the Company and shall make the Vessel available there for such repossession at Buyer's cost and risk. If following repossession and on-sale of the respective Product to a third party there is a shortfall to the Price, the Buyer shall forthwith pay such shortfall to the Company. The Buyer acknowledges that repossessed Product will most likely be on-sold to third parties at a considerably reduced price.

**8.9 Measurement** The quantity of Product delivered under the Agreement shall be measured by and at the Physical Supplier's option by one of such generally recognised methods of measurement as is appropriate in the circumstances and the Physical Supplier's measurements shall be final and binding and, absent manifest error, conclusive. The Buyer or its properly accredited representative may be present at all measurements; non-presence does not give any right or implication to the Buyer to challenge the respective measurement(s).

**8.10 Specification** The Product to be delivered shall be as specified in the Confirmation and in respect of marine bunkering and lubrication products, save where more precisely specified in the Confirmation, these shall be of the Company's commercial grades of product as currently offered generally to its buyers at the time and Point of Delivery for marine bunkering or lubrication purposes. There is no guarantee, warranty or undertaking of any kind or form from the Company that the Product will remain of the same quality and/or condition as delivered with the passage of time after delivery. No other warranties, express or implied as to quality, merchantability or fitness for a particular purpose, are given or form part of the Agreement.

**8.11 Compatibility and Segregation** Responsibility for establishing compatibility of Product delivered with any other product or products and for segregating or commingling the same rests solely with the Buyer.

**8.12 Substitution** The Company may discharge its obligation to deliver Product as specified in the Confirmation by supplying in substitution product of a different grade

and/or brand name provided always that such substitute product is of an equivalent or superior specification to that specified in the Confirmation.

**8.13 Availability** Subject to the availability of Product, the availability of facilities at the Place of Supply and Point of Delivery, the customary priority of any specific other vessel(s) and to the Buyer giving notice in accordance with Clause 8.16, the Company will use its best endeavors to ensure that Product is delivered promptly upon or as close as possible to the Vessel's arrival at the Point of Delivery, but the Company shall not be responsible for any loss, expense, damage or increased costs incurred in consequence of the Vessel not being supplied promptly or otherwise being delayed or restrained for any reason whatsoever. Particular note must be taken of Clauses 5.0 and 8.1, which apply also in this respect and are relevant.

**8.14 Time** The Buyer is responsible for ensuring that the Vessel is ready to receive Product at the Point of Delivery on the expiry of the time of the notice given in accordance with Clause 8.16.

**8.15 Delay** In the event that the Vessel's arrival at the Point of Delivery is delayed or likely to be delayed the Buyer must so advise the Company and the Vessel's agent at the Place of Supply and must ensure that the Vessel's agent advises the Physical Supplier and the Company (if different) accordingly. At the Buyer's request the Company will use its best endeavors to supply a delayed Vessel on the terms originally agreed but reserves the right to pass on to the Buyer all additional costs, including increased Basic Cost, incurred as a result of the Vessel's delayed arrival.

**8.16 Notice and Other Delivery Requirements** The Buyer must give in writing to the Physical Supplier and the Company (if different) not less than 3 (local, at Place of Supply) working days notice of the Vessel's readiness to receive Product. Notice must be given during the Physical Supplier's normal business hours. Notice given outside these hours will be deemed to have been given at 08:00 a.m. on the first local 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:

**8.16.1** 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 Point of Delivery, and

**8.16.2** the exact location of the Point of Delivery, and

**8.16.3** any particular requirements to enable delivery to be effected as efficaciously as possible.

**8.17** It is the responsibility and duty of the Buyer to instruct its agent at the Place of Supply to liaise with the Physical Supplier so as to ensure compliance with the provisions of Clause 8.16.

