



terms of sale for marine lubricants

6th November 2018

1 Definitions and Interpretation

- 1.1 In the Agreement (as hereinafter defined) unless the context otherwise requires:
- 1.1.1 **“Anti-Bribery and Anti-Tax Evasion Laws”** means any applicable foreign or domestic anti-bribery and anti-corruption laws and regulations, as amended from time to time, including, but not limited to, the UK Bribery Act 2010, the US Foreign Corrupt Practices Act 1977 and any laws intended to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the UK Serious Crime Act and any laws and regulations relating to anti-money laundering or tax avoidance legislation (including, but not limited to, the UK Criminal Finances Act 2017);
- 1.1.2 **“Affiliate”** means a company or other legal entity which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with a party. For this purpose “control” means the direct or indirect ownership of fifty per cent or more of the voting rights attached to the issued share capital of such company or other legal entity;
- 1.1.3 **“Agreement”** means these Terms of Sale together with the MLSA (where applicable) and the Order Confirmation(s);
- 1.1.4 **“Banking Day”** means a day when the banks in the banking system of the currency in which the price is payable and in the country where payment is due to be made are open for the transaction of normal banking business;
- 1.1.5 **“Berth”** means a berth, dock, wharf, anchorage, submarine line, single point or single berth mooring facility, offshore location, alongside vessels or barges or any other place for delivery of the Marine Lubricants;
- 1.1.6 **“Business Day”** unless the Agreement expressly provides to the contrary means a day when banks are open for normal business in London, United Kingdom. Where the last day for any notice to be given under the Agreement falls on a day which is not a Business Day, such notice shall be given (by not later than the specified time, where applicable) on the last preceding Business Day;
- 1.1.7 **“Component”** means any crude oil, petroleum products or additives from which the Marine Lubricants would primarily be manufactured in accordance with the general practices of the petroleum industry;
- 1.1.8 **“Confidential Information”** means: (a) the Agreement; (b) all information concerning the Agreement and its performance or non-performance; and (c) the business and affairs of each other Party and/or its Affiliates that the receiving Party may have obtained or received as a result of the discussions leading up to or entering into or the performance of the Agreement;
- 1.1.9 **“Delivery Vehicle”** means the barge, coastal tanker or other vehicle used by the Seller or the Physical Supplier to effect delivery or to transport the Marine Lubricants to the place of delivery and includes all hoses or other equipment of such vehicle of the Seller or Physical Supplier;
- 1.1.10 **“Directory”** means the Seller’s Marine Lubricants International Port Directory, as amended from time to time. The latest version applicable at any given time can be viewed on <https://www.chevronmarineproducts.com/>;
- 1.1.11 **“Discount”** means any discount to the Price, bonus or other incentive as described in the MLSA or Order Confirmation;
- 1.1.12 **“EU”** means European Union;
- 1.1.13 **“Marine Lubricants”** means marine lubricants as specified in the MLSA or Order Confirmation;
- 1.1.14 **“Marine Lubricants Delivery Receipt”** means the document evidencing delivery of the Marine Lubricants issued by or on behalf of the Seller or the Physical Supplier;
- 1.1.15 **“Marine Lubricants Handbook”** means the Seller’s Marine Lubricants Handbook, which sets out the descriptions and applications of Marine Lubricants, as amended from time to time. The latest version applicable at any given time can be made available to the Purchaser upon request;
- 1.1.16 **“MLIPS”** means the Seller’s Marine Lubricants International Price Schedule, as amended or updated from time to time, which sets out the prices and delivery terms for Marine Lubricants. The latest version applicable at any given time can be made available to the Purchaser upon request;
- 1.1.17 **“MLSA”** means the Marine Lubricants Sales Agreement, together with any Schedules thereto, issued by the Seller or other document evidencing the terms and conditions of the sale in which, by reference, these Terms of Sale are incorporated;
- 1.1.18 **“Order Confirmation”** means the order confirmation issued by or on behalf of the Seller recording the details of an order and delivery under the Agreement;
- 1.1.19 **“Party”** means a party to the Agreement;
- 1.1.20 **“Physical Supplier”** means any legal entity which physically supplies the Marine Lubricants to the Purchaser on behalf of the Seller, including without limitation any Affiliate of the Seller or any supplier of the Seller (or its Affiliates);
- 1.1.21 **“Port”** means the port or terminal at which the Marine Lubricants are to be delivered or, where the context requires, the operator, authority or governing body of such port or terminal;

- 1.1.22 **“Purchaser”** means the purchaser(s) identified in the MLSA or Order Confirmation;
- 1.1.23 **“Purchaser’s Principal”** means any legal entity on whose behalf the Purchaser is acting as an agent for the purchase and supply of the Marine Lubricants, whether or not the agency or principal is disclosed and whether or not the Purchaser purports to contract as agent only;
- 1.1.24 **“Purchaser’s Customer”** means any legal entity to whom the Purchaser supplies, intends to supply and/or is contracted to supply Marine Lubricants to be delivered under the terms of the Agreement;
- 1.1.25 **“Receiving Vehicle”** means the Vessel, barge, coastal tanker or other vehicle nominated by the Purchaser to take delivery of the Marine Lubricants under the Agreement;
- 1.1.26 **“Seller”** means the legal entity or entities identified in the MLSA or Order Confirmation as the seller, and where the context requires, any Affiliated or subsidiary companies;
- 1.1.27 **“Term”** means: (a) the duration of the Agreement as specified in, and defined in, the MLSA; or (b) absent an MLSA or absent specification in the MLSA, such period as may be required to perform all obligations under the Agreement;
- 1.1.28 **“Terms of Sale”** means these Terms of Sale for Marine Lubricants (6th November 2018);
- 1.1.29 **“Vessel”** means the vessel(s) specified in the MLSA or Order Confirmation or any other vessel(s) for which the Purchaser requires supplies of Marine Lubricants during the Term or to which Marine Lubricants are supplied under the Agreement.

1.2 Clause, sub-clause and paragraph headings contained in the Agreement are for convenience of reference only and shall not affect the interpretation thereof. Any reference to any Act of Parliament or to legislation of any sovereign state shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and to include any bylaws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made thereunder and any condition attaching thereto. Except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting any gender include all genders; and words denoting persons include firms and corporations and vice versa.

2 Applicability

- 2.1 These Terms of Sale apply to all sales of Marine Lubricants entered into by Chevron Marine Products LLC or its Affiliate identified in the MLSA or Order Confirmation.
- 2.2 The Terms of Sale are intended to be accompanied by an MLSA and/or an Order Confirmation. In the event of any inconsistency between the terms and conditions recorded in an Order Confirmation, the MLSA and these Terms of Sale, the terms and conditions shall apply in the following order of priority: (a) Order Confirmation; (b) MLSA; and (c) these Terms of Sale.
- 2.3 The terms and conditions recorded in an MLSA or Order Confirmation shall be deemed to apply to the Agreement: (a) unless the Seller receives from the Purchaser written notice of any objections to or disagreements with the provisions of the MLSA or

Order Confirmation (as the case may be) within 5 days of issuance of the MLSA or Order Confirmation (as the case may be); or (b) if the Purchaser places any order(s) for deliveries of Marine Lubricants covered by the MLSA.

