



**PETROCHINA INTERNATIONAL (SINGAPORE) PTE. LTD.  
GENERAL TERMS AND CONDITIONS FOR THE  
SALE, DELIVERY AND PURCHASE OF MARINE FUELS**

**(2024 EDITION)**

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## PREAMBLE

These are the General Terms and Conditions for the Sale, Delivery and Purchase of Marine Fuels of PetroChina International (Singapore) Pte. Ltd. (“GTCs”).

### 1 SECTION 1 - APPLICATION

- 1.1 Unless otherwise agreed in writing by PetroChina International (Singapore) Pte. Ltd. (“PCSG”), the GTCs shall apply to and be deemed incorporated into each and every offer and/or quotation made by PCSG and/or transaction and/or agreement entered into by PCSG on or after 1 July 2024 for the sale, supply, delivery or purchase of Marine Fuels.
- 1.2 The GTCs, together with the Confirmation, shall constitute the entire agreement between the Seller and the Buyer (“**Fuels Agreement**”) with respect to the sale, supply, delivery or purchase of Marine Fuels and supersedes any prior or other agreements, understandings or arrangements between the parties, whether written or oral, relating to the transaction or subject matter. Every Confirmation issued by the Seller shall be deemed to incorporate and/or be supplemented by these GTCs. If the Confirmation also incorporates the Seller’s supplier’s terms and conditions (“**Seller’s Supplier’s T&Cs**”), the latter shall be incorporated into the Fuels Agreement only insofar as they do not conflict with or contradict the provisions of the Confirmation and the GTCs.
- 1.3 In the event of any conflict or inconsistency between any of the provisions of the Confirmation and that in the GTCs, the former shall prevail.
- 1.4 Any addition, deletion, amendment or change to any provision in the Fuels Agreement shall be made only by written agreement by the Parties (which may include an exchange of emails confirming the amendment or change). The Fuels Agreement shall not incorporate, and the provisions of the Fuels Agreement shall not be varied, modified or supplemented by, any other terms or conditions that may be contained in any form, stipulated or referred to by the Buyer whether in its order, nomination, bunker delivery receipt or any other document issued by the Buyer; any such additional terms or conditions not contained in the Fuels Agreement are expressly excluded and rejected.
- 1.5 The Buyer acknowledges and confirms that in entering into the Fuels Agreement, it has not relied on any, and it shall have no right or remedy in respect of, any statement, representation, assurance, warranty or undertaking of the Seller or any other person, whether made in writing or orally, other than those expressly set out in the Fuels Agreement. Any terms or conditions implied into the Fuels Agreement by any applicable statute or laws are hereby excluded to the extent that such exclusion can legally be made.

### 2 SECTION 2 – DEFINITIONS AND INTERPRETATION

- 2.1 Throughout these General Terms and Conditions, except where the context otherwise requires, the following definitions shall apply:
  - 2.1.1 “**Actual Delivery Month**” has the meaning in Section 8.4.4;
  - 2.1.2 “**Additional Credit Support**” has the meaning in Section 9.4.1;
  - 2.1.3 “**Affected Party**” has the meaning in Section 11.1;

- 2.1.4 “**Affiliate**” means any corporation or other legal entity directly or indirectly controlling or controlled by the Party or controlled directly or indirectly by any corporation or other legal entity having direct or indirect control over a Party;
- 2.1.5 “**Barge**” means:
- 2.1.5.1 a self-propelled vessel or towed/pushed dumb craft employed in port areas and sheltered waterways which is not classified as a sea-going vessel (inland barge); or
- 2.1.5.2 a towed/pushed dumb craft classified for sea-going trade (sea-going barge);
- 2.1.6 “**Business Day**” means a day other than Saturday, Sunday, or public holiday in Singapore or other jurisdiction as specified in the Section; or where remittance is in United States dollars, means a day other than a non-banking day in New York, United States of America;
- 2.1.7 “**Buyer**” means the Party named in the Fuels Agreement to be purchasing the Product;
- 2.1.8 “**Buyer’s Debt**” has the meaning in Section 4.4.2;
- 2.1.9 “**Code**” has the meaning in Section 5.2;
- 2.1.10 “**Competent Authority**” means, in respect of any country, any national, regional, state, municipal, local or other government of such country, any ministry, department, political subdivision, instrumentality, agency, commission, corporation, entity, undertaking, board, bureau, authority, judicial body or administrative body under the direct or indirect control of any such government, including any port authority, or any quasi-governmental organisation therein, in each case, acting within its legal authority, and irrespective of any change at any time or from time to time in structure, form or otherwise;
- 2.1.11 “**Confidential Information**” has the meaning in Section 24.1;
- 2.1.12 “**Confirmation**” means the written communications between the Parties through which the Parties agree on certain commercial terms of the sale, supply and/or delivery of Marine Fuels and as supplemented by a contract issued by the Seller to the Buyer in writing in respect of the sale, supply, delivery and/or purchase of Marine Fuels;
- 2.1.13 “**Control**” has the meaning in Section 13.2;
- 2.1.14 “**Credit Support**” means any parent company guarantee, payment undertaking, bank guarantee, letter of comfort, standby letter of credit, letter of credit or other form of credit support or security that is provided or agreed to be provided in respect of a Party in connection with such Party’s obligations under and in accordance with the Fuels Agreement;
- 2.1.15 “**Credit Support Provider**” means any person providing Credit Support;
- 2.1.16 “**DAP**” has the meaning ascribed thereto in Incoterms® 2010, except as modified by the Fuels Agreement; further, if there is any inconsistency or conflict between Incoterms® 2010 and the Fuels Agreement, the Fuels Agreement shall prevail.

- 2.1.17 “**DES**” has the meaning ascribed thereto in Incoterms® 2000, except as modified by the Fuels Agreement; further, if there is any inconsistency or conflict between Incoterms® 2000 and the Fuels Agreement, the Fuels Agreement shall prevail.
- 2.1.18 “**Dealings with the Product**” has the meaning in Section 4.4.6;
- 2.1.19 “**Disclosing Party**” has the meaning ascribed to it in Section 24.1;
- 2.1.20 “**Events of Default**” has the meaning ascribed to it in Section 13.1;
- 2.1.21 “**Fuels Agreement**” has the meaning ascribed to it in Section 1.2;
- 2.1.22 “**FOB**” has the meaning ascribed thereto in Incoterms® 2000, except as modified by the Fuels Agreement; further, if there is any inconsistency or conflict between Incoterms® 2000 and the Fuels Agreement, the Fuels Agreement shall prevail.
- 2.1.23 “**Force Majeure**” has the meaning ascribed to it in Section 11.1;
- 2.1.24 “**GTCs**” means the terms and conditions set out in this document and has the meaning ascribed to it in the preamble;
- 2.1.25 “**GST**” means Goods and Services Tax in Singapore;
- 2.1.26 “**Marine Fuels**” means bunker fuel oil, intermediate bunker fuel, marine diesel oil, marine gas oil or biofuel;
- 2.1.27 “**Notice**” has the meaning ascribed to it in Section 14;
- 2.1.28 “**Party**” means the Buyer or the Seller in the Fuels Agreement (as the case may be), and “**Parties**” means both the Buyer and the Seller;
- 2.1.29 “**Payment Instruction**” has the meaning ascribed to it in Section 9.5.1;
- 2.1.30 “**PCSG**” means PetroChina International (Singapore) Pte. Ltd.;
- 2.1.31 “**Product**” means the Marine Fuels of the grade specified in the Confirmation or in the absence of any specifications stipulated in the Confirmation, of the commercial grade offered by the Seller at the time and place of delivery;
- 2.1.32 “**Reasonable and Prudent Operator**” means a person seeking in good faith to perform its contractual obligations under a Fuels Agreement and in so doing, and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator, complying with all applicable laws and engaged in the same type of undertaking under the same or similar circumstances and conditions;
- 2.1.33 “**Regulations**” has the meaning ascribed to it in Section 10.1;
- 2.1.34 “**Scheduled Delivery Month**” has the meaning ascribed to it in Section 8.4.4;

- 2.1.35 “**SDN List**” means Specially Designated Nationals and Blocked Persons List published by the United States Treasury Department’s Office of Foreign Assets;
- 2.1.36 “**Seller**” means the Party named in the Fuels Agreement to be selling, supplying and/or delivering the Product;
- 2.1.37 “**Singapore Business Day**” means a day other than Saturday, Sunday, or public holiday in Singapore;
- 2.1.38 “**Spill**” has the meaning ascribed to it in Section 15.3;
- 2.1.39 “**Vessel**” means the vessel which receives, or which it is intended will receive, delivery of the Product; and
- 2.1.40 “**Wilful Misconduct**” means any act or failure to act by any Party which was intended to cause, or which was in reckless disregard of or wanton indifference to, harmful consequences such Party knew, or should have known, such act or failure would have on another Party.
- 2.2 In the GTCs, unless the context otherwise requires:
- 2.2.1 references to “Sections” are to Sections of these GTCs;
- 2.2.2 the headings are inserted for convenience only and shall not be taken into consideration in the interpretation or construction of the Fuels Agreement;
- 2.2.3 words importing the singular number may include the plural number and vice versa; and
- 2.2.4 a “person” includes a natural person, corporate or unincorporated body.

### **3 SECTION 3 - QUALITY**

- 3.1 The quality of the Product to be supplied or delivered by the Seller shall comply with the specifications expressly prescribed in the Confirmation or in the absence of any specifications stipulated therein, be of the commercial grade offered by the Seller at the time and place of delivery, which shall represent the only quality characteristics that the Product is required to meet, to the exclusion of any other characteristic or specification.
- 3.2 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 Product for any particular purpose or otherwise, which extend beyond the description expressly set out in the Confirmation. All express and implied terms, conditions and/or warranties in respect of description, satisfactory quality, and fitness and suitability for any purposes (whether or not that purpose is specific and/or is known to the Seller) contained in any statutes or any other documents or standards are excluded.
- 3.3 Each Party to the Fuels Agreement warrants that it has entered into the Fuels Agreement as a commercial transaction in its capacity as a principal and not as an agent.
- 3.4 The Buyer shall be solely responsible for the selection, acceptance and use of the Product including without limitation determination of compatibility of the Product with any Marine Fuels (whether it is already on board the Vessel or otherwise). The Buyer warrants that it has not relied upon any representation made by or on behalf of the Seller with respect to the Product but has relied exclusively on its own knowledge and judgment as to the fitness and suitability of the Product for its purpose. The

Buyer acknowledges that the Seller shall not be liable for any losses, damages, costs, expenses and/or consequences whatsoever arising directly or indirectly out of the Buyer's decision to commingle the Product with any Marine Fuels (whether it is already on board the Vessel or otherwise). The Buyer shall indemnify and hold the Seller harmless against such losses, damages, costs, expenses and/or consequences.