**8.18 Information** In response to a specific request for information from the Buyer in respect of the Point of Delivery the Company will use its best endeavors to obtain or



provide the information requested. Whilst every care will be taken to ensure that such information is accurate and up-to-date, it is furnished on the strict understanding that it is not a contractual representation and that no responsibility whatsoever will attach to the Company for its non-accuracy and/or non-veracity.

**8.19 Environmental Protection** Without prejudice to Clause 8.8 the Company may at any time without notice take any steps which it considers necessary to protect the environment from damage arising from spillage or transport of Product. Any action so taken shall be on behalf of and at the expense of the Buyer and the Buyer shall fully indemnify the Company for any loss, costs, damages or expense incurred by the Company for any such steps taken by the Company or on its behalf.

**8.20 Nomination** Where the Buyer nominates a Product that is above the Sulphur limits set out in MARPOL Annex VI, the Buyer shall be deemed to warrant and represent that the Vessel has installed working Abatement Technology or has a valid Fuel Oil Non-Availability Report (FONAR). Where the Buyer nominates fuel oil with a maximum Sulphur content of 0.5% the Buyer shall be deemed to warrant and represent that the Vessel's receiving tanks: i) have been sufficiently cleaned and prepared to receive the Product and ii) that following such cleaning and preparation of the Vessel's receiving tanks, no other Products above the limits set out in MARPOL Annex VI have been stored, or will be stored, in the Vessel's receiving tanks.

**9. CANCELLATION AND BREACH** In the event of the Buyer at any time canceling a request for Product or the Vessel failing to take delivery of part or all of the agreed quantity and/or kind of Product for any reason, regardless of fault or causation, the Company shall have the right to pursue a claim against both the Buyer and the Vessel and the Buyer and the Vessel shall be jointly and severally liable for all loss and/or damage and/or expense thereby suffered, including but without limitation loss of profit and (where the Company has engaged in derivative hedging instruments to offer a fixed price to the Buyer for the Product) loss and damage incurred arising from the Company's purchase of derivative instruments to include, but not limited to, the premium cost of such instruments, net payments made by the Company to instrument writer(s) and administrative fees. The Company may treat any other breach by the Buyer of any express term of the Agreement as a breach of a condition and it may at its discretion accept the breach, treat the Agreement repudiated and seek such remedies as it considers appropriate. However the provisions of Clauses 15.0, 16.0 and 17.0 shall survive the termination of the Agreement in any event.

**10. LIENS-MARITIME LIEN** Where Product is supplied to a Vessel, in addition to any other security and right, the Agreement is entered into and Product is supplied upon the faith and credit of the Vessel. It is agreed and acknowledged that a maritime lien over the Vessel is thereby created for the Price of the Product supplied and all other monies payable under the Agreement and that the Company in agreeing to deliver Product to the Vessel does so relying upon the faith and credit of the Vessel and such maritime lien. The Buyer, if not the owner of the Vessel, hereby expressly warrants that it has the authority of the owner to pledge the Vessel's credit as aforesaid and that it has given clear notice of the provisions of this Clause to the owner. The Company shall not be bound by any attempt by any person or entity to

restrict, limit or prohibit its lien or liens attaching to a Vessel, either by clausing the delivery receipt, or otherwise.

## 11. THE PRICE

**11.1 Unit Price** The Buyer shall pay the Unit Price at the rate agreed in the Confirmation. In case of any unexpected general increase of the market price of the Product between the Confirmation and the Delivery, the Buyer shall bear the corresponding increase to the Unit Price, by paying same to the Company.

**11.2 Further Costs** In addition to the Basic Cost of the Product the Buyer shall pay for any charges raised in respect of taxes, freight, barge, vehicle, wagon, clean up costs, overtime, or other like payments, insurance, pilotage, port dues and any and all other like costs and expenses incurred by or charged to the Company. Such charges, costs and expenses will be passed on to the Buyer at the rates charged to the Company as and when they are advised to the Company and together with the Basic Cost shall for all purposes constitute the Price due from the Buyer to the Company for the Product supplied.