- 2.4 For the avoidance of doubt, any terms and conditions contained in any order form or other document that may be used or generated by the Purchaser shall not apply to the Agreement, unless the Seller expressly agrees to such terms in writing.
- 2.5 By agreeing to the supply of Marine Lubricants pursuant to these Terms of Sale, the Purchaser confirms and acknowledges that the Purchaser has seen and is familiar with these Terms of Sale, the Directory, the Marine Lubricants Handbook and the MLIPS.
- 2.6 The Parties may agree to use any electronic systems for ordering Marine Lubricants that the Seller may, at any time and from time to time, make available to the Purchaser. The use of any such electronic ordering system shall be subject to the terms and conditions applicable for the use of such system at the relevant time, in addition to these Terms of Sale. The foregoing does not constitute any obligation or commitment whatsoever to make any such electronic ordering system available to any person.

3 Orders for Marine Lubricants

- 3.1 The Purchaser shall order Marine Lubricants in accordance with the relevant terms of the Directory in effect at the time of the order. The order shall be given in writing by an authorised representative of the Purchaser to the Seller and shall specify:
 - 3.1.1 The Marine Lubricant(s) required to be delivered.
 - 3.1.2 The packages (bulk, drum or pail) and quantity or quantities of Marine Lubricants required.
 - 3.1.3 The Port at which delivery is required.
 - 3.1.4 Details of the Vessel to which the Marine Lubricants are to be supplied (if applicable).
 - 3.1.5 Details of the Receiving Vehicle to be used to take delivery if not the Vessel (if applicable).
 - 3.1.6 The date and time of delivery required by the Purchaser.
 - 3.1.7 The ETA (estimated time of arrival) of the Vessel or other Receiving Vehicle at the Port (if applicable).
 - 3.1.8 The ETD (estimated time of departure) of the Vessel or other Receiving Vehicle at the Port (if applicable).
 - 3.1.9 Details of the local agent at the Port.
 - 3.1.10 Details of the Vessel’s next port of call.
- 3.2 The Purchaser shall provide full details of the Vessel and any other Receiving Vehicle (including without limitation the name of the Vessel or Receiving Vehicle or other identifying information, the registered name and full address of the owner and, where relevant, the IMO number) as required by the Seller in order for the Seller perform due diligence on the Vessel or other Receiving Vehicle and to ensure that the Seller’s compliance policies have been followed. Such details are to be provided within the timeframe set by the Seller as being sufficient for it to decide whether to accept the Vessel or other Receiving Vehicle and if accepted, for the Vessel or other Receiving Vehicle to be entered properly within the Seller’s ordering/accounting system.

- 3.3 An Order Confirmation shall be issued by or on behalf of the Seller confirming the details of each order and delivery under the Agreement. Such Order Confirmation shall form part of the Agreement in respect of such order and delivery. Each order and delivery under the Agreement shall be deemed to be a separate contract.
- 3.4 The Seller may, in its sole discretion, procure that the sale and delivery of the Marine Lubricants is made by a Physical Supplier on behalf of the Seller. If Marine Lubricants are sold and delivered by a Physical Supplier, the terms and conditions of the Agreement will continue to apply with respect to such delivery. If the Physical Supplier is an Affiliate of the Seller, the Seller may, in its sole discretion, arrange for the Physical Supplier to invoice the Purchaser on behalf of the Seller and the Purchaser shall pay such invoice issued by the Physical Supplier.
- 3.5 If the Seller or the Physical Supplier cannot supply the Marine Lubricants as ordered by the Purchaser, the Seller, at its sole discretion, may deliver or cause to be delivered Marine Lubricants produced by other companies.
- 3.6 Neither the Seller nor any Physical Supplier shall be obliged to deliver Marine Lubricants to the Purchaser unless: (a) the Seller accepts the order, acceptance not to be unreasonably withheld; (b) the Marine Lubricants ordered by the Purchaser are available at the Port specified in the Purchaser's order; (c) the order relates to a Vessel specified in the MLSA; (d) the Receiving Vehicle is acceptable to the Seller, the Physical Supplier and their agents; and (e) the Purchaser has complied with Clause 3.1 above.
- 3.7 Notwithstanding any other provision of the Agreement, each delivery and order shall be subject to the terms and conditions of the Directory and MLIPS. Without prejudice to the generality of the foregoing:
- 3.7.1 Deliveries are subject to any surcharges specified in the MLIPS and any additional charges specified in the Directory or by the Seller at the time of confirming ability to supply the order.
- 3.7.2 If the Purchaser requests delivery of Marine Lubricants at a Port not listed in the MLSA or the Directory or outside of normal working hours on a day on which work at a Port is normally carried out, the Seller may decline to accept the order. If the Seller accepts the order, the Seller may charge additional fees to the Purchaser, including without limitation any charges specified in the MLIPS or any other charges, costs or expenses incurred by the Seller or the Physical Supplier as a result of delivery to such Port and/or during such hours.
- 3.7.3 Each order and delivery is subject to the minimum quantities per order specified in the Directory. The Seller may charge additional fees for delivery in certain quantities or packages as specified in the MLIPS.
- 3.7.4 Each order and delivery is subject to the lead times specified in the Directory. If the Seller accepts an order with less lead time, the Seller may charge additional fees as specified in the MLIPS.
- 4.1.2 delivery shall be deemed completed and title to and risk of loss of or damage to the Marine Lubricants shall pass to the Purchaser: (a) for Marine Lubricants delivered in bulk, when the Marine Lubricants pass the permanent fixed intake valve of the Receiving Vehicle; and (b) for Marine Lubricants delivered other than in bulk, when the Marine Lubricants pass the ship's rail.
- 4.2 Notwithstanding Clause 4.1, where the Marine Lubricants are to be delivered other than in bulk and: (a) the Seller or the Physical Supplier determines (in its sole discretion) that it is not possible, practicable or safe to deliver free on board for any reason whatsoever; (b) delivery free on board would necessitate use of a crane or other equipment of the Receiving Vehicle; (c) the Buyer requests delivery of the Marine Lubricants free alongside; or (d) the MLSA or Order Confirmation provides for delivery free alongside:
- 4.2.1 the Marine Lubricants shall be delivered to the Purchaser free alongside the Receiving Vehicle at the relevant Port; and
- 4.2.2 delivery shall be deemed completed and title to and risk of loss of or damage to the Marine Lubricants shall pass to the Purchaser when the Marine Lubricants are placed on the dock alongside the Receiving Vehicle where accessible by the Seller's or the Physical Supplier's delivery equipment or, if inaccessible to the Seller or Physical Supplier, at the nearest reasonably accessible point to the Receiving Vehicle.
- 4.3 For Marine Lubricants delivered in bulk, the Purchaser shall be responsible for: (a) the connection of hoses to the intake valve of the Receiving Vehicle; and (b) providing and maintaining or causing to be provided and maintained, in good working order, at no cost or risk to the Seller or Physical Supplier, all necessary connections, pipelines and receiving tanks on board the Receiving Vehicle for taking delivery of the Marine Lubricants.
- 4.4 The Purchaser shall be responsible for:
- 4.4.1 procuring, at no cost or risk to the Seller or Physical Supplier, a suitable and safe Berth or other place for delivery of the Marine Lubricants which is accessible by the Delivery Vehicle and at which delivery can be safely carried out; and
- 4.4.2 any damage to the Delivery Vehicle caused by or attributable to the Purchaser or its Affiliates or agents, the Receiving Vehicle or its master, crew, driver or officers or any other person employed or contracted by the Purchaser in connection with the delivery of the Marine Lubricants.
- 4.5 The Vessel and, if different, the Receiving Vehicle(s) nominated by Purchaser to receive the Marine Lubricants shall be subject to the acceptance of the Seller and the Physical Supplier.
- 4.6 The Receiving Vehicle shall not be moored at a Berth of the Seller or the Physical Supplier unless free of all conditions, difficulties, peculiarities, deficiencies or defects which might impose hazards in connection with the mooring, unmooring or supply of the Receiving Vehicle(s).
- 4.7 Neither the Seller nor the Physical Supplier shall be liable for any demurrage, detention, hire or bunkers paid or incurred by the Purchaser or for loss or damage of any nature whatsoever due to any delay in any delivery of Marine Lubricants, save to the extent of any demurrage, detention or hire that the Purchaser proves was incurred and paid by the Purchaser during any period when time was lost directly due to any delay in delivery caused directly and solely by a breach or negligence of the Seller or the Physical Supplier.

