



## Fixenergies DMCC | General Terms & Conditions of Sale

Edition October 2023

### 1. Definitions

- 1.1. "**Buyer**" means the party or parties, jointly and severally, named on the Order Confirmation for whose account the sale has been contracted. The Buyer shall always include the Owner, or, if applicable, the Disponent Owner.
- 1.2. "**Conditions**" means these general terms and conditions of sale.
- 1.3. "**Containers**" mean intermediate bulk containers (IBC), drums or any other sealed containers or segregated units.
- 1.4. "**Contract**" means these Conditions together with an Order Confirmation and provides for an agreement between the Seller and the Buyer for the supply of Products and shall constitute the full and final agreement between the Parties.
- 1.5. "**Disponent Owner**" means any party contracting with the Owner to charter or otherwise commercially dispose of the Vessel, typically a bareboat/demise charterer, or any other party who controls the Vessel and enjoys the benefit thereof under a similar arrangement.
- 1.6. "**End User**" means the party who ultimately purchases, uses, receives or consumes the Products.
- 1.7. "**Intermediary**" means trading companies, entities or persons that enter into an agreement with the Seller as Buyer of the Products for the purpose of reselling the Products to an End User or to another Intermediary or party.
- 1.8. "**Order Confirmation**" means any written confirmation issued by the Seller to the Buyer in respect of an order placed by or on behalf of the Buyer and/or confirmation of a similar agreement.
- 1.9. "**Owner**" means the registered owner(s) of the Vessel and any party or parties with actual ownership of the Vessel, in the absence of registration of such ownership.
- 1.10. "**Payment Interference**" means confiscation, freezing, detainment, arrest, stoppage, blocking of funds or any other interference exercised by banks, courts, public authorities or otherwise (and whether or not such interference is justified);
- 1.11. "**Physical Supplier**" means a third party appointed by the Seller to deliver the Products to the Vessel.
- 1.12. "**Product**" or "**Products**" means the Seller's marine fuel products, grades, gasolines, lubricating oils, technical spares, supplies, items, victuals and/or any other similar products and related services offered for sale by the Seller.
- 1.13. "**Sanctions Regulations**" means any export or import controls, embargos, trade restrictions, listing of persons or entities, asset freezing, prohibitions to sell, purchase, import, export, transfer or transport, or any other economic sanctions regulations adopted by the United Nations, the European Union or any Member State of the European Union, the United Kingdom, Singapore, the UAE, the United States of America or any other jurisdiction where the Seller delivers Products or otherwise carries out business.
- 1.14. "**Seller**" means "FixEnergies DMCC", company registration number 37140988, registered address at Tuborg Boulevard 12, 3. 2900 Hellerup, Denmark, and any of its servants, officers, agents, brokers, designated representatives and its subsidiaries or affiliates, wherever applicable.
- 1.15. "**Vessel**" is the vessel, rig, platform, storage unit or other installation or unit whether floating or not to which the Products are delivered to under the Contract.

### 2. Scope

- 2.1. **Integral part.** These Conditions shall always apply to any and all supplies of Products made by the Seller and constitute an integral part of any offers, quotations, orders, agreements, services, Order Confirmations and/or Contracts setting out the legal terms of the Seller's supply of Products and shall apply thereto whether or not express reference to the Conditions is made in the Order Confirmation. These Conditions are made known to any Buyer on the Seller's website and will be sent in pdf-copy via email to the Buyer upon request. Subject to clause 2.2 below, these Conditions and the Order Confirmation embody all the terms and conditions applicable to the Contract and supersede and cancel in all respects any previous conditions by the Seller.

- 2.2. No amendment. The Seller shall not be bound by, and the Buyer may not rely on, any statement, representation or warranty, collateral or other piece of communication to the extent that would amount to an amendment from these Conditions, unless and always provided a senior officer or member of management of the Seller (who cannot be a bunker trader), or the Seller's legal desk, confirms and authorizes the amendment in writing.
- 2.3. Severability. Any variance or invalidity of any part(s) of these Conditions shall not prejudice or limit in any way the validity of the remaining Conditions of any Contract made between the Seller and the Buyer. If any provision of the Contract is held to be invalid, void or unenforceable that will not affect the validity, legality or enforceability of any other provision of the Conditions or any other rights of the Seller under the Contract.
- 2.4. No waiver. Failure by either party at any time to enforce any of these Conditions shall not be considered as a waiver by such party of such provisions or in any way affect the validity of these Conditions.
- 2.5. Whole agreement. Together with the Order Confirmation, these Conditions constitute the whole agreement made between the Seller and the Buyer, and the Buyer may not rely on any pre-contractual or post-contractual statement, representation or warranty, collateral or other piece of communication to the extent that prejudices the Seller's rights under these Conditions. No amendment of these Conditions shall be binding on the Seller unless confirmed in writing by the Seller pursuant to clause 2.2.