**11.3 Notice of the Price** The Company will give notice of the Price to the Buyer as soon as reasonably practicable after Delivery. In certain circumstances the Company will give notice of the Price in instalments. Where notification of the Price is given in instalments each element of the Price so notified shall, when due, constitute an enforceable debt due from the Buyer to the Company. Notice of the Price may at the Company's option be provided by invoice sent by post, fax, email or as otherwise provided herein or as agreed.

**11.4 Proof of Delivery** The Buyer or its representative should attend Delivery and obtain at that time all information relating to Delivery including the exact quantities and precise specification of the Product delivered. Unless otherwise requested by the Buyer prior to dispatch by the Company of the Confirmation, the Company shall be under no obligation any time to produce to the Buyer any evidence of Delivery to the Vessel. It is expressly agreed that the furnishing by the Company of proof of delivery is not a pre-requisite to payment of the Price. However, the Buyer shall instruct its representative(s) on the Vessel to sign and seal (i) prior to delivery, any relevant pre-delivery note and (ii) after delivery, the respective delivery receipt.

**12. PAYMENT** In most cases special payment terms will have been agreed and will be set out in the Confirmation.

12.1 Each of the following terms apply unless the Confirmation otherwise provides:

**12.1.1** Payment of the Price will be made in United States Dollars, or such other currency as specified in the Confirmation, in full without set off and/or deduction for any reason whatsoever (including but without limitation for any counter claim concerning the Product supplied) so as to ensure that the Company receives value for the payment in cleared funds on or before the Due Date.

**12.1.2** Timely payment is of the essence of the Agreement.

**12.1.3** In respect of all sums which are overdue, the Buyer shall be liable to pay to the Company default interest/late payment charges, calculated at 2% per month, pro-rated and compounded on a daily basis, from the Due Date until receipt by the Company of full payment. Accrued interest and costs and/or expenses incurred by the Company in requesting payment of outstanding amounts will be added at monthly intervals to and become part of the outstanding sum. The Buyer hereby agrees and accepts that the rate of the default interest/late payment charges as agreed hereinabove in this Clause is not a penalty, but constitutes the agreed damages suffered by the Company 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 Company under the Agreement or under the applicable Law or otherwise. In the event that the aforesaid contractually agreed rate of default interest/late payment charges is in excess of that permitted by the applicable Law, it shall be substituted by the maximum rate so permitted.

**12.1.4** Payment will be made by way of telegraphic, telex, swift or rapid electronic transfer to the bank and the account specified in the Company's invoice. All bank and other charges if any incurred in effecting remittance will be for the account of the Buyer. Advice of remittance including identifying references should always be given to the Company. If payment is not received as a result of the Buyer not complying with the payment instructions, then the Buyer will pay immediately, upon written request, all sums due including interest and all other charges.

**12.1.5** Payments received by the Company from or on behalf of the Buyer, notwithstanding any specific request or reference to the contrary, will be applied in the following order in diminution or extinction of:

**12.1.5.1** accrued financial and other charges (including costs and attorneys' fees) in respect of other transactions for which the principal sum has already been paid.

**12.1.5.2** accrued financial and other charges (including costs and attorneys' fees) arising from all other transactions.

**12.1.5.3** any principal sum due and outstanding, commencing with the oldest and proceeding chronologically thereafter to the most recent.

**12.2** The Company may in good faith vary, amend, withdraw, substitute or add to the terms relating to payment at any time in the course of a transaction in such manner as it shall in its absolute discretion consider necessary to protect its interests.

**12.3** If at any time the conduct, reputation, standing, creditworthiness, liquidity or solvency of the Buyer or any subsidiary, parent, associate or affiliate thereof should give the Company reasonable cause for concern, and/or if any amount due remains outstanding for a period of seven (7) days after its Due Date, the Company may (without prejudice to all other rights and remedies which it may have) give notice to the Buyer that credit facilities from the Company to the Buyer and its group/associates are withdrawn or suspended, as the case may be, and all sums

outstanding and/or due for payment at a future date shall thereupon fall due for immediate payment.