4 Delivery, Risk and Title

- 4.1 Subject to Clause 4.2:
- 4.1.1 the Marine Lubricants shall be delivered to the Purchaser free on board the Receiving Vehicle at the relevant Port; and

5 Purchaser Warranties

- 5.1 The Purchaser warrants at the date of the Agreement and at delivery that:
- 5.1.1 the Marine Lubricants purchased under the Agreement are for the operation of the Vessel(s) specified by the Purchaser and such Vessel(s) only;
 - 5.1.2 the Vessel(s) and any Receiving Vehicles taking delivery of the Marine Lubricants: (a) are in compliance with all local, national and international regulations and requirements, as applicable; and (b) have capacity to take delivery of the Marine Lubricants;
 - 5.1.3 the Marine Lubricants are suitable for: (a) use in the Vessel being supplied; (b) the specific equipment on the Vessel; and (c) the Purchaser's intended use of the Marine Lubricants; and
 - 5.1.4 the Marine Lubricants are consistent with the original equipment manufacturer's recommendations for the equipment operating conditions and the Purchaser's maintenance practices.
- 5.2 The Purchaser shall have sole responsibility for the selection of Marine Lubricants that are suitable and consistent as set out in clauses 5.1.3 and 5.1.4. The Purchaser shall verify, prior to ordering Marine Lubricants and prior to using the Marine Lubricants, that the Marine Lubricants are suitable and consistent as set out in clauses 5.1.3 and 5.1.4. The Purchaser accepts that the Seller is not familiar with: (a) the Vessel; (b) the equipment on board the Vessel; and (c) the particular application or operating environment in which the Marine Lubricants are to be used.

6 Purchaser's Customers and Purchaser's Principals

- 6.1 If the Purchaser is supplying the Marine Lubricants to any Purchaser's Customer or if the Purchaser is acting as an agent for any Purchaser's Principals:
- 6.1.1 the Seller and the Physical Supplier shall have the right, in their sole discretion, to refuse to deliver the Marine Lubricants to any such Purchaser's Customer or Purchaser's Principal if the Seller or the Physical Supplier determines that such delivery would be in violation of any law or regulation or policy of the Seller or Physical Supplier to which the Seller or the Physical Supplier is subject;
 - 6.1.2 unless otherwise agreed in writing, the Purchaser and the Purchaser's Principal shall be bound by the terms and conditions of the Agreement (including without limitation any warranties and indemnities) and shall have joint and several liability;
 - 6.1.3 any term and condition of the Agreement which provides for the Purchaser to do, omit to do or refrain from doing any act or thing shall be construed to include that the Purchaser will procure that the Purchaser's Customer shall do, omit to do or refrain from doing such act or thing; and
 - 6.1.4 notwithstanding any other provision to the contrary, the Purchaser shall at all times remain fully liable for the proper performance of all of its obligations under the Agreement, even if such obligations are performed by or performance of such obligations is delegated to a Purchaser's Customer or a Purchaser's Principal.

7 Quality

- 7.1 Unless otherwise stated in the MLSA or the Order Confirmation, the Seller warrants that the Marine Lubricants shall meet the descriptions, specifications and applications set out in the Marine Lubricants Handbook. The foregoing constitutes the whole of the Seller's obligations with respect to the description, quality and fitness for purpose of the Marine Lubricants. To the extent permissible, all statutory or other terms, conditions or warranties, express or implied, regarding the description, quality or fitness for purpose of the Marine Lubricants (including without limitation those set out in the Sale of Goods Act 1979 in the United Kingdom) are excluded.
- 7.2 The Seller shall have no liability whatsoever for any losses, costs, expenses or damage arising out of or in connection with the Purchaser selecting Marine Lubricants that are: (a) unsuitable or inappropriate for use in the Vessel being supplied, the specific equipment on the Vessel and/or for the Purchaser's intended use of the Marine Lubricants; and/or (b) inconsistent with the original equipment manufacturer's recommendations for the equipment operating conditions and the Purchaser's maintenance practices.
- 7.3 Where the Marine Lubricants were delivered in bulk by barge, the Seller shall be entitled to take, where operationally possible and for the purposes of quality control, up to two (2) composite retain samples during the course of supply of the Marine Lubricants being supplied by barge. Each sample shall be given a unique identification number, which shall be recorded on the Marine Lubricants Delivery Receipt. One sample shall be retained by the barge and one sample shall be given to an authorized representative of the receiving Vessel, who shall be requested to sign for receipt. In the event of claim relating to quality, condition or description, only the contents of these two sealed and labelled samples shall be considered valid for testing at an independent laboratory selected and agreed by both Parties. The result of testing of such independent laboratory shall be final, binding and conclusive on the Parties, save for fraud or manifest error. The barge samples shall be retained for no longer than 6 months from the date of supply.

8 Determination of Quantity

- 8.1 The quantity of Marine Lubricants delivered shall be determined solely by the Seller and shall be recorded in the Marine Lubricants Delivery Receipt. The quantity recorded in the Marine Lubricants Delivery Receipt shall be final, binding and conclusive on the Parties, save for fraud or manifest error.
- 8.2 For deliveries in bulk:
- 8.2.1 the quantity shall be determined by measurements of tank truck or meter at the point of delivery to the Vessel; and
 - 8.2.2 the Purchaser shall have the right, at its own expense, to have its representative or an independent inspector present during measurement.
- 8.3 For deliveries other than in bulk, the quantity shall be indicated on the container. Marine Lubricants delivered in sealed metal containers shall be determined by the quantities indicated on the container.
- 8.4 The Purchaser shall confirm receipt of the Marine Lubricants by having either the Master or Chief Engineer of the Vessel or relevant representative of the Receiving Vehicle (other than a Vessel) sign the Marine Lubricants Delivery Receipt.

9 Discounts

- 9.1 If the MLSA provides that the Purchaser is entitled to a Discount, such entitlement to a Discount is subject to any conditions specified in the MLSA, including without limitation as to the quantity of Marine Lubricants to be delivered.
- 9.2 If the Purchaser does not, for any reason whatsoever, satisfy the conditions applicable to the entitlement to a Discount, the Seller may, at any time or times, adjust the Discount in respect of any future deliveries and/or demand a reimbursement of any Discounts applied in respect of previous deliveries (in part or in whole).