- 3.5 This Section 3 constitutes the whole of the Seller's obligations with respect to the quality of the Product to be supplied and/or delivered by the Seller to the Buyer under the Fuels Agreement.
- 3.6 The Seller shall not be responsible for, and shall have no obligation to test, any quality parameters that are not required to be tested in the specification parameters set out in the Fuels Agreement. The Seller shall not be liable for any losses, damages, costs, expenses and/or consequences whatsoever arising directly or indirectly out of any quality parameters that are not required to be tested in the specifications parameters set out in the Fuels Agreement, all of which shall be borne solely by the Buyer. The Buyer shall indemnify and hold the Seller harmless against such losses, damages, costs, expenses or consequences.

#### **4 SECTION 4 - FOB DELIVERIES**

##### **4.1 Delivery**

Unless otherwise specified in the Confirmation, the Product shall be delivered by the Seller to the Buyer in bulk FOB at the Seller's nominated loading facility in Singapore during the delivery date range specified in the Confirmation and delivery of the Product shall be deemed to be made to the Buyer as provided for in Section 4.4.1.

##### **4.2 Buyer's Barge Nomination**

- 4.2.1 The Buyer's nominated Barge to take delivery of the Product shall be subject to the Seller's and the Seller's nominated loading facilities' acceptance, which acceptance shall not be unreasonably withheld.
- 4.2.2 Unless otherwise specified in the Confirmation, each Barge must be capable of loading a minimum of 2,000 metric tons of the Product.
- 4.2.3 Unless otherwise specified by the Seller, the Buyer shall give the Seller a notice in writing (hereinafter "**Barge Nomination Notice**") at least forty-eight (48) hours prior to delivery (excluding hours on non-Singapore Business Days) of the following:
- 4.2.3.1 the name of the Barge;
  - 4.2.3.2 the actual quantity of the Product to be delivered, narrowed to within any agreed minimum and maximum quantity tolerances set out in the Confirmation;
  - 4.2.3.3 the estimated date and estimated time of arrival of the Barge at the Seller's nominated loading facility; and
  - 4.2.3.4 any other relevant particulars of the Barge requested by the Seller.
- 4.2.4 The Buyer hereby represents and warrants that the Barge nominated by the Buyer to take delivery of the Product shall at all times:

- 4.2.4.1 have valid and operative licences, administrative and applicable certificates required by the relevant authorities; and
  - 4.2.4.2 not be a person subject to any applicable sanctions, including but not limited to not being listed in the SDN List;
  - 4.2.4.3 not be owned or operated by an entity, or fly the flag of any country or territory, that is subject to any asset, trade, dealing or transaction prohibition or restriction of any kind under any laws, legislation, sanctions, regulations, decrees, rules, orders, resolutions, demands, directives, requirements, requests, or guidelines enacted, imposed, administered, implemented, enforced, applied or issued by (a) the governmental authority of the country in which such Product is produced, manufactured, processed or loaded, or any relevant agency thereof, or (b) the United Nations, the Republic of Singapore, the People's Republic of China, the United States of America, the European Union, the United Kingdom, any governmental authority, inter-governmental organization or any relevant agency thereof, which asserts jurisdiction over the Seller, the Buyer, or the performance of the Fuels Agreement including but not limited to the Product sale, delivery, insurance (where applicable), shipping (where applicable), and any payment or financial services in relation to the Fuels Agreement (collectively the "**Trade Control Laws**");
  - 4.2.4.4 not have carried or carry any cargo produced, originated, manufactured, processed or loaded from, related to or in connection with any country or territory subject to the Trade Control Laws; and
  - 4.2.4.5 not have called at the port of any country or territory subject to the Trade Control Laws.
- 4.2.5 If prior to delivery of the Product and notwithstanding any prior acceptance of the Buyer's nominated Barge by the Seller, the Seller has a reasonable belief that the Buyer is or may be in breach of its warranty in Section 4.2.4 and/or Section 16 Trade Compliance, the Seller shall be entitled to notify the Buyer in writing to nominate an alternative Barge which shall satisfy the warranties in Section 4.2.4 and Section 16 Trade Compliance and be acceptable to Seller and the Seller's nominated loading facilities. If the Buyer fails to nominate an alternative Barge in accordance with this Section within seven (7) calendar days of Seller's written notice or within such time as to enable the delivery to take place within the agreed period, whichever is earlier, the Seller shall be entitled, without prejudice to any of its rights and remedies, to terminate the Fuels Agreement. The Seller shall also be entitled to claim from the Buyer all losses, damages, charges, costs and expenses arising out of or in connection with the Buyer's breach and/or the termination of the Fuels Agreement.
- 4.2.6 If the Buyer fails to or delays in taking delivery of the Product or rejects in part or in full the Product, the Buyer shall be liable to pay the Seller all losses, damages, charges, costs and expenses incurred by the Seller as a result thereof.

### 4.3 Quantity, Quality and Claims

- 4.3.1 Unless otherwise specified in the Confirmation:
  - 4.3.1.1 Quantity of the Product delivered shall be determined by the loading facility meter system as evidenced by the Certificate of Quantity issued by the loading facility



provided by the Seller and this shall be the invoice quantity. Such determination shall be final, binding and conclusive on both the Seller and the Buyer save in the case of fraud or manifest error.

- 4.3.1.2 Quality of the Product delivered shall be determined by the loading facility as evidenced by the Certificate of Quality issued by the loading facility provided by the Seller.
- 4.3.2 Sample(s) of the Product (the “**FOB Retained Samples**”) shall be collected at the Buyer’s Barge’s receiving manifold, and shall be properly handled, distributed and recorded in the documents issued by the Seller after loading is completed (the “**Loading Documents**”).
- 4.3.3 Unless the Buyer has notified the Seller in writing of:
  - 4.3.3.1 any claim relating to the quantity of the Product within fourteen (14) calendar days; and/or
  - 4.3.3.2 any claim relating to the quality of the Product within thirty (30) calendar daysfrom the date of the bill of lading (if any) or date of commencement of loading of the Product, whichever is earlier, in either case together with details of the claim and facts on which the claim is based and full supporting documentation substantiating each and every constituent part of the claim, the Buyer shall have no right to make the claim against the Seller, and any right that the Buyer may have to make the claim against the Seller and/or the Buyer’s claim shall be deemed extinguished, waived and forever barred and the Seller shall be deemed released and discharged from the claim.
- 4.3.4 In the event the Buyer disputes the quality of the Product delivered, then provided the Buyer has complied with the requirements in Section 4.3.3 above, the Seller’s FOB Retained Sample recorded in the Loading Documents shall be sent to an independent and internationally recognised laboratory of the Seller’s choice for testing on whether it is on-specifications, the results of which shall be final, conclusive and binding on both the Seller and the Buyer save in the case of fraud or manifest error. If the test results show that the Product is on-specifications, the fees charged by the laboratory shall be borne solely by the Buyer.
- 4.3.5 It is a condition precedent to the Buyer’s right to commence any legal proceedings against the Seller for a claim of any nature under or arising out of or in connection with the Fuels Agreement that the Buyer’s Debt shall first be fully paid to the Seller without any withholding, deduction or set-off by the due date. If the Buyer fails to make full payment of the Buyer’s Debt to the Seller by the due date, the Buyer shall be deemed to have waived the right to bring any legal proceedings against the Seller for any claim of whatsoever nature under or arising out of or in connection with the Fuels Agreement and the Seller shall be deemed to be released and discharged from any such claim.
- 4.3.6 Upon notifying the Seller of a claim relating to the quality of the Product in accordance with Section 4.3.3 above, the Buyer shall give the Seller, at the latter’s request, a reasonable opportunity to inspect the Barge (including without limitation its engines and fuel tanks) and the Barge’s documents (including without limitation its logs, records and copies of all relevant communications between the Buyer and the Barge).

#### 4.4 Risk and Title

##### 4.4.1 Risk

Risk in the Product shall pass from the Seller to the Buyer progressively, and delivery of the Product shall be deemed to be made by the Seller to the Buyer progressively, as the Product passes the flange connecting the agreed loading facility's hose and the Barge's intake manifold.

##### 4.4.2 Title

Notwithstanding the passing of risk and the delivery of the Product to the Buyer, the Seller reserves the right of disposal of the Product, and the property in and title to the Product shall remain vested in the Seller until, and shall pass from the Seller to the Buyer only upon, the Seller's receipt of full payment of the price of the Product and all other sums that are due and payable by the Buyer to the Seller in connection with the delivery of the Product under the Fuels Agreement (collectively, the "**Buyer's Debt**"). The price of the Product is payable on a day certain as provided for in Section 9 irrespective of delivery.

4.4.3 Subject to Section 4.4.4, until the property in and title to the Product passes to the Buyer, the Seller authorises the Buyer to resell the Product in its ordinary course of business but only upon and subject to these conditions:

4.4.3.1 The resale is to be made by the Buyer with its sub-buyer(s) not as the Seller's agent but by the Buyer as principal;

4.4.3.2 The Buyer shall fully indemnify and hold the Seller harmless against any claims that may be made against the Seller by the sub-buyer(s) in respect of or arising out of the resale by the Buyer of the Product;

4.4.3.3 The Buyer shall at the time of resale, give notice to the sub-buyer(s) of the Seller's title to the Product and include provisions in the resale contract giving effect to the Seller's retention of title; and

4.4.3.4 Upon the Buyer's resale of the Product, where the Seller has still not received full payment of the Buyer's Debt, the Buyer's right to receive payment pursuant to such resale of the Product shall be held in trust for the Seller to the extent of the Buyer's Debt and the Seller shall have a right to require the sub-buyer(s) to make payment to the Seller directly. Where the Seller has not received full payment of the Buyer's Debt and the Buyer has received the proceeds of resale, the Buyer shall account to the Seller for the proceeds, which shall be the property of the Seller to the extent of the Buyer's Debt. The Buyer shall hold such proceeds separately from its own money on trust for the Seller and shall pay it to the Seller upon demand. The trust shall have force and effect until the Seller has received full payment of the Buyer's Debt.

4.4.4 The Buyer's authority from the Seller to resell the Product under Section 4.4.3 above terminates automatically upon the occurrence of an Event of Default or it may be immediately withdrawn by the Seller by notice in writing, in either case, without prejudice to the validity of Section 4.4.3.1 to 4.4.3.4 and any of the Seller's other rights or remedies or the Buyer's liabilities.

4.4.5 Until such time that property in and title to the Product passes to the Buyer and pending any resale under Section 4.4.3 above, the Buyer shall have possession of the Product only as a bailee to the Seller. The Buyer shall keep the Product at its sole risk and expense separately from other

goods and marked in such a way that the Product is clearly identified as the Seller's property. Upon the occurrence of an Event of Default or when the Buyer's Debt is due and unpaid to the Seller in whole or in part, the Seller shall have the right to repossess and resell the Product immediately. In such event, upon the Seller's written demand, the Buyer shall immediately deliver up the Product to the Seller and shall take all necessary steps to effect the delivery up including without limitation giving instructions to any facilities storing or carrying the Product to deliver up the Product to the Seller immediately at the Buyer's own risk, cost and expense. If the Buyer fails and/or refuses and/or neglects to do so, the Seller shall have the right to enter upon any premises and/or the vessels owned, chartered, occupied, operated, leased or controlled by the Buyer where the Product is situated and repossess the Product. Any and all costs and expenses thereby incurred by the Seller shall be on the Buyer's account, which the Buyer shall pay to the Seller within five (5) Singapore Business Days from the date of the Seller's demand. In circumstances where the Product is, in breach of the Buyer's obligation in this Section 4.4.5, mixed with other goods, the Seller shall have the right to trace its proprietary interest in the Product into the mixed goods and/or the Seller shall have a right of lien to such part of the mixed goods as corresponds to the quantity or value of the Product delivered.