12.4 In the event that the Buyer or any subsidiary or parent thereof (“group”) shall commit an act of bankruptcy or shall be the subject of proceedings judicial or otherwise commenced for protection from creditors, bankruptcy, insolvency, liquidation or winding up the Company may forthwith terminate the Agreement.

12.5 The full legal and other costs and expenses incurred by the Company, including those of the Company's own legal and credit departments and of the lawyers it will appoint/engage in connection with any breach by the Buyer of any term of the Agreement including but not limited to actions for collection of the debt, shall be for the Buyer's account and shall for all purposes form part of the Price due from the Buyer to the Company for the Product supplied.

### 13. CLAIMS, DISPUTES AND PRECAUTIONS

13.1 **Notification:** Written “Notice of Claim” must be given to the Company strictly within the time limit specified in Clauses 13.4 (quantity claims and disputes), 13.5 (quality claims and disputes) and 13.6 (all other claims and disputes) below or as specified in the Confirmation and any claim not notified within the specified time limit shall be deemed waived and in any event absolutely barred and the Company shall be discharged of all liability whatsoever and howsoever arising. It is the Buyer's responsibility to ensure that Notice of Claim is received by the Company, whose express written confirmation of receipt should always be sought. Regardless of whether a claim or dispute has risen or is anticipated, the Buyer must give Notice of Claim forthwith to the Company of any discrepancy, error or omission present in any form or document tendered, submitted or produced by the Physical Supplier and of any unusual occurrence relating to the delivery.

13.2 **Sufficiency of Information:** The Notice of Claim must contain sufficient information to enable the Company to identify the relevant transaction and/or delivery, the nature of the complaint and the loss or damage alleged. Any Notice of Claim which does not give such sufficient information will not be valid for the purpose of compliance with the relevant time limit. In addition the Buyer must provide a full and complete response to any and all questions, enquiries and requests made by the Company concerning the claim and matters relating thereto.

13.3 **Categories** Claims fall into 3 categories:

13.3.1 Quantity claims and disputes

13.3.2 Quality claims and disputes

13.3.3 Other claims and disputes

13.4 **Quantity Claims and Disputes** For bulk deliveries the Physical Supplier shall measure the contents of delivery barges and/or wagons and/or vehicles and/or storage tanks by tank-dipping to ensure full out-turn and shall check flow meters for seals, correct settings, calibration and general condition. All of these checks must be

carried out before and after delivery of each consignment on each barge and/or wagon and/or vehicle and/or storage tank load. The delivery shall be supervised by the Physical Supplier at all times and all documentation shall be complete and accurate before signing and stamping. The Buyer's representative may attend throughout the delivery. Any discrepancies concerning quantity must be recorded by the Buyer or the Buyer's representative by a letter of protest issued by the Buyer and counter-signed by the Physical Supplier on completion of delivery. In the absence of discrepancies recorded in accordance with this Clause, the Company shall not be liable for any claims for discrepancies, including but not limited to claims for short delivery.

13.4.1 The Company shall not be liable for claims for short delivery based upon figures obtained by measuring the Product in the Vessel's tanks. Such measurements shall have no proof value and shall be inadmissible.

13.4.2 The time limit for receipt by the Company of a Notice of Claim in a quantity dispute is 7 (seven) days from the date of Delivery or such shorter period as may be specified in the Confirmation. The Buyer acknowledges that this deadline is reasonable, necessary and important, given that in case of a quantity claim the Company may have a claim against the Physical Suppliers and/or the interests of the delivery barge or other means of delivery, which must be in turn protected.

**13.5 Quality Claims and Disputes** It is the Buyer's sole responsibility to ensure that Product tendered for delivery is fit for use by the Vessel and is delivered into the correct tanks.