10 Payment

- 10.1 Except as expressly provided elsewhere in the Agreement, the Purchaser shall pay the full amount of all sums due under the Agreement without any discount, deduction, withholding, offset or counterclaim of any kind whatsoever by wire transfer of same day funds in the currency prescribed in the Seller's invoice to the bank account designated by the Seller.
- 10.2 Payment of the price for Marine Lubricants shall be made by no later than the due date specified in the MLSA, the Order Confirmation or as otherwise provided by the Agreement. If any due date falls on a Sunday or a Monday that is not a Banking Day, payment shall be made on the first Banking Day following and if any due date falls on a Saturday or day other than a Monday that is not a Banking Day payment shall be made on the last preceding Banking Day.
- 10.3 The Purchaser agrees that any claims related to a delivery do not constitute a valid defence to a failure to pay, when due, the full amount owed to the Seller. The Purchaser shall make payment in full pending any resolution or settlement of any claims by the Purchaser. The Seller may immediately recover in full any amount deducted by the Purchaser.
- 10.4 Without prejudice to any other rights or remedies of the Seller, if full payment is not received into the Seller's bank account on the due date, the Seller shall be entitled, in its sole discretion, to charge a fee of the lesser of: (a) 2% for each thirty day period (or part thereof) in which the payment is late; or (b) the maximum rate permitted under applicable law. The Purchaser shall be liable for, and pay on demand, any costs or expenses incurred by the Seller as a result of any failure by the Purchaser to pay on the due date and/or in seeking to obtain payment.
- 10.5 It is a condition of the Agreement that the Purchaser complies with its payment obligations under the Agreement. Any failure either in whole or in part by the Purchaser to comply with any such obligations shall be a breach of condition.

11 Financial Assurances

- 11.1 The Purchaser shall periodically provide to the Seller that financial information or security deemed necessary by the Seller to support any credit extension.
- 11.2 If, during the Term, the financial capacity of the Purchaser becomes impaired or unsatisfactory to the Seller, in the sole judgment of the Seller, advance cash payment or security satisfactory to the Seller shall be given by the Purchaser on demand by the Seller.
- 11.3 The provision of any security required pursuant to this Clause 11, the terms of the MLSA or the terms of an Order Confirmation shall be a condition precedent to any obligation of the Seller to deliver Marine Lubricants. The Seller shall have no obligation to deliver any Marine Lubricants to the Purchaser until or unless such security has been provided to the Seller in a form acceptable to the Seller.

12 Force Majeure and Other Contingencies

- 12.1 Neither Party shall be obliged to sell, purchase, deliver or receive Marine Lubricants under the Agreement to the extent that one or more Force Majeure Events prevent, restrict or delay the production, transportation, sale, delivery or receipt of the Marine Lubricants or any Component, whether the event affects a Party directly or affects the Seller indirectly by affecting suppliers and whether or not existing, foreseeable or reasonably in the contemplation of the Parties at the date of the Agreement.
- 12.2 "**Force Majeure Event**" means: (a) compliance, voluntary or involuntary, with any law, regulation, order rule, recommendation, direction, request or suggestion of a government or any agency, authority or representative of government, including without limitation priority, rationing or allocation orders or regulations; (b) total or partial expropriation, nationalisation, confiscation, requisitioning or abrogation or breach of a government contract or concession; (c) closing or restriction on the use of a port or pipeline; (d) Act of God, maritime peril, storm, earthquake, flood, accident, fire, explosion; (e) hostilities or war (declared or undeclared), public enemy, embargo, blockade, riot, civil unrest, sabotage, revolution, insurrection, malicious mischief, terrorism; (f) strike, lockouts, boycotts, picketing, labour disturbance or other labour difficulty (whomsoever's employees are involved), even if resolvable by acceding to the demands of a labour group; (g) total or partial failure or loss or shortage of or relating to any Marine Lubricants, Components or producing, manufacturing, delivery or transportation facilities, equipment, labour or materials from the suppliers or the Sellers' then-contemplated suppliers or otherwise caused by circumstances beyond the reasonable control of the party affected; and (h) any event reasonably beyond the control of the party affected, whether or not similar to those listed above, including without limitation any failure of suppliers to deliver Marine Lubricants or any Components due to any of the foregoing events.
- 12.3 As used in this Clause 12: (a) "party affected" means the Party affected by the event in question and does not include any suppliers, agents or representatives of such Party or any person to whom such Party has delegated, sub-contracted or otherwise arranged to perform, in full or part, an obligation under the Agreement; (b) "suppliers" shall include the Physical Supplier and any supplier to the Seller, the Physical Supplier or their Affiliates; and (c) "transportation" means transportation of the Marine Lubricants to the Seller or suppliers.
- 12.4 Notwithstanding and without prejudice to any other provision of the Agreement, the Seller may suspend, reduce or stop deliveries of any Marine Lubricants to the Purchaser in such manner as the Seller may in its sole discretion determine, and shall have no liability whatsoever to the Purchaser in connection therewith, if: (a) Clause 12.1 applies; (b) in the Seller's sole opinion, there is a shortage of Marine Lubricants or any Components at any suppliers such that the Seller, the Physical Supplier or their Affiliates expect that they will not meet their own requirements and the requirements for sales to customers of all kinds; (c) in the Seller's sole opinion, performance by the Seller: (i) becomes impracticable for any reason whatsoever, including without limitation due to the event listed at Clause 12.2(a) or otherwise due to any priorities, rationing or allocations of any Marine Lubricants or Components; or (ii) is made substantially more expensive as a result of the event listed at Clause 12.2(g); and/or (d) if the Seller's cost of performance is increased and the Seller cannot recover such increased cost by an increase in the price to be paid by the Purchaser for any reason whatsoever.

- 12.5 Notwithstanding and without prejudice to any other provision of the Agreement: (a) if there is an increase in the cost of Marine Lubricants and/or any Components due to any unanticipated circumstances or for any reason whatsoever, the Seller may implement, at its sole discretion, a non-discountable temporary price surcharge and the price for any Marine Lubricants shall be increased accordingly; and (b) if any law, regulation or other governmental action requires the Seller to reduce any price in effect under the Agreement, or prevents the Seller from increasing any price to the extent it wishes pursuant to its rights under the Agreement, the Seller may cancel from the Agreement the quantities of Marine Lubricant so affected.
- 12.6 In the event of any suspension, reduction or cessation of deliveries pursuant to this Clause 12: (a) the Seller may allocate any Marine Lubricants available to it as it determines in its sole discretion and any total or partial failure to make deliveries to the Purchaser, while delivering to other customers, shall not be a breach of the Agreement; (b) the Seller shall not be obliged to acquire additional Marine Lubricants or to sell or deliver to the Purchaser any additional Marine Lubricants which the Seller may acquire; (c) neither Party shall be obliged to sell, purchase, deliver or receive, after the period of suspension or reduction, the undelivered quantity of the Marine Lubricants which would otherwise have been delivered under the Agreement; (d) the Term of the Agreement shall not be extended; and (e) the Seller shall not be liable for any costs, losses or damages (including without limitation any demurrage, detention, hire and/or bunkers) arising out of any delays or failures to perform.
- 12.7 Any party which relies on Clause 12.1 or 12.4 shall give the other Party: (a) prompt notice thereof, specifying the anticipated amount and duration of any suspension, reduction or cessation of deliveries; and (b) prompt notice when it no longer expects to rely thereon.
- 12.8 Subject to Clauses 12.4 to 12.6, the party affected by the Force Majeure Event shall use reasonable endeavours to take reasonable steps within its control and power to mitigate the effects of the Force Majeure Event on the performance of its obligations. Any delay or failure to comply with the foregoing shall not preclude the party affected from relying upon Clause 12 but a party may be liable for damages in respect of any additional losses caused solely and directly by breach of this Clause 12.8.
- 12.9 Nothing in this Clause 12 shall excuse the Purchaser from its obligations to make payments when due or provide security.