- 4.4.6 Until such time that property in and title to the Product passes to the Buyer, the Buyer shall not resell, pledge, charge, allow the creation of a lien over or otherwise dispose of, use as security or deal with the Product, or assign to any third party the right to receive the proceeds of sale (collectively, "**Dealings with the Product**") otherwise than in accordance with Section 4.4.3 above or the Seller's written consent. Any unauthorised Dealings with the Product by the Buyer shall be wholly void.

## 5 SECTION 5 – DES, DAP DELIVERIES

### 5.1 Delivery

- 5.1.1 Unless otherwise specified in the Confirmation, the Product shall be delivered by the Seller to the Buyer's nominated Vessel in bulk ex-barge at the anchorage of Singapore during the delivery date range specified in the Confirmation and delivery of the Product shall be deemed to be made to the Buyer as provided for in Section 5.5.1. Except as expressly modified by the Confirmation, references to "ex-barge" or "Ex Ship" shall refer to DES or DAP as specified in the Confirmation, in the absence of which, DAP shall apply.
- 5.1.2 If the Buyer's nominated Vessel fails to arrive at the agreed delivery location within seventy-two (72) hours of the nominated estimated time of arrival, the Seller shall have the option (without prejudice to any other rights or remedies it may have under the Fuels Agreement or law) to cancel the delivery of the Product or terminate the Fuels Agreement without incurring any liability whatsoever.
- 5.1.3 The Seller will effect delivery of the Product with reasonable dispatch based on the nominated estimated time of arrival of the Vessel but makes no promise or guarantee, and is under no obligation, to the Buyer to give or complete delivery of the Product within any particular period or by any particular date or time. The Seller shall not be liable for any losses, damages, costs, expenses, charges, penalties, demurrage, cancellation or any consequences or liabilities arising out of or in connection with the delay in delivery of the Product caused by, whether directly or indirectly, congestion at the delivery location or at the Seller's or its supplier's facilities, prior commitments of the Seller's delivery Barge or by any event or circumstance beyond the control of the Seller.

5.1.4 Delivery of the Product shall be effected through standard delivery procedures and facilities adopted by the Seller's delivery Barges. The Seller shall not be liable for any losses, damages, costs, expenses, charges, penalties, demurrage or any consequences or liabilities arising out of or in connection with a failure or delay to deliver the Product due to incompatible delivery facilities on the Buyer's Vessel. The Seller shall not be responsible for on-board safety or storage failures that may affect the delivery of the Product and shall have the right to recover from the Buyer any resulting losses, damages, costs and expenses incurred. In the event of delay in the use of the Seller's delivery or barging facilities due to the Buyer or to the Vessel for any reason whatever, the Buyer shall reimburse the Seller for any costs and expenses including without limitation demurrage incurred as a result of such delay.

## 5.2 Application of Singapore Standards

Notwithstanding anything herein to the contrary, where delivery is carried out by Barges to Vessels in Singapore, the bunkering operation shall be subject to and shall follow the procedures prescribed by the Code of Practice For Bunkering and the Code of Practice for Bunker Mass Flow Metering, being the versions current on the date of delivery including any subsequent official amendments and/or updated version (collectively referred to as "**Code**"), or any other Codes applicable to bunkering operations published by the Singapore Standards Council should the Code be inapplicable.

## 5.3 Buyer's Nomination of Vessel Receiving Product

5.3.1 The Buyer's nominated Vessel to receive the Product shall be subject to the Seller's and Seller's Barge's acceptance, which acceptance shall not be unreasonably withheld.

5.3.2 Unless otherwise specified by the Seller, the Buyer shall give the Seller a notice of nomination of the Vessel receiving the Product in writing at least 48 hours prior to delivery (excluding non-Singapore Business Days) (the "**Vessel Nomination Notice**"), which notice must include the following that is not inconsistent with the Confirmation:

5.3.2.1 the name of the Vessel and its registration number;

5.3.2.2 the Vessel and/or Vessel charterer's agent where known;

5.3.2.3 the actual quantity of the Product to be delivered, narrowed to within any applicable minimum and maximum tolerances;

5.3.2.4 estimated date and estimated time of arrival of the Vessel at the delivery location;

5.3.2.5 exact location at which delivery is required; and

5.3.2.6 any other relevant particulars of the Vessel requested by the Seller.

5.3.3 The Buyer hereby represents and warrants that the nominated Vessel to receive the Product shall:

5.3.3.1 have valid and operative licences, administrative and applicable certificates required by the relevant authorities;

5.3.3.2 not be a person subject to any applicable sanctions, including not listed in the SDN List;

- 5.3.3.3 not have carried or carry any cargo produced in or originated from any country or territory subject to Trade Control Laws;
  - 5.3.3.4 not have called at the port of any country or territory subject to Trade Control Laws; and
  - 5.3.3.5 have delivery facilities onboard the Vessel that would enable the Vessel to receive the Product from the Seller's delivery Barge.
- 5.3.4 If prior to delivery of the Product and notwithstanding any prior acceptance of the Buyer's nominated Vessel by the Seller, the Seller has a reasonable belief that the Buyer is or may be in breach of its warranty in Section 5.3.3 and/or Section 16 Trade Compliance, the Seller shall be entitled to notify the Buyer in writing to nominate an alternative Vessel which shall satisfy the warranties in Section 5.3.3 and/or Section 16 Trade Compliance and be acceptable to Seller and Seller's delivery Barge. If the Buyer fails to nominate an alternative Vessel in accordance with this Section within seven (7) calendar days of Seller's written notice or within such time as to enable the delivery to take place within the agreed period, whichever is earlier, the Seller shall be entitled, without prejudice to any of its rights and remedies, to terminate the Fuels Agreement. The Seller shall also be entitled to claim from the Buyer all losses, damages, charges, costs and expenses arising out of or in connection with the Buyer's breach and/or the termination of the Fuels Agreement.
- 5.3.5 If the Buyer fails to or delays in taking delivery of the Product or rejects in part or in full the Product, the Buyer shall be liable to pay the Seller all losses, damages, costs and expenses incurred by the Seller as a result thereof.

#### 5.4 Quantity, Quality and Claims

- 5.4.1 Unless otherwise specified in the Confirmation:
- 5.4.1.1 Quantity of the Product delivered shall be determined by the Seller's Barge mass flow meter system and stated in the bunker delivery note and this shall be the invoice quantity. Such determination shall be final, binding and conclusive on both the Seller and the Buyer save in the case of fraud or manifest error.
  - 5.4.1.2 Quality of the Product delivered shall be determined by the Certificate of Quality issued by the loading facility provided by the Seller.
- 5.4.2 Sample(s) shall be collected at the Vessel's receiving manifold in accordance with the Code, and shall be handled, recorded in the bunker delivery note and distributed in accordance with the Code (the "**Retained Samples**"). Any sample taken in contravention or non-compliance with the Code shall not be recognised as representative of Product supplied.
- 5.4.3 If the Buyer or the Master / Chief Engineer of the Buyer's nominated Vessel should contravene, decline or waive compliance with any of the procedures prescribed by the Code for deliveries by Barges to Vessels and a dispute arises between the Seller and the Buyer, the failure or omission in compliance with the Code shall be construed strictly against the interests of the Buyer, who shall be estopped from denying, contradicting or challenging the findings on quantity or quality obtained by the Seller, which shall be final, binding and conclusive on the Buyer. Without prejudice to the foregoing, if the Chief Engineer of the Buyer's nominated Vessel fails, refuses or neglects to witness and confirm the opening and closing of the Seller's

Barge's tanks, the Seller reserves all rights to refuse or stop the delivery of the Product to the Vessel. In such event, all losses, damages, costs and expenses arising out of the delay in the delivery of the Product shall be borne by the Buyer. For the avoidance of doubt, the Code shall apply for deliveries by Barges to Vessels in Singapore as well as deliveries in other countries subject to any local laws that are mandatory.

5.4.4 Unless the Buyer has notified the Seller in writing of:

5.4.4.1 any claim relating to the quantity of the Product in the form of the Note of Protest prescribed by the Code within fourteen (14) calendar days and/or

5.4.4.2 any claim relating to the quality of the Product within thirty (30) calendar days

from the date of delivery (based on the date of the bunker delivery note), in either case together with details of the claim and facts on which the claim is based and full supporting documentation substantiating each and every constituent part of the claim, the Buyer shall have no right to make the claim against the Seller, and any right that the Buyer may have to make the claim against the Seller and/or the Buyer's claim shall be deemed extinguished, waived and forever barred and the Seller shall be deemed released and discharged from the claim.

5.4.5 In the event Buyer disputes the quality of the Product delivered, then provided the Buyer has complied with the requirements in Section 5.4.4 above, the Seller's Retained Sample recorded in the bunker delivery note shall be sent to an independent and internationally recognised laboratory of the Seller's choice for testing on whether it is on-specifications, the results of which shall be final, conclusive and binding on the Seller and the Buyer save in the case of fraud or manifest error. If the test results show that the Product is on-specifications, the fees charged by the laboratory shall be borne solely by the Buyer.

5.4.6 It is a condition precedent to the Buyer's right to commence any legal proceedings against the Seller for a claim of any nature under or arising out of or in connection with the Fuels Agreement that the Buyer's Debt shall first be fully paid to the Seller without any withholding, deduction or set-off by the due date. If the Buyer fails to make full payment of the Buyer's Debt to the Seller by the due date, the Buyer shall be deemed to have waived the right to bring any legal proceedings against the Seller for any claim of whatsoever nature under or arising out of or in connection with the Fuels Agreement and the Seller shall be deemed to be released and discharged from any such claim.

5.4.7 Upon notifying the Seller of a claim relating to the quality of the Product in accordance with Section 5.4.4 above, the Buyer shall give the Seller, at the latter's request, a reasonable opportunity to inspect the Vessel (including without limitation its engines and fuel tanks) and the Vessel's documents (including without limitation its logs, records and copies of all relevant communications between the Buyer and the Vessel).

## 5.5 Risk and Title

### 5.5.1 Risk

Risk in the Product shall pass from the Seller to the Buyer progressively, and delivery of the Product shall be deemed to be made by the Seller to the Buyer progressively, as the Product passes the Seller's delivery Barge's flange connection during discharging into the Buyer's nominated Vessel's tank.

## 5.5.2 Title

Notwithstanding the passing of risk and delivery of the Product to the Buyer, the Seller reserves the right of disposal of the Product and the property in and title to the Product shall remain vested in the Seller until, and shall pass from the Seller to the Buyer only upon, the Seller's receipt of full payment of the Buyer's Debt. The price of the Product is payable on a day certain as provided for in Section 9 irrespective of delivery.