13.5.1 The Physical Supplier shall take four (4) representative samples of every consignment and load of the Product on commencement of delivery with continuous drip sampling at barge manifold. Buyer's representative shall have the right to attend the taking of these samples. These four (4) representative samples must be sealed and labelled and the label must be signed by a representative of the Physical Supplier and by an officer of the Vessel and/or other senior representative of the Buyer. Two (2) of these samples shall be retained as commercial samples to be used in case of any quality claim(s), pursuant to the terms of the Agreement (the "Commercial Samples" and each a "Commercial Sample") and the other two (2) shall be retained in accordance with the provisions of MARPOL 73/78, Annex VI and may only be used for the purposes of confirming the Sulphur content of the marine fuel and such other matters as are specifically set out in Marpol Annex VI, Regulation 18 (the "Marpol Samples" and each a "Marpol Sample"). The Buyer shall retain one of each of the Commercial Samples and the Marpol Samples, the other to be retained by the Physical Supplier. The Commercial Samples to be retained for a period of at least sixty (60) days after the day of delivery of the respective Product to the Vessel.

13.5.2 All documentation must be checked by the Buyer or the Buyer's representative and if there are any discrepancies concerning quality this must be recorded by the Buyer or the Buyer's representative by a letter of protest issued by the Buyer and counter-signed by the Physical Supplier.

13.5.3 In the event of the Buyer having grounds to believe that the Product supplied does not accord with the description in the Confirmation or is defective the Buyer must immediately:

**13.5.3.1** Take all reasonable steps to mitigate the consequences of having been supplied with possibly defective or incorrect Product. When there is reasonable suspicion of having been supplied with defective Product the Buyer must abstain from consuming same and place same in a segregated tank.

**13.5.3.2** Give immediate notice ("Notice of Claim") with full details of the possibly defective or incorrect Product to the Company together with the Vessel's position, destination and ETA, the quantities and locations of all Products (supplied by the Company or pre-existing on board or supplied after Delivery) on board the Vessel/stored in the Vessel, the rate and quantity of consumption since Delivery and the location of the Vessel immediately prior to delivery of the Product, and for each of the three preceding deliveries to the Vessel, the quantity, quality and specification of the products supplied, the place and date of supply and the name of the respective physical supplier;

**13.5.3.3** Inform the Company of the whereabouts of the Buyer's retained Commercial sample.

13.5.4 It is a condition precedent to any liability of the Company for any quality claim that:

i) the Notice of Claim includes a copy of the analysis report by a first class inspection company in accordance with the method(s) provided in ISO 8217 showing that the results of testing of a sample of the specific Product are greater than the limits set out in ISO 4259 (or any amendment(s) thereto from time to time) and

ii) upon the giving of a valid Notice of Claim, the Commercial Sample retained by the Physical Supplier is submitted for analysis by a reputable independent testing laboratory approved by the Company in accordance with the established practice and procedures. The Buyer hereby acknowledges that the sealed Commercial Sample retained by the Physical Supplier is representative of the Product delivered and that the Company has no duty or obligation to consider any other independently produced samples. The results of the analysis of such Commercial Sample shall be final, binding and conclusive on all parties. In the event that the Physical Supplier is unable or unwilling to make available for analysis its retained Commercial Sample within seven (7) days from the giving of a Notice of Claim or such shorter period as may be specified in the Confirmation or mutually agreed, the

Company will accept the Buyer's retained sealed Commercial Sample as representative of the Product delivered for analysis in accordance with the provisions of this Clause, provided that the Buyer's request in writing to the

Physical Supplier for its sealed Commercial Sample is copied to the Company at the same time the request is sent to the Physical Supplier. For the avoidance of any doubt, the analysis report under (i) above which must accompany a valid Notice of Claim, is only for the purpose of the valid submission of a claim and does not constitute in any way an acceptable and/or valid proof of the quality of the Product, which is to be determined exclusively as is expressly set out hereinabove in this Clause.