### **3. Liability for payment and acceptance of these Conditions**

- 3.1. Acceptance by the Owner. All orders of Products are deemed to have been made under instruction from the Master of the Vessel acting as an agent of the Owner. The Owners accepts that the Master (or any other officer or representative of the Vessel), by signing and/or stamping the bunker delivery note(s) or other similar document, shall be deemed to have full authority on behalf of the Vessel and her Owners to take delivery of the Products and to accept these Conditions on behalf of the Owner. The Owner acknowledges and accepts that the Products are supplied for account of the Owner by the Vessel taking delivery of the Products. The Buyer (if different from the Owner) warrants that these Conditions are always communicated to the Owner, that the Buyer is authorized as agent to order the Products for the Vessel for and on behalf of the Owner and that the Seller has a lien on the Vessel for any Products supplied under the Contract in accordance with the applicable law (see clause 20.1 below).
- 3.2. Disponent Owner. If, at the time of delivery of the Products, the Vessel is under the control of a Disponent Owner, the Disponent Owner shall be deemed liable for payment of the Products as party to the Contract in the Owner's stead even if not named as a Buyer under the Contract and regardless of whether the agent acting for the Disponent Owner when ordering the Products from the Seller has disclosed the existence and/or identity of the Disponent Owner. This clause only applies if the Disponent Owner has agreed under its contract with the Owner to be liable for the supply of Products to the Vessel. If this clause applies, any references to "Owner" in these Conditions shall apply mutatis mutandis to the Disponent Owner.
- 3.3. "No-lien stamps". The Buyer expressly undertakes not to make any endorsement, complaint or comment (such as the insertion of "No-lien" clausing) on the bunker delivery note when presented for signature by the Buyer's representative(s). Any such insertion shall be invalid and of no effect whatsoever. This clause 3.3 reflects the principle embodied under the preceding clauses, i.e., that the Products are received with full authority from the Owner.
- 3.4. Agents. When the Seller's Order Confirmation states that the sale is for account of a party, that party shall be deemed to have transacted as principal and shall be the Buyer and be jointly and severally liable to settle payment with the Owner. The Buyer shall be liable and may not be excused from liability by relying on ex-contractual statements (e.g. in correspondence) saying that it transacts as agent only.
- 3.5. Brokers. The Seller will, from time to time, sell Products to the Buyer via an intermediary (a bunker broker). A broker does not contract as principal but merely as an agent of the Buyer or the Seller. Only the Buyer shall be bound as party to the Contract. The Broker shall always forward the Seller's Order Confirmation with a copy of these Conditions to the Buyer.

### **4. Terms of Offers and Contracts**

- 4.1. Formation of Contract. The Seller's Order Confirmation is evidence of the terms of the Contract agreed between the Seller and the Buyer and the Contract is binding when Seller issues the Order Confirmation to the Buyer. The Seller shall be entitled to issue amended Order Confirmations recording variations agreed with the Buyer. if, for any reason, the Buyer takes delivery of Products from the Seller without having been provided with an Order Confirmation, a Contract shall be deemed to have been formed, incorporating these Conditions, at the time of delivery.
- 4.2. Quotations, offers and estimates. The Seller's offers, quotations and estimates of prices and other costs are to be understood as being conditional and subject to availability and alteration.



4.3. Approximate values and information. Unless otherwise expressly provided for in the Order Confirmation, all particulars notified to the Buyer (e.g. analytical data, delivery times, names of delivery vessels, or specifications of the Product) and all documents to which access has been given shall be deemed to contain only approximate values customary in the trade and do not constitute undertakings or warranties. The Seller further reserves the right to alter such particulars or documents.

4.4. FoB and Incoterms. The supply of Products is always made on FoB terms, unless another Incoterm is expressly stated in the Order Confirmation. References to FoB or other Incoterms shall be deemed to have the meaning contained in the most recent edition of Incoterms. This Clause and any applicable Incoterms shall always be subject to, and be varied in accordance with, clause 9.13 below.