13 Health, Safety and Environment

- 13.1 The Purchaser warrants that it is familiar with the health effects related to the Marine Lubricants supplied under the Agreement and with appropriately protective health, safety and environmental procedures, requirements and recommendations for handling and use of such Marine Lubricants ("**HSE Procedures**").
- 13.2 The Purchaser shall:
- 13.2.1 provide its employees with appropriate information and training to enable them to handle and use the Marine Lubricants delivered under the Agreement in a manner, which does not endanger their health or safety;
- 13.2.2 disseminate, or caused to be disseminated, the HSE Procedures to all employees, agents, contractors, users and any other persons potentially exposed to the Marine Lubricants sold under the Agreement ("**Relevant Persons**");

- 13.2.3 adhere to, and cause all Relevant Persons to adhere to, the HSE Procedures while using or handling the Marine Lubricants; and
- 13.2.4 be responsible for compliance by all Relevant Persons with the HSE Procedures and shall use its best efforts to ensure that any Relevant Persons avoid frequent or prolonged contact with or exposure to the Marine Lubricant, during and after delivery.
- 13.3 To the extent permissible by law, neither the Seller, the Physical Supplier nor their suppliers shall be responsible in any respect whatsoever for:
- 13.3.1 any loss, damage or injury resulting from any hazards inherent in the nature of the Marine Lubricants delivered under the Agreement;
- 13.3.2 any consequence arising from any failure of the Purchaser, any Relevant Person or any other party to comply with the HSE Procedures.
- 13.4 The Seller and the Physical Supplier may refuse to make a delivery without recourse from the Purchaser if the Seller or the Physical Supplier (as the case may be), in their sole discretion, determines that such delivery cannot be made safely.

14 Pollution

- 14.1 In the event of an escape, spillage or discharge during delivery which causes or threatens to cause pollution damage, the Purchaser shall, and shall cause the Vessel and/or Receiving Vehicle to, promptly take any and all necessary actions and measures whatsoever as may be necessary to prevent, remedy or mitigate the consequences of such escape, spillage, discharge or, actual or threatened, pollution damage.
- 14.2 The Seller and the Physical Supplier shall have the right, in their sole discretion, to take, or assist the Purchaser in taking, any such actions or measures specified in Clause 14.1. Any measures or actions taken by the Seller, the Physical Supplier or their designee(s) shall be deemed to be taken on the Purchaser's authority and shall be at the Purchaser's expense, save the extent that the escape, spillage or discharge in question was caused by the negligence of the Seller or the Physical Supplier. If the Purchaser considers that any actions or measures should be discontinued and any governmental authorities having jurisdiction concur, the Purchaser shall so notify the Seller and the Physical Supplier and thereafter neither the Seller, the Physical Supplier nor their designee(s) shall have any right to continue such actions or measures at the expense and authority of the Purchaser.
- 14.3 Each Party shall supply the other with all necessary documents and information in its custody and control concerning any escape, spillage, discharge or pollution or any program for the prevention thereof as required by either Party, by law, or by regulations applicable at the port of delivery.

15 Permits and Licences

- 15.1 The Seller's obligation to sell and deliver Marine Lubricants hereunder is conditional on the Purchaser and the Seller obtaining such permits, authorisations, consents and licences as may be necessary for the performance of the Agreement, including without limitation with respect to the sale and delivery of the Marine Lubricants.
- 15.2 The Purchaser shall ensure that it has obtained such permits, authorisations, consents and licences as may be necessary for the Purchaser to perform its obligations under the Agreement, including without limitation with respect to the purchase and delivery of the Marine Lubricants. Any failure to obtain such permits, authorisations, consents and licences shall not constitute a Force Majeure Event.

16 Taxes

- 16.1 The Purchaser represents, warrants and undertakes that any Marine Lubricants purchased by the Purchaser pursuant to the Agreement are: (a) purchased by or on behalf of the owner or operator of a seagoing vessel which operates in international waters; (b) for consumption on such vessel outside the country where title transfers. The Purchaser shall, at the Seller's request, provide any documents required by the Purchaser to verify compliance with this Clause 16.1.

16.2 Purchaser's Taxes

The Purchaser is responsible (and shall not seek reimbursement from the Seller) for all claims, demands, liabilities and damages for taxes that any taxing authority (including any of its political subdivisions) may assess or levy against the Purchaser relating to the Agreement, including all of the following:

- 16.2.1 **Income.** Income, withholding, excess profit or other taxes, charges and imposts assessed or levied on account of the Purchaser's earnings, taxable margins, receipts (including gross receipts) or franchise taxes for the privilege or actual conduct of business that are measured by the Purchaser's net worth, capital, surplus or undivided profits;
- 16.2.2 **Personnel.** Taxes assessed or levied against or on account of compensation or other benefits paid to the Purchaser's employees;
- 16.2.3 **Property.** Taxes assessed or levied against or on account of, or by reference to the value of, any property or equipment (including materials and consumable supplies) of the Purchaser; and
- 16.2.4 **Services.** Taxes assessed or levied against or on account of, or by reference to the value of, the Services performed by the Purchaser, except taxes payable by the Seller as noted below.

16.3 Seller's Taxes

The Seller is responsible for all claims, demands, liabilities and damages for taxes that any taxing authority (including any of its political subdivisions) may assess or levy against the Seller relating to the Agreement (except for erroneous assessments or levies of taxes levied against the Purchaser).

16.4 Transaction Taxes

The Purchaser is responsible for the payment of all value added tax, goods and services tax, sales tax, excise tax and/or other similar taxes and/or duties now or hereafter imposed directly or indirectly on Marine Lubricants and the sale or use of Marine Lubricants

(collectively "**Transaction Taxes**"). The Seller (or any relevant Affiliate) may invoice the Purchaser for any Transaction Taxes and the Purchaser shall pay to the Seller the amount of such Transaction Taxes invoiced. Any Transaction Taxes shall be separately identified on the Seller's invoices and collected and paid over by the Seller to the appropriate governmental agency, subject however to the following sentence. The Purchaser may provide to the Seller, and the Seller shall accept and honour, an exemption certificate, or a letter from the appropriate authority or a letter from the Purchaser agreeing that the Purchaser will self-assess and remit Transaction Taxes, for one or more relevant taxing jurisdictions, instead of payment to the Seller and the Seller shall not collect from the Purchaser any such identified Transaction Taxes. If the Purchaser claims a tax exemption or import/export exemption (such as an export or a ship's stores exemption or similar), the Purchaser shall comply with all requirements of such exemption, shall disclose this exemption to Seller on a timely basis and provide the Seller with all exemption documentation requested by the Seller and the Seller shall be entitled to rely on such documentation for purposes of applying the relevant exemption. The Purchaser warrants that he is not acting as a reseller, neither that the Vessel being supplied with Marine Lubricants shall be operating in local inland waterways.