5.5.3 Subject to Section 5.5.4, until the property in and title to the Product passes to the Buyer, the Seller authorises the Buyer to resell the Product in its ordinary course of business but only upon and subject to these conditions:

5.5.3.1 The resale is to be made by the Buyer with its sub-buyer(s) not as the Seller's agent but by the Buyer as principal;

5.5.3.2 The Buyer shall fully indemnify and hold the Seller harmless against any claims that may be made against the Seller by the sub-buyer(s) in respect of or arising out of the resale by the Buyer of the Product;

5.5.3.3 The Buyer shall at the time of resale, give notice to the sub-buyer(s) of the Seller's title to the Product and include provisions in the resale contract giving effect to the Seller's retention of title; and

5.5.3.4 Upon the Buyer's resale of the Product, where the Seller has still not received full payment of the Buyer's Debt, the Buyer's right to receive payment pursuant to such resale of the Product shall be held in trust for the Seller to the extent of the Buyer's Debt and the Seller shall have a right to require the sub-buyer(s) to make payment to the Seller directly. Where the Seller has not received full payment of the Buyer's Debt and the Buyer has received the proceeds of resale, the Buyer shall account to the Seller for the proceeds, which shall be the property of the Seller to the extent of the Buyer's Debt. The Buyer shall hold such proceeds separately from its own money on trust for the Seller and shall pay it to the Seller upon demand. The trust shall have force and effect until the Seller has received full payment of the Buyer's Debt.

5.5.4 The Buyer's authority from the Seller to resell the Product under Section 5.5.3 above terminates automatically upon the occurrence of an Event of Default or it may be immediately withdrawn by the Seller by notice in writing, in either case, without prejudice to the validity of Section 5.5.3.1 to 5.5.3.4 and any of the Seller's other rights or remedies or the Buyer's liabilities.

5.5.5 Until such time that property in and title to the Product passes to the Buyer and pending any resale under Section 5.5.3 above, the Buyer shall have possession of the Product only as a bailee to the Seller. The Buyer shall keep the Product at its sole risk and expense separately from other goods and marked in such a way that the Product is clearly identified as the Seller's property. Upon the occurrence of an Event of Default or when the Buyer's Debt is due and unpaid to the Seller in whole or in part, the Seller shall have the right to repossess and resell the Product immediately. In such event, upon the Seller's written demand, the Buyer shall immediately deliver up the Product to the Seller and shall take all necessary steps to effect the delivery up including without limitation giving instructions to any facilities storing or carrying the Product to deliver up the Product to the Seller immediately at the Buyer's own risk, cost and expense. If the Buyer fails and/or refuses and/or neglects to do so, the Seller shall have the right to enter upon any premises and/or the vessels owned, chartered, occupied, operated, leased or controlled by the Buyer where the Product is situated and repossess the Product. Any and all costs and

expenses thereby incurred by the Seller shall be on the Buyer's account, which the Buyer shall pay to the Seller within five (5) Singapore Business Days from the date of the Seller's demand. In circumstances where the Product is, in breach of the Buyer's obligation in this Section 5.5.5, mixed with other goods, the Seller shall have the right to trace its proprietary interest in the Product into the mixed goods and/or the Seller shall have a right of lien to such part of the mixed goods as corresponds to the quantity or value of the Product delivered.

5.5.6 Subject to Section 5.5.7 below, until such time that property in and title to the Product passes to the Buyer, the Buyer shall not have any Dealings with the Product otherwise than in accordance with Section 5.5.3 above or the Seller's written consent. Any unauthorised Dealings with the Product by the Buyer shall be wholly void.

#### 5.5.7 **Right in Rem / Lien**

The Seller permits such use notwithstanding that the property in and title to the Product remains vested in the Seller on the condition that the Seller shall have a right of lien over the Vessel and/or the Seller shall have rights *in rem* against the Vessel for the Buyer's Debt without prejudice to any other right or remedy that the Seller has under the Fuels Agreement or at law.

### 6 SECTION 6 – TIME BAR

Without prejudice to Section 4.3.3 and Section 5.4.4 above, any and all claims of whatsoever nature against the Seller under or arising out of or in connection with the Fuels Agreement including without limitation any claim relating to quantity or quality of the Product shall be deemed extinguished, waived and forever barred, and the Seller shall be released and discharged of any and all liability whatsoever in respect thereof, unless legal proceedings in accordance with Section 25.3 below are commenced for the claim(s) against the Seller, with notice of the commencement given to the Seller, within one (1) year from the date of delivery of the Product or if there is no delivery, the last day of the agreed delivery date range or if there is no agreed delivery date range, the event giving rise to the claim.

### 7 SECTION 7 – BUYER'S FAILURE TO RECEIVE THE PRODUCT

7.1 Without prejudice to any other rights or remedies that may be legally available to the Seller or to any previous waiver, forbearance, or course of dealing, and without any liability on the part of Seller whatsoever, including without limitation Section 13, if the Buyer fails, for any reason other than Force Majeure and/or reasons attributable to Seller, to take delivery, in whole or in part, of the contractual quantity of the Product within seventy-two (72) hours (or such longer period as the Parties may agree in writing) after the end of the agreed delivery date range, and the Parties are unable to agree within such seventy-two (72) hours (or such longer period as the Parties may agree in writing) after the end of the agreed delivery date range on a revised delivery date range, the Seller shall be entitled to any or all of the following cumulative remedies available to Seller at Seller's option:

7.1.1 The Seller may cancel the delivery of the Product (or the part thereof that is not received) and store the Product in shore tanks (whether at Seller's or at a third-party terminal) or on board a vessel or terminate the Fuels Agreement;

7.1.2 The Buyer shall pay to the Seller on demand all losses, damages, costs, expenses and liabilities incurred by the Seller as a result of the Buyer's failure including without limitation lost profits, time loss, costs to store the Product in shore tanks and/or ship tanks (whether at Seller's or third party terminal) or on board a vessel; and/or



- 7.1.3 If the Fuels Agreement is for multiple shipments, if and to the extent that Buyer has not paid the amount specified in Section 7.1.2 above to the Seller, the Seller shall be entitled at any time to suspend the delivery of any subsequent shipment(s) without incurring any liability to the Buyer. The Seller shall be entitled to cancel the affected shipment and/or, cancel any of the other unaffected shipments and/or terminate the Fuels Agreement. The exercise of the Seller's rights under this Section shall not relieve the Buyer of any remaining obligations to receive specific quantities of the Product under other shipments under the Fuels Agreement (unless the Seller exercises its rights to terminate the Fuels Agreement) or under other Fuels Agreement that are on foot, or any other obligations or its liabilities under the Fuels Agreement.

## **8 SECTION 8 – PRICE, TAX & OTHER CHARGES**

- 8.1 The unit price of the Product shall be in the amount expressed per unit and in the currency stipulated in, or otherwise determined in accordance with the pricing formula as stated in the Confirmation. Unless otherwise expressly specified in the Confirmation, the price is exclusive of GST, which shall be borne by the Buyer.
- 8.2 The Buyer shall pay for any and all taxes (including but not limited to any applicable GST if any), fees, duties or assessments as imposed by the relevant government authority in respect of the sale, purchase or use of the Product.
- 8.3 Where the Fuels Agreement is made on a FOB basis, the Buyer shall also pay for any and all costs and expenses relating to and/or arising out of the delivery, which costs and expenses shall be included in the Seller's invoice to the Buyer, including without limitation wharfage charges, mooring/berthing charges, tugboat charges, and/or barging/jetty fees. Such costs and expenses shall be paid by the Buyer to the Seller within three (3) Singapore Business Days from the date of receipt of the Seller's invoice.
- 8.4 Provisional Pricing for the Product**
- 8.4.1 If provisional pricing for the Product is provided in the Confirmation, this Section 8.4 shall apply.
- 8.4.2 If the final price cannot be calculated and determined prior to the payment due date, the Buyer shall effect payment against the Seller's or its bank's presentation of the Seller's provisional invoice in accordance with the payment due date set out in the Confirmation.
- 8.4.3 In the event that the final price cannot be determined at the time the Seller is required under the Fuels Agreement to issue the provisional invoice, then the provisional price shall apply and be determined in accordance with the pricing formula stated in the Confirmation, for the pricing period from 1<sup>st</sup> day to 20<sup>th</sup> day of the respective delivery month unless otherwise expressly specified in the Confirmation.
- 8.4.4 In the event that any quantity scheduled to be delivered within a certain month ("**Scheduled Delivery Month**") is actually delivered in a different month ("**Actual Delivery Month**"), the provisional price shall be calculated with reference to the Scheduled Delivery Month and not the Actual Delivery Month unless otherwise expressly agreed by the Seller and the Buyer.
- 8.4.5 The Buyer shall pay to the Seller the provisional price based on the Seller's provisional invoice on the payment due date notwithstanding that the final price and quantity can be determined on the payment due date.
- 8.4.6 The Seller shall as soon as practicable issue the final invoice to the Buyer. Any shortfall in payment due from the Buyer to the Seller or refund of overpayment due from the Seller to the

Buyer shall be settled by telegraphic transfer within five (5) New York Business Days after the Buyer's receipt of the final invoice (day of receipt of final invoice to count as day zero).

8.4.7 No interest will be due from the payor to the payee on any difference between the provisional and final invoice value for the period between the first or provisional invoice payment due date and the payment due date of the shortfall or refund set out in Section 8.4.6 above.

8.4.8 Notwithstanding the above, any amount of overpayment payable by the Seller to the Buyer under the relevant Fuels Agreement may, at the Seller's option, be reduced by its set-off against any amount(s) payable (whether at such time or in the next payment due from Buyer) by the Buyer to the Seller (or any of its related entities) under any other agreement(s) between the Seller (or any of its related entities) and the Buyer. The Seller will give notice to the Buyer of any set-off under this Section 8.4.8. No interest shall be due from the Seller to the Buyer on the amount of such overpayment.

## **9 SECTION 9 – PAYMENT**

9.1 The Buyer shall pay the Seller the price of the Product and all other sums that are due and payable by the Buyer to the Seller in connection with the delivery of the Product under the Fuels Agreement in full as stated in the Seller's invoice(s) without any discount, deduction, withholding, set-off, and/or counterclaim whatsoever, by the payment due date stipulated in the Confirmation or in the absence of such stipulation, as provided for in the Seller's invoice(s) irrespective of delivery of the Product. The information contained in the Seller's delivery documents shall form the basis of the invoice(s).

### **9.2 Payment provisions**

9.2.1 All payment due dates shall follow New York banking days unless otherwise agreed by Seller and Buyer in writing.

9.2.2 If a payment due date falls on a Saturday or New York banking holiday other than a Monday, payment will be due on the preceding New York banking day. If a payment date falls on a Sunday or New York banking holiday falling on Monday, payment will be due on the following New York banking day.

9.2.3 All bank charges including correspondent charges and reimbursement charges are for the Buyer's account except that bank charges of the Seller's bank shall be for the Seller's account.