13.5.5 If it is alleged that any equipment or machinery has been damaged by incorrect or defective Product, full details must be given to the Company at the earliest opportunity and the item allegedly damaged must be preserved and made available for inspection on demand at any reasonable time or times by the Company and/or its representative(s).

13.5.6 The time limit for receipt by the Company of a Notice of Claim in respect of quality and/or claims arising out of quality is fifteen (15) days from the date of Delivery or such other period as may be specified in the Confirmation. The Buyer acknowledges that this deadline is reasonable, necessary and important, given that in case of a quality claim the Company may have a claim against the Physical Suppliers and/or the interests of the delivery barge or other means of delivery and/or the refinery, as the case may be, which must be in turn protected.

13.5.7 The non participation by the Buyer or its representative(s) at the sample taking and/or sealing procedure or at the sample testing and relevant seal opening, per the foregoing, does not affect the effect validity and consequences of the foregoing terms and conditions.

13.5.8 The Buyer's remedies shall be limited to the following as may be applicable in each specific case:

**13.5.8.1** the de-bunkering of the Product to be arranged by the Company at a mutually agreed location;

**13.5.8.2** reimbursement for or replacement of such Product by the Company at its option;

**13.5.8.3** the reasonable and proven direct repair or replacement costs of any components of the Vessel which were physically damaged as a direct result of using such Product.

13.5.9 In no circumstances shall the Company:

**13.5.9.1** be liable for any claim in connection with a supply of Product which has been comingled with any other substance, even if the latter is a product similar or identical to the Product.

**13.5.9.2** have any liability, whether as a result of a breach of contract, negligence or otherwise, and whether as a result of the acts or omissions of the Company, its servants, agents, subcontractors or any fraudulent acts or omissions of the Physical Supplier, its servants and

agents, for any loss of actual, projected, prospective or anticipated profit, loss of time or hire, demurrage, detention or loss of schedule, cost of substitute vessel(s), loss related to the loss of operational use of the Vessel, physical loss, damage to cargo, loss of contract(s) or any other kind of economic loss, in each instance irrespective of whether such losses are direct, consequential or otherwise.

**13.6 Other Claims and Disputes:** In all other cases Notice of Claim must be given to the Company as soon as reasonably possible and in any event no later than twenty eight (28) days after Delivery. If the Confirmation provides for a shorter period such shorter period shall apply.

**13.7 Proceedings:** Without prejudice to the provisions of Clause 13.1 above, the Company shall in any event be discharged of all liability whatsoever, howsoever arising in respect of any Product and/or supplies and/or services provided to the Buyer or which the Company has undertaken to supply and/or provide, unless suit be brought and written notice of such suit is given to the Company within 6(six) months from the date of Delivery and/or date of the Company's respective undertaking.

**14. WAIVER** The failure by any party to the Agreement to enforce any right against any other party shall not be construed as a waiver of that right or shall in any way affect the validity of the Agreement. In particular, the granting by the Company of any additional time to make payment or the waiving or reducing of any interest or other charge shall not prevent the Company at any time thereafter from relying upon its strict contractual rights.

**15. INDEMNITY** Notwithstanding anything else contained in this Agreement, the Company shall not be responsible for and the Buyer hereby fully indemnifies the Company against, any claim for injury and/or death occurring to any person and/or any damage to any property and/or any actions, suits, claims, demands, costs, charges or expenses arising in connection therewith in the course of performance of or arising out of or in connection with the Agreement, including but not limited to, collision, swell and/or other weather or sea-related condition or incident.

**16. LIABILITY** Save as provided in Clause 13, the Company shall not be liable to the Buyer for any loss or damage, including loss of profit or any other consequential loss whatsoever, arising from any cause whatsoever, whether in contract, tort or otherwise including the negligence of the Company, its servants, agents and/or sub-contractors.