## **5. Prices, Invoicing, Payment, Interest, Collection Costs, Allocation**

5.1. Prices. The Buyer shall pay the agreed prices as set out in the Order Confirmation. If the price has not been agreed in advance of delivery, the Buyer is obligated to pay the price offered by the Seller at the place and date of supply as stipulated in the invoice(s) sent by the Seller.

5.2. Additional expenses and costs – customs, VAT and other taxes. The Buyer shall pay any expenses and costs in addition to the price of the Products, such as barging, overtime, demurrage, detention, costs owing to delay, wharfage, dockage, port/harbor/agency fees, dues, duties, taxes, VAT, customs, levies and any other similar costs, including but not limited to those imposed by governments and local authorities ("Additional Expenses"). The Buyer shall always pay any Additional Expenses promptly upon receiving the Seller's invoice even if the Additional Expenses are not recorded in the Order Confirmation. Additional Expenses which arise pursuant to local law and/or local custom at the place of supply and are invoiced by the Physical Supplier to the Seller and paid by the Seller to the Physical Supplier shall be presumed validly imposed by the Physical Supplier in accordance with local law and/or local custom. The Buyer may discharge this presumption and bears the burden of proof in arbitration.

5.3. Due date for payment. Payment shall be received by the Seller in full no later than on the due date stated in the Seller's invoice, free of bank charges and other cost, into the Seller's nominated bank account.

5.4. Currency. Unless otherwise specified in the Order Confirmation, prices shall be in US dollars (typically quoted in USD per metric ton). In case of a Payment Interference, or if the Seller has reason to believe that a Payment Interference will occur, the Seller shall be entitled to demand payment into the Seller's account in a different currency than US dollars, with the applicable currency conversion rate to be set by the Seller, acting reasonably.

5.5. No set-off. Payment shall always be made in full into the Seller's bank account, without any set-off, deduction and/or discount, unless agreed in writing prior to payment being made. The Buyer's submission of any claim against the Seller does not relieve the Buyer of its obligation to make full payments as required under the Contract and such claim does not grant the Buyer any right of set-off.

5.6. Interest and administration charges. If payment is not received by the Seller on the due date the Seller is entitled to interest at the rate of 3 (three) percent per month compounded each month pro rata without prejudice to any other rights or remedies available to the Seller. The Seller shall also be entitled to charge a delayed payment administration fee of USD 5.00 per metric ton supplied with a minimum administration fee of USD 1,000.00.

5.7. Legal and Collection costs. Any costs incurred by the Seller due to a breach of the Buyer shall be solely for the Buyer's account. If the Buyer fails to make payment in full on the due date or otherwise breaches the Contract, the Seller may without notice take legal action (such as ship arrest and/or arbitration) to collect the overdue payment. Any and all costs that the Seller reasonably incurs as a consequence of the Buyer's breach shall be indemnified by the Buyer upon demand from the Seller. These costs and expenses include, but are not limited to, interest charges, internal costs, and external costs such as expenses to lawyers, debt collectors, arbitrators or other consultants, court fees, costs for translating documents, bailiff's or Marshall's fees and any collection costs of whatsoever nature. These costs shall be indemnified by the Buyer to the Seller, and the Seller may invoice those costs from time to time.

5.8. Allocation of payments. All payments received by the Seller shall be applied to settle, first, any overdue interest and administration fees accrued pursuant to clause 5.6 above), then, to any legal and collection costs incurred (such costs to be indemnified by the Buyer as set out in clause 5.7 above), and, then, to principal.

5.9. Anticipatory breach. The Seller shall be entitled to demand all payments settled immediately, whether or not such payments have fallen due under the Seller's invoice(s), if the Seller has reasonable grounds to believe that the Buyer will not pay on the due date.