16.5 Indemnity for Taxes

The Purchaser indemnifies the Seller against any and all liabilities or claims for taxes, including interest and penalties, that may be assessed or levied against the Seller in connection with the Purchaser's tax obligations arising out of the Agreement, including any taxes, interest, damages, losses, costs, duties, charges, fines or penalties arising out of the Purchaser's actions or failure to comply with, or act diligently under, this Clause 16, as well as any taxes imposed on the Seller as a consequence of receiving payment under this sentence.

17 Confidentiality

- 17.1 Each Party undertakes to each other Party to: (a) keep confidential all Confidential Information and not to disclose any Confidential Information to any third party; (b) exercise the same degree of care and discretion to avoid unauthorized disclosure, publication or dissemination of all Confidential Information as the receiving Party exercises to protect its own confidential information that it does not wish to disclose, publish or disseminate being no less than a reasonable degree of care; and (c) use Confidential Information solely in connection with the implementation and performance of the Agreement.

- 17.2 Notwithstanding the provisions of Clause 17.1, a Party (the "**Disclosing Party**") may disclose Confidential Information: (a) if the other Party consents in writing to the disclosure; (b) if required by law, order of a tribunal or court of competent jurisdiction or any securities exchange or regulatory or governmental body or fiscal authority having jurisdiction over it, wherever situated, and whether or not the requirement has the force of law, provided that the Disclosing Party shall (to the extent permitted by law) give to the other Party prior written notice setting out the reasons for such disclosure; (c) the Confidential Information is or was already in the public domain other than through the fault or action of the Disclosing Party; (d) to an Affiliate or legal, financial or other professional advisor, provided that such person is bound by the same obligations of confidentiality as contained in the Agreement; or (e) in connection with any dispute, legal or arbitration proceedings arising out of or in connection with the Agreement.

- 17.3 The provisions of this Clause shall survive for a period of five (5) years after the Term or termination of the Agreement.

18 Data Privacy

18.1 The Parties may provide each other with Personal Data, the processing and transfer of which will be done in accordance with applicable data protection law. “**Personal Data**” means any information that can be used directly or indirectly, alone or in combination with other information, to identify an individual.

19 Notices

19.1 Unless otherwise provided elsewhere in the Agreement, any communication by a Party to another Party shall be sufficiently made if sent by registered post, by facsimile transmission or by courier to the address of the other Party specified for this purpose in the MLSA or the Order Confirmation or as otherwise designated by the receiving Party and shall, unless otherwise provided herein, be deemed to have been received as follows:

19.1.1 in the case of a communication sent by registered post or by courier, if received: (a) on a Business Day before 17:00 hours local time in the recipient’s location, then on that day; and (b) if received outside the hours stated (a), it will be treated as being received on the next Business Day in the recipient’s location.

19.1.2 in the case of a communication by facsimile transmission where a verifiable answerback is provided and: (a) if the recipient’s answerback is received on a Business Day before 17:00 hours, then on that day; and (b) in any other case, on the Business Day after the day on which the recipient’s answerback is received.

19.2 Except for notices for assignment, termination and legal or arbitration proceedings, the Parties may exchange messages with respect to the performance of the Agreement by e-mail. Any message sent by e-mail shall be sent to the address of the other Party specified for this purpose in the MLSA or the Order Confirmation or as otherwise designated by the receiving Party and shall be deemed to have been received: (a) if sent on a Business Day before 17:00 hours, then on that day; and (b) in any other case, on the Business Day after the date it was sent. Notwithstanding the foregoing, e-mail messages are only valid if actually received and the sender bears the risk of a failure in transmission.

19.3 Any alterations to the contacts or addresses specified in the MLSA or Order Confirmation shall be notified immediately by letter or facsimile to the other Party.

19.4 Notices may not be given by instant messaging.

20 Assignability

20.1 The Agreement shall not be assigned by the Purchaser without the written consent of the Seller, which consent shall not be unreasonably withheld.

20.2 Notwithstanding the provisions of Clause 20.1, the Seller may:

20.2.1 assign (without prior notice to or consent of the Purchaser) or require the novation of the Agreement and any other marine lubricant sales agreement entered into by the Purchaser with the Seller or any Affiliate of the Seller concurrently; and

20.2.2 cause deliveries under the Agreement at one, more or all Ports (including Ports listed in the Directory) to be made to the Purchaser by a Physical Supplier and may assign (without prior notice to or consent of the Purchaser) or require the novation of the Agreement, in whole or in part.

21 Conflict of Interest, Improper Influence, Records and Right to Audit

21.1 Prohibition

Neither the Purchaser, nor any director, employee, Affiliate or agent of the Purchaser shall:

21.1.1 give to or receive from any director, employee, or agent of the Seller or its Affiliate, in connection with the performance of this Agreement, (a) any gift, entertainment, or other benefit of more than nominal cost or value or (b) any commission, fee, or rebate;

21.1.2 enter into any business arrangement with any director, employee, or agent of the Seller or its Affiliate (other than as a representative of the Seller or its Affiliate) without the Seller’s prior written consent;

21.1.3 offer or make any payment, or offer or give anything of value to any public official, any immediate family member of a public official, or any political party to influence any act or decision by any public official, government, government instrumentality, party, or public international organisation, or to gain any other advantage for the Seller group, the Purchaser group, or any of them arising out of this Agreement; and/or

21.1.4 offer or make any payment or offer or give anything of value to any person, if the Purchaser group member knows or has reason to believe that any portion of the payment or thing of value will be given directly, indirectly, or through a third party to any public official, any immediate family member of any public official, or any political party.

21.2 Representation and Warranty

The Purchaser represents and warrants to the Seller that no event has occurred prior to the date of this Agreement which, had it occurred after the date of this Agreement, would constitute a violation of Clause 21.1.

21.3 Reporting Violations and Termination

The Purchaser shall immediately notify the Seller of any violation of Clause 21.1 or breach of the warranty under Clause 21.2. Notwithstanding any other provision of this Agreement, the Seller may terminate this Agreement at any time either pursuant to Clause 4.2 or, on less than 60 days’ notice at the Seller’s sole discretion, for any violation of Clause 21.1, or breach of the warranty under Clause 21.2, and the Seller is not obligated to make any payment to the Purchaser after the date of such violation or event, except in satisfaction of payment obligations that accrued on or prior to the date of such violation or event and that the Seller has determined are not directly or indirectly related to such violation or event.

21.4 Records and Inspection

Up until 24 months from the end of the calendar year in which this Agreement is completed or terminated, (a) the Purchaser shall ensure that all members of Purchaser group retain all records related to this Agreement (or until expiry of the statute of limitations for taxes or import or export charges) and (b) the Seller may inspect at any time all records to confirm that the requirements of the Agreement are met.