9.2.4 The Buyer's payment obligation to the Seller in respect of any terms or conditions of the Fuels Agreement shall not be discharged until the Seller has received payment in full.

9.2.5 In the event any amount that is due and payable to the Seller pursuant to the Fuels Agreement by the Buyer is blocked or seized by any governmental authority or agency, whether under local, national or international legislative acts, powers, resolutions or sanctions, whether or not due to the Buyer's acts, omission or defaults, the Buyer shall remain fully liable to the Seller for the payment of any amount owed to Seller hereunder that may be blocked or seized.

9.2.6 Any blockage or seizure shall not constitute grounds of objection, delay or defence for the non-payment of the outstanding amounts on the Buyer's part.

9.2.7 The Seller is entitled to combine, consolidate or merge all or any of the liabilities of the Seller and/or any Seller's Affiliates (collectively, the "**Seller's Group**") and set-off or transfer any sums owed by the Seller's Group to the Buyer and/or any Buyer's Affiliates (collectively, the "**Buyer's**

**Group**”) towards the satisfaction or payment of any of the liabilities of the Buyer to the Seller under any Fuels Agreement. Notwithstanding that the Buyer’s liabilities may not be expressed in the same currency, the Seller is authorised to effect any necessary currency conversions at the rates then prevailing as at the date of the set-off or transfer.

### 9.3 Late Payment Interest

9.3.1 Without limitation to the provisions of this Section 9 or the Seller’s other rights under the Fuels Agreement or other rights, remedies or actions available, the Seller shall have the right, in respect of any payment not made by the due date, to require the payment by the Buyer to the Seller of interest thereon at the rate of two percent (2%) per annum above prime lending rate as quoted by JPMorgan Chase Bank, N.A published on the date on which payment is due, such late payment interest shall commence on the payment due date until the date of receipt of full payment of the amount outstanding and late payment interest. Such interest shall be payable to the Seller on demand therefor being made by the Seller. Interest shall continue to accrue under this Section 9.3 notwithstanding the termination of the Fuels Agreement for any cause whatsoever. The amount of late payment interest payable to the Seller shall be grossed up for withholding tax, if any, such that the net amount received by the Seller after the deduction of any such withholding tax shall be equal to the full amount of late payment interest due.

9.3.2 The provisions of Section 9.3.1 shall not be construed as an indication of any willingness on the part of the Seller to provide extended credit as a matter of course, and shall be without prejudice to any rights and remedies which the Seller may have under the Fuels Agreement or at law. Any expenses incurred by the Seller, including but not limited to legal fees, court and/or arbitration costs, fees and expenses, and collection agency fees, relating to steps or actions taken by the Seller arising out of the delay or failure by the Buyer to pay the amount(s) due shall be for the account of the Buyer and payable to the Seller upon demand.

### 9.4 Additional Credit Support

9.4.1 If (a) the Seller determines that the financial condition of the Buyer or the Buyer’s Affiliates or the Credit Support Provider has become impaired or unsatisfactory, or (b) for any other reason the Seller determines it necessary to obtain adequate assurances of the Buyer’s or the Buyer’s Affiliates’ financial responsibility, the Seller may, in its sole discretion and upon notice to the Buyer, require the Buyer to provide the Seller with satisfactory security for the Buyer’s and/or the Buyer’s Affiliates’ performance (“**Additional Credit Support**”).

9.4.2 Such Additional Credit Support may include but not be limited to at the Seller’s option: (i) prepayment of Product; (ii) an irrevocable standby letter of credit to the Seller, for the estimated maximum value of the Product contemplated to be delivered pursuant to the Fuels Agreement, issued by a first class international bank acceptable to the Seller no later than seven (7) Singapore Business Days prior to scheduled delivery or (iii) delivery to the Seller within two (2) Singapore Business Days of the Seller’s request of a guarantee or payment undertaking from the Buyer or the Buyer’s parent company or any other entity at the Seller’s discretion in a form and substance satisfactory to the Seller. Any costs arising from Buyer’s provision of Additional Credit Support shall be fully borne by the Buyer.

9.4.3 Notwithstanding anything to the contrary herein and without prejudice to any other rights or remedies available to the Seller, if the Buyer fails to comply with Sections 9.4.1 and 9.4.2 above, the Seller is entitled to any or all of the following cumulative remedies at the Seller’s option without any liability to the Buyer:

- 9.4.3.1 terminate the Fuels Agreement immediately upon written notice to the Buyer; and/or
- 9.4.3.2 suspend any deliveries and/or performance of any of its obligations under the Fuels Agreement.

## 9.5 Change of Payment Instructions

- 9.5.1 In the event that the Buyer receives any notice of changed banking information or instruction for payment to the Seller to be made to a bank account different from that previously used for payment settlement or different from that currently in the Buyer's records (collectively known as "**Payment Instruction**"), the Buyer shall be required to forthwith verify and confirm the Payment Instruction with the Seller by both telephone and email with the Seller's payment settlement contact person stated in the notice section of the applicable Confirmation before any payment is made by the Buyer to the bank account in the Payment Instruction. The Buyer shall update its records in a timely manner upon receipt of Seller's confirmation so as to avoid unnecessary further requests for confirmation.
- 9.5.2 The Seller shall not be responsible for any losses, costs, expenses, liabilities or delays, resulting directly or indirectly from the Buyer's reliance on any payment instruction or correspondence sent by any email addresses not stated in the Fuels Agreement and shall not be responsible for any losses, costs, expenses, liabilities or delays, resulting directly or indirectly from the Buyer sending any correspondence to any other email than otherwise stated in the Fuels Agreement. Each Party shall ensure the implementation of security monitoring to protect itself against network intrusion attack and maintain the security of its IT equipment and software, including, but not limited to, its email system, and each party shall be liable for all activities that occur under its email system.
- 9.5.3 The Buyer's obligation to pay the Buyer's Debt to the Seller shall survive the expiration or termination of the Fuels Agreement.

## 10 SECTION 10 – NEW AND CHANGED REGULATIONS, ETC

- 10.1 It is understood by the Parties that the Seller is entering into the Fuels Agreement in reliance on the laws, rules, regulations, decrees, agreements, concessions and arrangements (collectively, the "**Regulations**") in effect as at the date of the Fuels Agreement, of governments, government instrumentalities or public authorities affecting the Product sold hereunder including, but without limitation to the generality of the foregoing, those relating to the production, acquisition, gathering, manufacturing, processing, transportation, storage, trading or delivery thereof, insofar as such Regulations affect the Seller or the Seller's supplier(s).
- 10.2 If at any time and from time to time during the currency of the Fuels Agreement, any Regulations are changed or new Regulations become effective, whether by law, decree or regulations or by response to the insistence or request of any governmental or public authority or any person purporting to act therefor, and the material effect of such changed or new Regulations (a) is not covered by any other provision of the Fuels Agreement of and (b) has a material adverse economic effect on Seller, the Seller shall have the option to request renegotiation of the price(s) or other pertinent terms of the Fuels Agreement. Such option may be exercised by the Seller at any time after such changed or new Regulations are promulgated by written notice to the Buyer, such notice to contain the new price(s) or terms desired by the Seller. If the Parties do not agree upon new price(s) or terms satisfactory to both Parties within fifteen (15) days after the date of the Seller's notice, either Party shall have the right to terminate the Fuels Agreement immediately at the end of such 15-day period. Any Product delivered during such 15-day period shall be

sold and purchased at the price(s) and on the terms applying under the Fuels Agreement without any adjustment in respect of the changed or new Regulations.

## 11 SECTION 11 – FORCE MAJEURE

11.1 “**Force Majeure**” means any event or circumstance, the effect of which is beyond the reasonable control of a Party (the “**Affected Party**”), but only to the extent that such event or its effect: (i) could not have been avoided by steps which might reasonably have been expected to have been taken by the Affected Party acting as a Reasonable and Prudent Operator; (ii) causes or results in the Affected Party being unable to perform (in whole or in part), or being delayed in performing, any of its obligations under the Fuels Agreement; and (iii) is not the direct or indirect result of a breach by the Affected Party of applicable law or a failure of the Affected Party to perform any of its obligations under the Fuels Agreement. Provided that the aforementioned conditions of Force Majeure are satisfied, Force Majeure shall include the following:

- 11.1.1 Compliance, voluntary or involuntary, with any law, regulation or ordinance or with any direction, order, demand, requisition or request of any international, national, port, transportation, local government or other authority or agency or of any body or person purporting to act with such authority or any corporation directly or indirectly controlled by any of them;
- 11.1.2 Strike, lockout, industrial disturbances, trade disputes or other labour difficulty from whatever cause arising, whether involving employees of either the Seller, its supplier, or the Buyer or of a third party and whether or not it could be settled by acceding to the demands of the labour group;
- 11.1.3 Natural calamity, fire, explosion, earthquakes; epidemic; pandemic;
- 11.1.4 War (whether declared or undeclared), hostilities, embargo, blockade, boycott, civil unrest, riots, insurrection, revolution, requisition, acts of piracy, terrorism and any consequence thereof;
- 11.1.5 Perils of the sea, storms, floods, hazardous weather, or other acts of God;
- 11.1.6 Acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 11.1.7 Explosions, fires, breakdown or destruction of tankage, pipelines, of refineries or terminals and any of kind of installations;
- 11.1.8 Breakdown of or damage to producing, processing, manufacturing, selling or delivery facilities, power failure at the terminal;
- 11.1.9 Any curtailment, failure or cessation of supplies of the Product from any of the Seller’s or suppliers’ sources of supply for any reason or by any refusal to supply Product whether lawful or otherwise by the Seller’s suppliers or supplies of the Product are available to the Seller only under conditions which, in the Seller’s sole judgment are deemed unacceptable (provided in fact the sources of supply are for the purposes of the Fuels Agreement);
- 11.1.10 Loss or shortage of transportation facilities, barge collisions;
- 11.1.11 Imposition of restrictions or onerous regulations by any government or governmental agency; or
- 11.1.12 Any other similar cause beyond the reasonable control of either Party.

11.2 Notwithstanding Section 11.1, the following events shall not constitute Force Majeure:

- 11.2.1 inability (however caused) of a Party to pay any amounts when due;
- 11.2.2 breakdown or failure of the Buyer's nominated Barge or Vessel prior to taking delivery of the Product;
- 11.2.3 break-down or failure of plant or equipment caused by normal wear and tear or by a failure to properly maintain such plant or equipment;
- 11.2.4 compliance by the Affected Party with an act, regulation, order or demand of a Competent Authority, or of any Person purporting to be or act for a Competent Authority, in circumstances where such act, regulation, order or demand affects solely or primarily the Affected Party and is not generally applicable to persons doing business in the same country; and
- 11.2.5 For the purposes of Section 11 (and without prejudice to the definition of Force Majeure therein), an event or circumstance shall not constitute Force Majeure affecting either Party if its occurrence or effect is not beyond the reasonable control of, and could have been avoided by steps which might reasonably have been expected to have been taken, by any agent or contractor of that Party.