## 6. Quality – claims

- 6.1. **Quality.** The agreed quality shall always be limited to the quality description set out in the Order Confirmation; for instance, by reference to the quality standard term ISO 8217:2017, which is mentioned here for illustration purposes only. If the Order Confirmation does not contain such description and does not contain any other term of quality, the Products shall be of the quality that is generally offered by the Seller to its customers at the time and place of delivery and subject to being available for delivery at the agreed place of delivery. Absent any special agreement, lubricating oils are sold and supplied by reference to the technical specification (data sheet) published by the producer at the time of entering the Contract.
- 6.2. **No implied warranties.** Any implied conditions, obligations, representations, undertakings and warranties – including of merchantability or fitness for a particular purpose or use – are expressly excluded and disclaimed and shall not apply. Clause 5 pursuant to ISO 8217:2010 (or any later version agreed) shall not apply.
- 6.3. **The Buyer's responsibility.** The Buyer, having greater knowledge than the Seller of the Buyer's and the Vessel's own requirements and needs, shall have the sole responsibility for the prior selection of the particular grade(s) and acceptance thereof and has a strict duty to notify the Seller upon receipt of the Order Confirmation if it does not accurately set out the type and quantum of Products demanded by the Buyer. Unless such notice is provided to the Seller, the description and other terms in the Order Confirmation shall be binding. It is the Buyer's duty to ensure that any lubrications oils or similar products are compatible for use with the Vessel's machinery, compressors, bearings and circulation systems, gear systems, hydraulic systems, etc.
- 6.4. **Agreed procedure for sampling and testing of samples of marine fuel Products.** The following clauses shall exclusively govern the taking of samples and the analysis (testing) of such samples for the supply of marine fuel Products:
- A. During delivery, The Seller (typically through the Physical Supplier) shall arrange for a primary sample of each grade to be drawn continuously throughout the bunker delivery period at a point as close as possible to the bunker barges/the delivery facility's manifold and in accordance with the rules and procedures of IMO resolution MEPC.182(59) (2009 guidelines for the sampling of fuel oil for determination of compliance with the revised MARPOL Annex VI) or any subsequent amendments thereto. The primary sample must be thoroughly mixed and divided into at least four (4) identical samples.
  - B. If drip sampling is not available onboard the bunker barge/delivery facility, samples shall be taken as a composite of each tank from which supplies are made onboard the barge/delivery facility divided with 1/3 from each the top, mid and bottom of the tanks. For guidance, this clause does not allow the Buyer to draw tank samples from the Vessel's tanks, which are not seen as representative of the Product supplied.
  - C. Two (2) samples shall be retained by the Seller and/or the Physical Supplier. The other two (2) samples shall be retained by the Vessel, one of which shall be dedicated as the MARPOL sample in accordance with the relevant rules and regulations in force at the time of supply.
  - D. The four (4) samples drawn and retained pursuant to this clause shall be conclusive and final evidence of the quality of the Products delivered to and received by the Vessel and any additional sample(s) that the Buyer may draw are not representative of the quality of the Products and can only be used for the Buyer's own purposes, which are irrelevant to the Seller.
  - E. Sampling shall be witnessed by both the Buyer and the Seller, or their representatives. Failure of the Buyer to attend the sampling process shall not prejudice the validity of the samples.
  - F. The samples must each be sealed with a security seal and provided with a label containing information on the name of the Vessel and the bunker barge/delivery facility, a specification of the Products delivered, the date of delivery, place of delivery and seal number. The seal numbers for the samples taken must be stated in the bunker delivery note. The Buyer and the Seller each declare by their, or their representatives', signature to the bunker delivery note that the samples have been validly taken in conformity with the requirements set out in these Conditions.