21.5 The Purchaser shall assist the Seller in making any audit under Clauses 21.1 and 21.2 above.

22 Prohibited Payments

- 22.1 Each Party shall:
- 22.1.1 comply with all applicable laws and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (“**Relevant Requirements**”);
 - 22.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 22.1.3 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
 - 22.1.4 ensure that all persons associated with it or other persons who are performing services or providing goods in connection with this Agreement comply with this Clause 22.
- 22.2 A breach of this Clause 22 shall be deemed a material breach of this Agreement.
- 22.3 For the purpose of this Clause 22, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with the Bribery Act 2010 (and any guidance issued under section 9 of that Act.)

23 Compliance with Applicable Laws

- 23.1 Nothing in this Agreement shall be construed to require any Party, or its subcontractors, to violate any laws, ordinances or regulations applicable to such Party, or its subcontractors, including any U.S. anti-boycott laws.
- 23.2 The Seller shall be entitled at any time and from time to time to refuse to supply Marine Lubricants to the Purchaser, any Vessel(s) or Receiving Vehicles nominated by the Purchaser, or any other entity nominated by the Purchaser where to do so would be contrary to any applicable law or regulation including those of the United States or the EU.
- 23.3 The Purchaser is placed on notice that the Marine Lubricants may be subject to U.S. or EU export and trade sanctions regulations. Diversion contrary to these laws is prohibited.

24 Termination or Suspension

- 24.1 Notwithstanding anything to the contrary express or implied elsewhere in the Agreement and without prejudice to its other rights, upon the occurrence of a Default Event, a Party (“**Non-Defaulting Party**”) may at its sole discretion exercise any one or more of the following remedies upon giving notice to the other Party (“**Defaulting Party**”) either orally (confirming such notification in writing) or in writing:
- 24.1.1 immediately suspend: (a) any delivery or deliveries; and/or (b) performance of any one or more of its obligations under the Agreement; and/or
 - 24.1.2 notwithstanding any prior suspension, immediately terminate: (a) the Agreement; or (b) any delivery or deliveries under the Agreement.

- 24.2 The following events are “**Default Events**”:

- 24.2.1 if a liquidator (other than for the purpose of amalgamation or reconstruction), administrator, trustee in bankruptcy, receiver or receiver and manager is appointed in respect of the assets and/or undertaking of the Defaulting Party, or the Defaulting Party enters into an arrangement or composition with its creditors, or any similar appointment, arrangement or composition is made under any applicable law, or if the Non-Defaulting Party has reason to anticipate any such occurrence, appointment, arrangement or composition;
 - 24.2.2 upon a material breach of the Agreement by the Defaulting Party which is not cured by the Defaulting Party within thirty (30) days from the date of written notice from the Non-Defaulting Party to cure such breach;
 - 24.2.3 if the Defaulting Party, being the Purchaser, fails to pay any sum or sums when due under the Agreement or otherwise fails to comply with any provision of Clause 10 or Clause 11 or any credit terms under the Agreement; and
 - 24.2.4 if any agreement between the Purchaser and any of the Seller’s Affiliates for the supply of Marine Lubricants or any other agreement between the Purchaser and the Seller for the supply of Marine Lubricants is terminated for any reason by any party thereto.
- 24.3 If the Non-Defaulting Party is the Seller, upon the occurrence of a Default Event, the Seller may at its sole discretion, in addition to and without prejudice to its other rights: (a) apply any advance cash payment to any amounts payable by the Purchaser to the Seller as the Seller sees fit; (b) call upon any security issued to the Seller by or on behalf of the Purchaser in respect of any amounts payable by the Purchaser to the Seller as the Seller sees fit; and/or (c) set-off against any amounts payable by the Purchaser to the Seller any amounts payable by the Seller to the Purchaser as the Seller sees fit. In each case, the application of an advance cash payment, call on security or set-off may be made irrespective of whether the payment, security or set-off was intended to relate to the Purchaser’s debt, and whether or not the amounts in question are liquidated, unliquidated or ascertainable at the time of the application, call or set-off. In the event that the amounts are not liquidated or ascertainable at the date of the application, call or set-off, the “amounts payable” for the purposes of this Clause may be estimated by the Seller acting reasonably and in good faith.
- 24.4 For the avoidance of doubt, termination of this Agreement for any reason shall also give the Seller and/or its Affiliates the right in its sole discretion to terminate any other marine lubricants sales agreement between the Purchaser and the Seller or any of the Seller’s Affiliates on, or about, the date the Agreement entered into force.
- 24.5 The expiry of the Agreement or its termination shall not affect and shall be without prejudice to any accrued rights or obligations or any rights of action or claim accrued on or before the date of termination and shall not affect any continuing obligations which the Agreement provides, either expressly or by implication, are to survive its expiry or termination.

25 Claims

- 25.1 Any claims by the Purchaser shall be deemed to be waived and absolutely barred and any liability or alleged liability of the Seller shall be extinguished unless:

25.1.1 in respect of claims relating to packaging or quantity: (a) any defect or variance in packaging or shortage in quantity is noted at the time of delivery on the Marine Lubricants Delivery Receipt or in a letter of protest; and (b) the Purchaser presents such claim to the Seller in writing, with supporting documentation, within fifteen (15) days of the date of delivery;

25.1.2 in respect of claims relating to quality, condition or description: (a) the Purchaser presents such claim to the Seller in writing, with supporting documentation, within thirty (30) days of delivery; (b) the Seller has been afforded an opportunity to inspect and test the Marine Lubricants delivered as soon as practicable after delivery; and (c) where the delivery was in bulk by barge, the procedure set out in Clause 7.3 has been followed.

25.2 Without derogating from the specific time limits set out in Clause 25.1 and any other provisions requiring compliance within a given period, all of which shall remain in full force and effect, and subject to Clause 25.3, any claim arising under the Agreement shall be deemed to be waived and absolutely barred and any liability or alleged liability of the other Party shall be extinguished unless proceedings are commenced with respect to any claim and any Dispute under Clause 30 within 1 year of the date on which the Marine Lubricants were delivered or, in the case of a non-delivery, of the date upon which the Marine Lubricants should have been delivered.

25.3 Clause 25.2 shall not apply to any claim arising out of or relating to any of the provisions of Clauses 13, 14, 16, 17, 18, 21 – 23 and/ or 26. In respect of any such claim, the parties shall be entitled to commence proceedings within such period as may be prescribed by law or statute.

25.4 Claims of any nature do not relieve the Purchaser of responsibility to make full payment of amounts due to the Seller under the Agreement.

26 Indemnification

26.1 The Purchaser agrees to and does hereby indemnify, hold harmless and defend the Seller, the Physical Supplier and their suppliers, and their respective officers, directors and employees, from any and all judgments, orders, decrees, claims, liabilities, damages, losses, costs or expenses, including attorney fees, arising out of the performance by the Purchaser, its principals, agents, employees and servants (including without limitation any Purchaser's Principals and Purchaser's Customers) of the Agreement except to the extent directly and solely caused by the negligence, gross negligence or wilful misconduct of the Seller. For the purposes of the Agreement, the term "wilful misconduct" shall mean in respect of a Party, a wilful and intentional or reckless act or omission by that Party.