### 11.3 Effects of Force Majeure

- 11.3.1 The Affected Party shall be relieved from liability for any delay or failure in performance of any of its obligations, other than obligations to make payment, under the Fuels Agreement to the extent that, and for the period during which, such failure or delay is caused by or results from Force Majeure.
- 11.3.2 The Affected Party shall be relieved from liability under Section 11.3.1 only for so long as, and to the extent that, the Affected Party complies with the requirements of Section 11.4.
- 11.3.3 The Affected Party, if the Seller, shall be entitled to withhold, reduce, or suspend deliveries of Product and may allocate according to its own discretion its available supplies of Product to meet its own requirements and those of its subsidiaries and Affiliates and other customers, including the other Party. The Affected Party, if the Seller, shall not be obliged to purchase afloat or otherwise from other suppliers to make good shortages or deficiency of delivery resulting from Force Majeure.

### 11.4 Notification

- 11.4.1 Upon the occurrence of Force Majeure or an event that a Party considers may subsequently lead it to claim Force Majeure, the Affected Party shall notify the other Party in writing as soon as reasonably practicable, including details of the nature of the actual or anticipated Force Majeure available to the Affected Party, an estimate of the likely duration of such Force Majeure (to the extent possible), the Affected Party's obligations under the Fuels Agreement and/or any transaction that are affected by such Force Majeure and the actions being taken both to mitigate the impact such Force Majeure may have on the Affected Party as well as to remedy such Force Majeure.
- 11.4.2 The Affected Party shall take the measures which a Reasonable and Prudent Operator would take in all the circumstances (to the extent permitted by applicable law):

- 11.4.2.1 to overcome the event or circumstances of Force Majeure relied on so as to enable it to resume full performance of its obligations as expeditiously as possible; and
- 11.4.2.2 to minimise the effects of the event or circumstance of Force Majeure, provided that, in each case, a strike, lock-out or any other kind of labour dispute may be settled by the Affected Party in its sole discretion.
- 11.4.3 The Affected Party shall provide a notice to the other Party once the event or circumstances causing the Force Majeure has been remedied or has ceased.

## 11.5 Termination for Force Majeure

If as a result of Force Majeure, the Affected Party is unable to perform any of its obligations, other than obligations to make payment, for more than thirty (30) consecutive days after the day the notice of Force Majeure under Section 11.4.1 above has been sent or the occurrence of the Force Majeure event whichever is later, then either Party shall be entitled to terminate the Fuels Agreement by written notice to the other Party without any liability on either side save that such termination shall be without prejudice to any other rights accrued prior to the occurrence of the event giving rise to Force Majeure.

## 12 SECTION 12 – INDEMNITY AND LIMITATION OF LIABILITY

### 12.1 Indemnity

- 12.1.1 The Buyer shall fully indemnify and hold harmless the Seller, the Seller's supplier, the Seller's Affiliates and the directors, employees and agents of the Seller and the Seller's Affiliates (collectively, the "**Indemnified Parties**") against any and all liabilities, claims, demands, proceedings, losses, damages, costs (including reasonable cost of any settlement and legal costs and expenses on a solicitor and client basis), expenses, fines, penalties and/or other consequences whatsoever including without limitation death, personal injury, loss, and damage caused to persons or property arising out of or in connection with any breach by the Buyer of the Fuels Agreement, or from any act, omission, default, negligence or misconduct on the part of the Buyer, its servants, agents or sub-contractors relating to and/or arising out of or in connection with the Fuels Agreement.
- 12.1.2 Any loss of or damage to the Product, property or any nominated delivery facilities of the Seller or its supplier or any other party caused, whether directly or indirectly, by the Buyer's nominated Vessel shall as between Parties hereto, be borne by the Buyer and the Buyer shall to such extent fully indemnify and hold the Seller or its supplier harmless in respect of the same.

### 12.2 Limitation of liability

- 12.2.1 Notwithstanding any other provisions in the Fuels Agreement, the Seller's total maximum liability under the Fuels Agreement howsoever arising whether in contract or in tort (including negligence) or otherwise (which shall include but not be limited to claims in respect of the quality and specification of the Product or for failure to supply or delay in supplying any quantity of Product for which the Seller is responsible) shall not under any circumstances whatsoever exceed the invoice price of the portion of the Product under the Fuels Agreement upon which liability is being asserted against the Seller. This limitation of liability shall be in addition to any other exclusions or limitations available to the Seller under the Fuels Agreement and/or at law.
- 12.2.2 The Seller shall not in any circumstances whatsoever and howsoever arising (including without limitation any breach, act or omission in the course of or in connection with the performance of

the Fuels Agreement or any negligence on the part of the Seller, its agents or sub-contractors) be liable for any of the following losses, damages, costs and/or expenses:

12.2.2.1 any indirect, consequential or special loss damage or expense, whether foreseeable or not;

12.2.2.2 any loss of use, loss of hire, loss of time, loss due to shut-down, loss of income, loss of revenue, loss of production, loss of goodwill or reputation, loss of profits, loss of market, loss of business or loss of business or commercial opportunity, all of which whether direct or indirect, whether in relation to the Product, Buyer's nominated Vessel or otherwise and whether asserted by the Buyer as a claim for an indemnity in respect of a claim, demand or action made or brought against the Buyer by a third party or otherwise;

12.2.2.3 any loss of use, loss of hire, loss of time, loss of revenue, loss of business opportunities, deviation cost or demurrage incurred by the Buyer's nominated Vessel, loss in relation to any delay or detention of the Buyer's nominated Vessel or any liability that the Buyer may have to a third party for such foregoing losses, costs or demurrage or for any loss of or damage to the Vessel's engines, tanks or other machinery (nor for any cleaning of such parts of the Vessel), all of which whether direct or indirect; and/or

12.2.2.4 any exemplary or punitive damages.

12.2.3 Nothing in the GTCs shall exclude or limit a Party's liability for:

12.2.3.1 personal injury or death resulting from that Party's negligence;

12.2.3.2 fraud; or

12.2.3.3 Wilful Misconduct.

12.2.4 It is expressly agreed that no Seller's supplier, servant, agent, contractor or other person acting on the instructions of the Seller in respect of the Fuels Agreement shall in any circumstances be under any liability to the Buyer for any loss or damage or delay of whatsoever kind arising out of or in connection with, whether directly or indirectly, from any act, neglect or default on its part while acting in the course of or in connection with its employment or as agent, supplier or contractor of the Seller or otherwise in excess of the liability of the Seller under the provisions of the Fuels Agreement. Without prejudice to the generality of the foregoing, every exemption from liability, defence and immunity applicable to the Seller shall also be available and shall extend to protect every such Seller's supplier, servant, agent, contractor or other person and for the purposes of this Section 12.2.4, the Seller is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and all such persons shall to this extent be or deemed to be parties to the Fuels Agreement between the Seller and the Buyer.

12.2.5 The defences and limitation of liability provided herein shall apply in any action for loss of or damage of whatsoever nature, whether the action be founded in contract, tort (including negligence) or otherwise.



### 13 SECTION 13 – EVENTS OF DEFAULT

13.1 The events and circumstances set out below with respect to each Party shall constitute “**Events of Default**”:

13.1.1 the Party, the immediate or ultimate parent company and/or Credit Support Provider of a Party:

13.1.1.1 is dissolved (other than pursuant to a consolidation, amalgamation or merger);

13.1.1.2 becomes insolvent or is unable to pay its debts or is likely to be or become insolvent or unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

13.1.1.3 makes a general assignment, arrangement or composition with or for the benefit of its creditors;

13.1.1.4 institutes or threatens to institute 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 five (5) calendar days of the institution or presentation thereof;

13.1.1.5 passes or threatens to pass a resolution for its winding up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

13.1.1.6 seeks or becomes subject to the appointment of an administrator, provisional liquidator, judicial manager, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets;

13.1.1.7 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) calendar days thereafter;

13.1.1.8 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 13.1.1.1 to 13.1.1.7 above; or

13.1.1.9 takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

13.1.2 the Buyer fails to deliver to the Seller any Credit Support and/or Additional Credit Support at the time and in the manner stipulated in the Fuels Agreement;

13.1.3 any Credit Support Provider of a Party fails to comply with any of its obligations under or in respect of the Credit Support provided by such Credit Support Provider;

13.1.4 any Credit Support becomes invalid, ineffective or unenforceable (other than due to its expiry) or ceases to be in full force and effect (in each case, other than in accordance with its terms) prior

to the satisfaction of all obligations of a Party to which such Credit Support relates under the Fuels Agreement, without the prior written consent of the other Party;

- 13.1.5 a Party or any of its Credit Support Providers disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of any Credit Support (or such action is taken by any Person appointed or empowered to operate such Party or such Credit Support Provider, or to act on behalf of such Party or such Credit Support Provider) issued to the other Party;
  - 13.1.6 a Party fails to pay any sums due from it in respect of a Fuels Agreement, at the time and in the manner stipulated in the Fuels Agreement;
  - 13.1.7 a Party fails to perform any material obligation of the Fuels Agreement at the time and in the manner stipulated in the Fuels Agreement (including and without limitation anticipatory breach);  
or
  - 13.1.8 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, or where the change of control is expressly agreed to by the Seller in writing.
- 13.2 **"Control"** means the ability to direct the activity of a corporation or an entity, and a person shall be presumed to control a corporation or entity if that person holds half or more of a certain type of means of control of that corporation or entity including but not limited to by direct or indirect holding of not less than fifty per cent (50%) of the ownership or voting rights of such company or entity.
- 13.3 Upon the occurrence of an Event of Default, the non-defaulting Party may in its absolute discretion and without prejudice to any other available right or remedy, or to any previous waiver, forbearance, or course of dealing, and without any liability to the defaulting Party whatsoever, be entitled to the following cumulative remedies available to the non-defaulting Party at its option:
- 13.3.1 Terminate the relevant Fuels Agreement or other Fuels Agreement or contracts between the Parties immediately upon written notice to the defaulting Party;
  - 13.3.2 The non-defaulting Party, if the Seller, shall be entitled to the following additional remedies:
    - 13.3.2.1 Suspend any further deliveries and/or performance of any of its obligations under the Fuels Agreement until such time as specified by the non-defaulting Party;
    - 13.3.2.2 Decline to commence or complete loading, discharging or delivery under the Fuels Agreement;
    - 13.3.2.3 Withdraw or cancel the credit terms (if any) extended to the Buyer;
    - 13.3.2.4 Demand immediate payment for (i) all Products which have been delivered but not paid in full (whether or not then due); and/or (ii) all other sums (whether or not then due) pursuant to the Fuels Agreement or other Fuels Agreements between the Parties which shall immediately become due and owing; and/or
    - 13.3.2.5 Set-off monies payable by the Seller (or any of Seller's related entities) to the Buyer (or any of Buyer's related entities) against any other amounts payable by the Buyer to the Seller pursuant to the Fuels Agreement or any other contracts between the Seller and the Buyer; and/or

13.3.2.6 Claim from the Buyer for any damages, losses, costs, expenses and/or charges resulting from the Buyer's failure to receive delivery, including without limitation, the loss in bunker value determined at the difference in price per the Fuels Agreement and the Seller's reasonable estimate of market price for the delivery place on such date of cancellation or failure to take full delivery, right to charge an order cancellation fee, delivery fee, demurrage, costs to return the bunkers to storage and costs to obtain or re-establish any hedging arrangement.