**17. COMPENSATION-LIMITATION** Without prejudice to the provisions of Clause 16.0, in the event that the Company is found to be liable to the Buyer, the total amount payable by way of compensation, damages, or otherwise howsoever other that in respect of personal injury



or death shall not exceed the Price (excluding Further Costs, interest and other charges payable by the Buyer) of the Product supplied under the Agreement. It is a pre-condition to the payment of any compensation by the Company that all sums due to the Company from the Buyer are first paid and settled.

**18. INSURANCE** The Buyer is responsible for effecting and maintaining in force adequate insurance which will fully protect the Buyer, the Company and all third parties from all risks, hazards and perils associated with or arising out of or in connection with the Agreement and delivery.

**19. LICENSES PERMITS AND APPROVALS** The Buyer is responsible for obtaining all necessary permits, licenses and approvals required to enable both parties to execute all of their obligations under the Agreement.

**20. WRITTEN, IN WRITING AND NOTICE** Any requirement for written communication including the giving of any notice may be fulfilled by the use of letter-post, courier, telex, facsimile transmission, email or any other medium which produces a tangible result for the intended recipient. The communication shall be deemed to have been given and received upon completion of transmission of any electrical or electronic medium, within two (2) working days of dispatch for first class inland letter-post, within five (5) working days of dispatch for second class inland letter post and air mail and on the expiry of the declared or guaranteed time for delivery of any courier or monitored service.

## **21. SANCTIONS COMPLIANCE**

21.1 The Buyer warrants and represents that the Vessel is employed at all times in full compliance with all Trade Sanctions. In particular, the Buyer warrants and represents that:

- 21.1.1** neither the Buyer nor the Vessel are included in a Sanctions List;
- 21.1.2** neither the Buyer nor the Vessel is owned, controlled or acting for on behalf of any individual or entity which is included in a Sanctions List;
- 21.1.3** no individual or entity with any interest in any cargo on board the Vessel is included in a Sanctions List;
- 21.1.4** every cargo carried on board the Vessel can be loaded, carried and discharged without infringing any Trade Sanctions.

21.2 If in the reasonable opinion of the Company, the Buyer's warranties under Clause 21.1 above are inaccurate, or there is a risk that payment by the Buyer for any invoiced amount under the Agreement may be delayed and/or confiscated by any bank, financial institution, regulator or governmental entity, the Company shall be entitled to:

- 21.2.1** terminate the Agreement without liability on its part;
- 21.2.2** change the currency of the Agreement to a currency other than United States Dollars, with the applicable currency conversion rate to be set by the Company, in its sole discretion

21.3 The Company shall not be obliged to perform any obligation otherwise required by the Agreement, including any obligation to perform, deliver, accept, sell, purchase, pay or receive monies to, from, or through a person or entity, or engage in any other acts if this would be in violation of, inconsistent with, or expose the Company to punitive measures under any Trade Sanctions

21.4 The Buyer shall indemnify and hold the Company harmless for non-strict compliance by the Buyer or the Vessel of any of the provisions of this Clause 21.

## **22. LAW AND JURISDICTION**

22.1 The Agreement and all claims and disputes arising under or in connection therewith shall be governed by the General Maritime Law of the United States of America.

22.2 Without prejudice to the provisions of Clause 22.3 herebelow, any disputes and/or claims arising in connection with the Agreement, shall be submitted to the competent Courts of the Republic of Cyprus.

22.3 For the sole benefit of the Company, it is further agreed that the Company, 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 Company 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 Company, are absolutely reasonable and fully acceptable by the Buyer, which hereby confirms that it will also be liable for all costs of the Company including but without limitation attorneys' fees.

22.4 If any proceeding of any nature whatsoever is instituted under Clause 22.2 or Clause 21.3 above, in connection with any controversy arising out of the Agreement or to interpret or enforce any rights under the Agreement, the prevailing party shall have the right to recover from the losing party all its reasonable costs and attorneys' fees incurred in such proceeding.