27 Limitation of Liabilities

27.1 Except as specifically provided for in the Agreement, neither Party shall in any event, including arising out of any negligent act or omission on its part, be liable to the other Party, whether under the Agreement or otherwise in connection with it, in contract, tort, breach of statutory duty or otherwise, for any of the following, whether or not foreseeable:

27.1.1 any losses, expenses or damages whatsoever relating to: (a) loss of actual or anticipated profit; (b) business interruption; (c) loss of goodwill or reputation; (d) plant shut-down or reduced production, loss of power generation, blackouts or electrical shut-down or reduction; or (e) loss of business receipts or contracts or commercial opportunities; or

27.1.2 any consequential, indirect or special losses, expenses or damages of any kind whatsoever.

27.2 The provisions of this Clause 27 shall continue to apply notwithstanding the termination or expiry of the Agreement for any reason whatsoever.

28 Miscellaneous

28.1 Severability

If any provision (or part thereof) of the Agreement is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction or either Party's compliance with any ruling or resolution of the United Nations or the EU has a like or similar effect, the remainder of the Agreement (and of such provision) shall not be affected except to the extent necessary to delete such illegal, invalid or unenforceable provision (or part thereof).

28.2 Survivability

If for any reason the Agreement shall be terminated then such termination shall be without prejudice to any rights, obligations or liabilities of either Party which have accrued at the date of termination but have not been performed or discharged, and any parts of the Agreement having any relevance thereto or any bearing thereon shall, notwithstanding the termination of the Agreement for any reason, continue in force and effect.

28.3 Modification

The Agreement shall not be modified unless mutually agreed by the Parties, which agreement must be evidenced in writing, except where the Parties agree or can show that an oral agreement was reached but has not yet been confirmed in writing.

28.4 Waiver

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

28.5 Recording, Retention and Monitoring of Communications

Each Party hereby acknowledges to the other Party and consents that such other Party may from time to time and without further notice and to the extent permitted by law:

28.5.1 record and retain electronic transmissions (including telephone conversations, e-mail and instant messaging between the Parties' respective representatives in connection with the Agreement or other commercial matters between the Parties) on central and local databases for their respective legitimate purposes; and

28.5.2 monitor electronic transmissions through their internal and external networks for purposes of security and compliance with applicable laws, regulations and internal policies for their other legitimate business purposes.

28.6 eDocs

Where it is specified in the MLSA or Order Confirmation that any Marine Lubricants Delivery Receipt, bill of lading, waybill, delivery order, certificate, receipt or other document issued pursuant to, or in connection with, the Agreement may be issued, signed and transmitted electronically (each, an "eDoc") then it is hereby expressly agreed that any applicable requirement of law, contract, custom or practice that any transaction, document or communication shall be made or evidenced in writing, signed or sealed shall be satisfied by an eDoc and the Parties hereto agree not to contend in any dispute arising out of or in connection with any eDoc or any eDoc which is converted to paper that it is not in writing or that it is not equivalent to an original paper document signed by hand, or, as the case may be, sealed.

28.7 Entire Agreement

The Agreement contains the entire agreement between the Parties with respect to the matters set forth in the MLSA and/or Order Confirmation and supersedes all prior agreements, whether oral or written, in connection therewith.

28.8 Warranties

The Purchaser and the Seller each warrant that it has not in connection with the Agreement relied upon any representations, whether written or oral, made by or on behalf of the other Party, but has relied exclusively on its own knowledge, judgment and expertise.

28.9 Warranty of Title

The Seller hereby warrants to the Purchaser that at the time title in the Marine Lubricants passed to the Purchaser as provided in the Agreement, the Seller had unencumbered title to the Marine Lubricants and had the right to sell the Marine Lubricants to the Purchaser.

28.10 Third party rights

If the MLSA or Order Confirmation provides for the application of English law, then the following provision shall apply. No term of the Agreement is intended to, or does, confer a benefit or remedy on any third party. A person, company or other legal entity who is not a party to the Agreement shall not have or acquire whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise any rights in relation to the Agreement. Further, the Parties hereto may rescind or vary the Agreement, whether in whole or in part, without the consent of any third party.

28.11 Trade marks

Nothing in the Agreement whether express or implied shall be deemed to confer any right upon either Party to apply any trade mark owned by the other Party or any of its Affiliates to any Marine Lubricants supplied under the Agreement nor to use such trade marks in relation to such Marine Lubricants.

29 Dispute Resolution

29.1 High Court

Subject to Clauses 29.2, 29.3 and 30.1, any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination (the “Dispute”), shall be referred to the Commercial Court of the High Court in London. Each Party agrees to appoint a solicitor to accept service of proceedings relating to the Dispute within 14 days of a written request from the other side so to do.

29.2 Arbitration

Notwithstanding Clause 29.1 above, either Party shall have the right by giving written notice of election to the other party, to elect to have the dispute referred to arbitration pursuant to the rules of the London Court of International Arbitration (“LCIA”), which rules are deemed to be incorporated herein. The electing Party must give written notice of election to arbitrate by no later than the fourteenth day of the written request to accept service of High Court proceedings pursuant to Clause 29.1 above. The arbitration shall, unless the Parties agree upon the appointment of a sole arbitrator, be held before a panel of 3 arbitrators. Each Party shall

nominate an arbitrator and the two arbitrators nominated by or on behalf of the Parties shall nominate the third arbitrator, who shall act as Chairman of the panel. If the two arbitrators nominated by or on behalf of the Parties have not nominated the third arbitrator within 30 days, the third arbitrator shall be chosen by the LCIA. The Chairman shall be a lawyer unless the first two arbitrators appointed are both lawyers. The place of arbitration shall be London. The language of the arbitration shall be English. The arbitration award shall be final without appeal to the Courts.

29.3 Small Claims

Notwithstanding Clauses 29.1 and 29.2 above, the Parties agree that where the amount in dispute between them is U.S.\$100,000 or less (excluding interest and costs) then the Dispute shall be referred to a sole arbitrator and the arbitration shall be conducted in accordance with the London Maritime Arbitrators' Association (“LMAA”) Small Claims Procedure current at the time when the claiming Party commences arbitration proceedings

29.4 Enforcement, Interlocutory and Interim Action

Any decision of the High Court or any arbitration may be enforced in the courts of any country and, furthermore, neither Party shall be precluded from pursuing arrest, attachment and/or other conservatory, interlocutory or interim actions in any court in relation to the Marine Lubricants or the Vessel.

30 Applicable Law

30.1 Governing law

The construction, validity and performance of the Agreement (and any non-contractual obligation relating to the Agreement) shall be governed by English law to the exclusion of any other law, which may be imputed in accordance with choice of law rules applicable in any jurisdiction.

30.2 The UN Convention

The United Nations Convention on Contracts for the International Sale of Goods of Vienna, 11th April 1980, shall not apply to the Agreement.

30.3 Sovereign immunity

Each Party warrants that it has entered into the Agreement in a commercial capacity and that with respect to the Agreement it is in all respects subject to civil and commercial law. Each Party hereby irrevocably and unconditionally and to the fullest extent permitted by law waives any rights of sovereign immunity which it may have now or which it may subsequently acquire in respect of its position or any title and/or assets (present or subsequently acquired and wherever located) belonging to it.

31 Anti-Bribery and Anti-Tax Evasion

31.1 Purchaser represents and warrants that it shall comply with all applicable Anti-Bribery and Anti-Tax Evasion Laws, and shall not commit (nor shall its employees, officers, directors or agents commit) an offence of making or receiving a bribe, an offence of cheating the public revenue or an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by itself or any other person.