13.4 Either Party shall immediately provide written notice to the other Party of the occurrence or expected occurrence of any of such events listed in Section 13.1. If the other Party exercises its right to terminate the Fuels Agreement, all sums owing to the other Party under the Fuels Agreement (whether or not then due) shall immediately become due and owing, and the other Party shall be entitled to demand immediate payment from the notified Party for the satisfaction of such sums. When the other Party exercises the right to demand immediate payment from the notified Party for any sums, the notified Party shall make such payment in U.S. dollars in full within three (3) Singapore Business Days after the other Party makes its demand, to the other Party's nominated bank account without any withholding, off-set, deduction or counterclaim whatsoever.

13.5 The rights and obligations of either Party to the other Party accrued prior to termination of the Fuels Agreement shall survive such termination.

#### **14 SECTION 14 – NOTICES**

14.1 Unless otherwise agreed, all notices or other communications, including invoices, consents, demands, confirmations or further agreements (each a "Notice") from one Party to the other Party which are required or permitted to be made by the provisions of the Fuels Agreement shall be: (i) made in English; (ii) made in writing; and (iii) either delivered in person or sent by courier, prepaid airmail, registered mail, or email to the other Party.

14.2 The address of PCSG for service of notices under the Fuels Agreement is its registered address in Singapore unless otherwise stated in the Confirmation.

14.3 Unless otherwise agreed, any notice made by one Party to the other Party in accordance with this Section shall be deemed to be received as follows:

14.3.1 if by registered mail, three (3) Singapore Business Days (if overseas) and one (1) Singapore Business Day (if inland) after dispatch;

14.3.2 if delivered in person, on the day on which it is received at that Party's address, and is handed to an officer, representative or employee of the Party to which it is addressed;

14.3.3 if by prepaid airmail, on the fifth (5<sup>th</sup>) day after it was posted; or

14.3.4 if by email, facsimile, or courier if it is delivered on a Singapore Business Day before 1800 hours, then on that day, in any other case, on the Singapore Business Day after the day on which it is delivered.

14.4 Except for notices under Section 19 Assignment and Section 25 Governing Law and Dispute Resolution Forum, the Parties may exchange messages with respect to the performance of the Fuels Agreement by email. Any message sent by email shall be sent to the address of the other Party specified in the

Confirmation or communicated in writing. Email messages are only valid if and when actually received and the sender bears the risk of a failure in transmission.

- 14.5 Any alterations to the contacts or addresses of a Party specified in the Confirmation shall be notified immediately by email, letter or facsimile to the other Party. A Party is entitled to modify its contact details in the Confirmation upon five (5) Singapore Business Days' prior written notice served to the other Party.
- 14.6 Notices shall not be given by instant messaging, which includes but is not limited to text messages, WeChat messages and WhatsApp messages or messages sent on similar or other electronic platforms.
- 14.7 For the avoidance of doubt and unless otherwise expressly agreed in writing by PCSG, PCSG does not accept service of (a) any legal proceedings documents, including but not limited to court or arbitration proceedings; (b) claim originating process and (c) documents (including notices) relating to any legal proceedings, by way of electronic means (including but not limited to email, electronic messaging and/or fax).

## **15 SECTION 15 – HEALTH, SAFETY, ENVIRONMENT**

- 15.1 The Buyer shall provide its employees, users and customers with health, safety and environmental information in relation to the Product to be delivered and/or used. The Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of any Product.
- 15.2 The Buyer shall at all times comply with any obligations, requirements, recommendations and/or industry best practices whether made by the Seller or contained in any law, statute, directive or regulation of any territory, state or jurisdiction in or through which the Products may be delivered, sold, transported or used and all Government, state or local regulations at the port such as, but not limited to, those related to fire, or loss of Product.
- 15.3 If an escape, spillage or discharge of oil (hereinafter referred to as a “**Spill**”) occurs while the Product is being delivered to the Buyer hereunder, the Buyer will promptly take such action as is reasonably necessary to remove the oil and mitigate the effects of such Spill. However, notwithstanding the cause of such Spill, the Seller or its supplier is hereby authorised, at its option, upon notice to the Buyer, or the receiving vessel, to take such measures, either in cooperation with the Buyer, or exclusively as the sole party, and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonably necessary, in the judgment of the Seller or its suppliers to remove the oil and mitigate the effects of such Spill. If the Seller has exercised its option to remove the oil and mitigate the effect of such Spill, the Buyer agrees to cooperate and render such assistance as is required by the Seller in the course of such action. Any expenses, damages, costs, fines and penalties arising from escape, spillage, discharge or pollution of oil shall be paid by the party that caused such escape, spillage, etc by a negligent act or omission. If both Parties have acted negligently, any expenses etc shall be divided between the Parties in accordance with the respective degree of negligence. The Buyer also agrees to give, or cause to be given, to the Seller, all such information concerning any spill, or any programme for the prevention thereof, which are requested by the Seller, or required by law or regulation applicable at the time and place where the Seller delivers Product to the Buyer.
- 15.4 The Buyer shall fully indemnify and hold the Seller harmless against any and all liabilities, demands, claims, proceedings and/or consequences of whatsoever nature arising out of or in connection with any failure by the Buyer to comply with its obligations under this Section 15.

## 16 SECTION 16 – TRADE COMPLIANCE

### 16.1 Sanctions

16.1.1 Notwithstanding anything to the contrary in the Fuels Agreement:

16.1.1.1 Nothing in the Fuels Agreement 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, penalised or prohibited under any laws, regulations, decrees, ordinance, order, demand, request, rules or requirements of the European Union, the United Nations, Republic of Singapore, People’s Republic of China, the United States of America, the United Kingdom and any other laws or regulations that could be applicable to such party which relate to international boycotts of any type; and

16.1.1.2 Neither Party shall be obliged to perform any obligation otherwise required by the Fuels Agreement (including without limitation an obligation to (a) perform, deliver, accept, sell, purchase, pay or receive monies to, from, or through a person or entity, or (b) engage in any other acts) if this would be in violation of, inconsistent with, or expose such Party to punitive measures under sanctions.

16.1.2 Where any performance by a Party would be in violation of, inconsistent with, or expose such Party to punitive measures under, the sanctions, such Party (the “**Exposed 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 Exposed Party shall be entitled to:

16.1.2.1 immediately suspend the affected obligation (whether payment or performance) until such time as the Exposed Party may lawfully discharge such obligation;

16.1.2.2 if it is not possible to suspend the affected obligation and 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 the Products 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

16.1.2.3 where the obligation affected is acceptance of the Buyer’s nominated Vessel, to require the Buyer to nominate an alternative Vessel,

in each case without any liability whatsoever on the part of the Exposed Party (including but not limited to any damages for breach of contract, penalties, costs, fees and expenses).

16.1.3 Nothing in this Section 16 shall be taken to limit or prevent the operation, where available under the governing law of the Fuels Agreement, of any doctrine analogous to the common law doctrine of frustration as applied in Singapore.

### 16.2 Destination Restriction

16.2.1 Notwithstanding anything to the contrary in the Fuels Agreement, the Buyer irrevocably represents and undertakes, and it is a condition of the Fuels Agreement, that the Product delivered under the Fuels Agreement shall not be used or utilised in any way that is

prohibited, restricted under, inconsistent with, contrary to, or may expose the Seller or its direct or indirect parent companies or Affiliates to punitive measures or other negative consequences under the Trade Restrictions and further, that the Product shall not be supplied, sold, transferred, transported, exported or imported (by the Buyer or its direct or indirect receiver(s)), directly or indirectly and irrespective of means, to:

- 16.2.1.1 a destination prohibited, restricted under, inconsistent with, contrary to, or may expose the Seller or its direct or indirect parent companies or Affiliates to negative consequences under the terms imposed by the Seller's supplier from whom the Seller has acquired the Product;
  - 16.2.1.2 any country, state, territory or region which is prohibited, restricted under, inconsistent with, contrary to, or may expose the Seller or its direct or indirect parent companies or Affiliates to punitive measures or other negative consequences under the Trade Restrictions; or
  - 16.2.1.3 any natural or legal person or vessel sanctioned, designated or subject to sanctions measures under the Trade Restrictions.
- 16.2.2 For the purpose of this Section 16, "**Trade Restrictions**" shall mean any laws, sanctions, regulations, rules, orders, resolutions, demands, directives, requirements, requests, or guidelines applied or issued by (a) the governmental authority of the country in which such cargo was produced, manufactured, processed or loaded, or any relevant agency thereof, or (b) the United Nations, the Republic of Singapore, the People's Republic of China, the United States of America, the European Union, the United Kingdom, any governmental authority, inter-governmental organization or any relevant agency thereof, which asserts jurisdiction over the Seller, the Buyer, or the performance of the Fuels Agreement including but not limited to the cargo sale, delivery, insurance (where applicable), shipping (where applicable), and any financial services in relation to the Fuels Agreement.
- 16.2.3 The Buyer acknowledges that it is fully aware of all the Trade Restrictions. The Buyer shall keep itself informed as to the Trade Restrictions and ensure that it and its direct or indirect receiver(s) fully comply with them.
- 16.2.4 The Buyer further undertakes to impose the abovementioned condition on, and secure a similar undertaking as stipulated in this Section from, any resale customer(s) of the Buyer, together with an obligation upon such resale customer(s) to expressly impose such a condition on, and secure a similar undertaking from, any subsequent resale customer(s) of theirs.
- 16.2.5 The Buyer undertakes to advise the Seller, upon request, of the destination of the Product. The Buyer shall, if the Seller requires, provide the Seller with appropriate documentation for the purposes of verifying the destination of any cargo delivered hereunder. Such documentation shall be provided within thirty (30) calendar days of the Seller's request or within such shorter period as will enable the Seller or its supplier to comply with any requirement or request of any governmental authority, inter-governmental organization or any relevant agency in question, and shall include such information including without limitation the name of the receiver(s), the port(s) of discharge, the date(s) of discharge, the grade and quantity discharged, the name of the vessel, and if applicable, the details of lightering or ship to ship transfers, the names of the agents at the discharge port, and any other details requested by the Seller. The obligations of the Buyer to comply with such requirement shall not be affected by any sale or disposal of the Product in question by the Buyer.

- 16.2.6 Without prejudice to the obligations of the Buyer set out herein, the Seller shall have the right, at its sole discretion, to appoint its representative(s) to witness or inspect any stage of the relevant loading or discharging operations. The Buyer shall fully cooperate and facilitate the attendance and work of the said representative(s) and ensure there is no obstruction or disruption thereof.
- 16.2.7 Without prejudice to the foregoing, and without prejudice to any other rights the Seller has or may have under the Fuels Agreement or otherwise, in the event of any breach of the Buyer's obligations under this Section or if the Seller has reasonable grounds for believing that this Section will not be complied with by the Buyer, the Seller shall have the right, at its sole discretion, upon notifying the Buyer either in writing or orally (with written confirmation to follow), to terminate the Fuels Agreement or suspend delivery and/or performance of its obligations under the Fuels Agreement until further notice or decline to commence or complete loading or discharging hereunder, and in such a case the Seller shall not in any way be liable for any and all damages, costs, losses, fines, penalties and/or other consequences whatsoever that may be caused to the Buyer or any other parties.
- 16.2.8 The Buyer shall at all times be liable for and shall fully indemnify and hold the Seller harmless against any and all losses, damages, costs, expenses, fines, penalties and/or other consequences whatsoever, that the Seller may suffer as a result of any breach or anticipatory breach of the Buyer's obligations under this Section.
- 16.2.9 Nothing in the Fuels Agreement is intended, and nothing herein should be interpreted or construed, to induce or require the Seller to act in any manner (including failing to take any actions in connection with a transaction) which is in any way prohibited, restricted under, inconsistent with, contrary, to or may expose the Seller or its direct or indirect parent companies or Affiliates to punitive measures or other negative consequences under the Trade Restrictions. The Seller shall not be obliged to perform any obligation including to (a) perform, deliver, sell, pay or receive monies to, from, or through any destination, natural or legal person or vessel; or (b) engage in any other acts, if this would be prohibited, restricted under, inconsistent with, contrary to, or may expose the Seller or its direct or indirect parent companies or Affiliates to punitive measures or other negative consequences under the Trade Restrictions.

## **17 SECTION 17 – ANTI-BRIBERY AND CORRUPTION**

- 17.1 The Buyer hereby agrees and undertakes to the Seller that in connection with this Fuels Agreement, the Buyer has complied and will comply with all applicable law(s), rules, regulations, decrees and/or official government orders of the United Nation, the Republic of Singapore, the People's Republic of China, the United Kingdom and the United States of America or any other relevant jurisdiction relating to anti-bribery and anti-money laundering (the "**Anti-Corruption Laws**") and that Buyer shall take no action which would subject the Seller to fines or penalties under such Anti-Corruption Laws.
- 17.2 The Buyer hereby represents, warrants and undertakes to the Seller that it shall not, directly or indirectly:
- 17.2.1 pay, offer, give, receive, or promise to pay or receive or authorise the payment or receipt of any monies or the transfer of any financial or other advantage or other things of value with the intent to bribe or launder money to:

- 17.2.1.1 a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
- 17.2.1.2 an officer or employee of a public international organization;
- 17.2.1.3 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;
- 17.2.1.4 any political party or official thereof, or any candidate for political office;
- 17.2.1.5 any director, officer, employee or agent/representative of Seller, or an actual or prospective counterparty, supplier or customer of the Seller; or
- 17.2.1.6 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

17.2.2 engage in other acts or transactions in each case if this is a violation of or inconsistent with the Anti-Corruption Laws as defined in this Section.

17.3 The Buyer represents and warrants to the Seller that this Section has not been violated prior to the date of the Fuels Agreement.

17.4 The Buyer shall immediately notify Seller of any violation of this Section and shall fully indemnify and hold the Seller harmless against any and all losses, damages, costs, expenses, fines, penalties and/or other consequences whatsoever that the Seller may suffer arising out of or in connection with such violation.

17.5 If in the reasonable judgment of the Seller:

17.5.1 the Buyer is in breach of any of the above representations, warranties or undertakings under this Section 17; and/or

17.5.2 the Buyer directly or indirectly engages in any act or transaction that is in violation of any Anti-Corruption Laws,

then the Seller may suspend any delivery and/or terminate the Fuels Agreement forthwith upon written notice to the Buyer at any time at no liability to the Seller.

## **18 SECTION 18 – WAIVER**

Any waiver shall be in writing and relate only to the matter, non-compliance or breach as it expressly relates to and shall not apply to any prior or subsequent other matter, non-compliance or breach.

## **19 SECTION 19 – ASSIGNMENT**

19.1 Save as provided in Section 19.2, neither Party shall assign the whole or any part of its rights and obligations hereunder directly or indirectly without the prior written consent of the other Party. In the event of an assignment in accordance with the terms of this Section 19.1, the assignor shall nevertheless remain responsible for the proper performance of the Fuels Agreement. Any assignment not made in accordance with the terms of this Section 19 shall be void.



- 19.2 Notwithstanding Section 19.1, the Seller may, without the Buyer's prior written consent, assign its rights to receive and obtain payment under the Fuels Agreement to a party in connection with any finance, securitisation or bank funding arrangements, provided that the assignee is not affected by any law, order or regulation which would prevent the Buyer from dealing with the assignee or expose the Buyer or any of its Affiliates to a prohibition, penalty or punitive measure. Payment made by the Buyer to the assignee as specified in the Seller's invoice(s) of the Buyer's Debt due and payable by the Buyer to the Seller in respect of the Product deliverable under the Fuels Agreement shall be in full discharge of the Buyer's payment obligations to the Seller under the Fuels Agreement for the Buyer's Debt. Any such assignment by the Seller will not affect the Seller's obligations under the Fuels Agreement.
- 19.3 The Buyer shall be responsible at its own costs for obtaining all consents, authorisations, approvals and assurances of whatsoever nature to give effect to the provisions of the Fuels Agreement.

## **20 SECTION 20 – TRADEMARKS**

Nothing in the Fuels Agreement contained whether express or implied shall be deemed to confer any right upon the Buyer to apply any trademark owned by the Seller to any Product supplied under the Fuels Agreement or to use such trademarks in relation to such Product.

## **21 SECTION 21 – SEVERABILITY**

- 21.1 If any provision of the Fuels Agreement or any part thereof (including any part of the GTCs contained herein) is declared by any court of competent jurisdiction to be illegal, invalid, unenforceable or contrary to law or public policy, the remaining part thereof and the remaining provisions of Fuels Agreement shall not be affected except to the extent necessary to delete such provision (or part thereof) which is illegal, invalid, unenforceable or contrary to law or public policy. If any of the rights or obligations of a party hereto are thereby materially affected, then such party may notify the other party hereto in writing that it wishes mutual consultations to be held with respect thereto, and thereupon the Parties shall promptly meet and negotiate in good faith in order to arrive at an amendment of the provision of the Fuels Agreement so affected, in such manner as will most closely and accurately reflect the intents and purposes including financial and commercial consequences of the Fuels Agreement without causing such provision to be illegal, unenforceable or contrary to law or public policy.
- 21.2 The Buyer agrees not to dispute nor contest the admissibility, authenticity or accuracy of a computer output or reproduction in any legal, administrative, judicial or other proceeding solely on the grounds that the data contained therein has been electronically filed and maintained as part of the Seller's electronic data management system.

## **22 SECTION 22 – THIRD PARTY RIGHTS**

Save for the Indemnified Parties in Section 12.1.1, a person who is not a Party to the Fuels Agreement has no rights under the Contracts (Rights of Third Parties) Act 2001 to enforce any term of the Fuels Agreement.

## **23 SECTION 23 – AGENCY**

The Buyer shall not contract with the Seller as an agent unless Buyer has disclosed the principal to Seller in writing and Seller agrees to contract with Buyer as agent on behalf of the disclosed principal. In the event the delivery is contracted by the Buyer as an agent of an undisclosed principal in breach of this Section the Buyer shall be liable for all obligations expressed to be those of the Buyer under the Fuels Agreement and for the due and proper performance of the Fuels Agreement.

## **24 SECTION 24 – CONFIDENTIALITY**

- 24.1 The terms and conditions of the Fuels Agreement together with all other relevant materials or information in connection with the transaction (the “**Confidential Information**”) shall be strictly kept private and confidential between the Parties and shall not be disclosed by either Party (the “**Disclosing Party**”) to any third party without the prior written consent of the other Party.
- 24.2 The obligations of non-disclosure and of confidentiality shall not apply if the Confidential Information:
- 24.2.1 is required to be disclosed by law, regulation, any regulatory or governmental body or supervisory authority, any court of competent jurisdiction or pursuant to the rules of any recognised stock exchange; or
  - 24.2.2 is or becomes generally available to the public otherwise than through the fault or action of the Disclosing Party; or
  - 24.2.3 is disclosed by the Disclosing Party to its officers, directors, employees and professional advisers and to the officers, directors, employees and professional advisers of its Affiliate(s), to the extent such disclosure is bona fide necessary for the proper performance of their duties in respect of this Fuels Agreement, and the Disclosing Party shall cause all parties in receipt of such Confidential Information to be bound by the same obligations of confidentiality as contained in the Fuels Agreement; or
  - 24.2.4 is required to be disclosed by the Disclosing Party to protect or pursue a legal right in connection with any dispute, legal or arbitration proceedings, and the Disclosing Party shall cause all parties in receipt of such Confidential Information to be bound by the same obligations of confidentiality as contained in the Fuels Agreement.

## **25 SECTION 25 – GOVERNING LAW AND DISPUTE RESOLUTION FORUM**

- 25.1 The Fuels Agreement including its interpretation, construction, validity and performance shall be governed by the laws of the Republic of Singapore to the exclusion of any rules of the conflict of laws.
- 25.2 The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Fuels Agreement.
- 25.3 **Arbitration**
- 25.3.1 Any claim or dispute arising out of or in connection with the Fuels Agreement (including any question regarding its existence, interpretation or termination) shall be referred to and finally resolved by arbitration in Singapore under the International Arbitration Act 1994 and administered by the Singapore International Arbitration Centre (“**SIAC**”) in accordance with the arbitration rules of the Singapore International Arbitration Centre (“**SIAC Rules**”) for the time being in force, which rules are deemed to be incorporated by reference in this Section.
  - 25.3.2 The tribunal shall consist of a single arbitrator who is to be agreed between the Parties and if not so agreed then to be appointed by the President of the Court of Arbitration of SIAC.
  - 25.3.3 The law of the arbitration agreement shall be the laws of the Republic of Singapore.
  - 25.3.4 The seat of the arbitration shall be Singapore. The language of the arbitration shall be English.

- 25.3.5 The tribunal shall give a written record of the award and reasons thereof. The award of the tribunal shall be final and binding upon both Parties without recourse to any courts and shall be enforceable in any court of competent jurisdiction.
- 25.3.6 Any costs related to the arbitration including the tribunal's fees, SIAC's fees and reasonable legal costs shall be borne by the losing party.
- 25.3.7 This Section shall not be construed as preventing any court having jurisdiction from issuing any relief including without limitation injunctions or attachment orders in aid of any arbitration commenced (or to be commenced) by the Seller which seeks the recovery or collection of any monies owed to the Seller (whether in the form of debt, damages, interest or costs).
- 25.3.8 To the extent that the Buyer may in any jurisdiction claim for itself immunity from service of process, suit, jurisdiction, arbitration or other legal or judicial process or other remedy, the Buyer hereby irrevocably and unconditionally agrees not to claim and hereby irrevocably and unconditionally waives any such immunity to the fullest extent permitted by the laws of such jurisdiction.