- G. In the event of a dispute regarding the quality of the Products delivered, no other samples than the samples drawn pursuant to this clause, and which are kept by the Seller and/or the Physical Supplier, may be tested, unless the parties have specifically agreed otherwise. One of these samples shall be forwarded to an independent laboratory that analyses the content of the sample and performs a set of tests based on a testing protocol agreed by the parties, or, in the event of disagreement, the Seller's testing protocol. In order to avoid uncertainty of evidence, the analysis undertaken by the laboratory shall only test for compliance with the parameters specified in ISO 8217:2017, Table 1 and 2 (or an earlier version, if the parties in the Contract have agreed to an earlier version of the ISO 8217 standard). **THESE TEST RESULTS WILL BE FINAL AND BINDING UPON THE PARTIES WITH RESPECT TO THE PARAMETERS ANALYSED.** It is emphasized that in case the Buyer unilaterally draws samples or conducts testing, any such samples and/or test results cannot validly be used as evidence; see also clause 6.5K below.
- H. The parties are to use best endeavors to agree on the independent laboratory to perform the tests. If the parties have not agreed on the choice of laboratory within 7 calendar days, the Seller is entitled to send the sample as mentioned in clause 6.4G to a reputable and independent laboratory of its choice to carry out such tests as are mentioned in the Seller's testing protocol. **THESE TEST RESULTS WILL BE FINAL AND BINDING UPON THE PARTIES WITH RESPECT TO THE PARAMETERS ANALYSED** as set out above.
- I. The samples' seal may be breached without the Seller being present, unless the Seller demands to be present during seal breaking and testing. The Buyer or its surveyor may be present, but the laboratory may proceed with seal breaking and testing if the Buyer has been notified of the place and time for testing. The seal may be breached without both parties being present if the Seller – in cases where the parties have not been able to agree on the choice of laboratory and/or the testing protocol (as mentioned above) – sends the sample to an independent laboratory for testing in accordance with the clauses above. Both parties shall have the right to appoint independent surveyor(s) to witness the seal breaking and testing.
- J. If the seal on a sample is broken, the sample in any other way has been tampered with, or if attempted tampering is obvious, any such sample shall have no evidentiary value.
- K. Samples and tests which are not drawn/conducted in accordance with the procedure described above **CANNOT BE USED AS EVIDENCE** for the quality of the Products. The Buyer's own test results are not admissible evidence in arbitration. The fact that any samples tested unilaterally by the Buyer may bear the signature of personnel on board the bunker barge/delivery facility shall have no legal significance since such personnel has no authority from the Seller to deviate from these Conditions. The purpose of this clause is to ensure that an alleged claim for deficient Products is settled under simple and predictable guidelines and to avoid the taking of conflicting evidence.
- L. The Buyer shall never be entitled to remove (debunker) the Products from the Vessel unless preapproved in writing by the Seller and always provided that the Seller's and the Physical Supplier's instructions are strictly adhered to. The Buyer is obliged to mitigate losses as much as is reasonably possible and work to obtain best possible prices for the Products. The Seller may assist in obtaining prices from other suppliers who are willing to purchase the Products. The Products cannot be removed and sold at a price below what is acceptable to the Seller. All costs and expenses related to debunkering, storage, etc., shall always be borne by the Buyer.
- 6.5. Reproducibility or repeatability – marine fuel Products. The conformity of marine fuel Products shall be determined in accordance with ISO 4259 and as provided for in ISO 8217:2017 (or any other agreed quality standard for the Products supplied). To the extent that the components/parameters detected during testing are within the allowed tolerances in respect of reproducibility or repeatability as set out in ISO 4259 the Products shall be deemed to be on-specification and conforming to the Contract.
- 6.6. Testing for compliance with the agreed quality standard – marine fuel Products. The ISO-standard for marine fuel Products provides for certain characteristics for Distillate marine fuels (Table 1) and Residual marine fuels (Table 2) (the "**Characteristics**"). The Products may be tested only for compliance with these Characteristics. As provided for in Annex B of ISO 8217:2017 (or any other agreed edition of ISO 8217), identifying and determining a concentration of a material that causes the fuel to be unacceptable for use is difficult, and it is not practical to conduct a detailed chemical analysis beyond testing for compliance with the Characteristics. Some ship owners routinely include detailed chemical analysis (such as FTR and GC-MS test methods) in fuel testing programs. The Buyer accepts that such test methods are speculative and do not aid in evidencing compliance with the Characteristics. The Buyer may not rely on such testing and shall follow the agreed procedure for testing set out in clause 6.4 above.

- 6.7. Agreed procedure for testing of lubricating oils. If the Buyer wishes to make a quality claim with respect to any lubricating oil Product, the Buyer shall prove that the Product was delivered by the Seller and was not in conformity with the technical specification (data sheet) published by the producer at the time of delivery (see also Clause 6.1, last sentence). The Parties shall agree on testing of an (unopened, if such is available) Container supplied by the Seller at an independent laboratory. The test results are **FINAL AND BINDING**. Clause 6.4 H to apply.
- 6.8. Quality claims – notification and time-barring. Any claims relating to the quality of the Products delivered shall be notified by the Buyer and/or the Vessel to the Seller **WITHIN 14 (FOURTEEN) DAYS AFTER COMPLETION OF DELIVERY** in the form of a written letter of protest with full supporting documentation. If the Buyer or the Vessel's master fails to present such letter of protest to the Seller within this timeframe, **SUCH CLAIM SHALL BE EXTINGUISHED AS NON-EXISTENT, BE DEEMED TO HAVE BEEN WAIVED AND SHALL BE ABSOLUTELY BARRED FOR ALL PURPOSES.** In addition, any and all claims of the Buyer that have been notified to the Seller in due time shall become time-barred unless arbitration has been commenced as per clause 20 below and served on the Seller **WITHIN 6 (SIX) MONTHS** from the date of delivery. The date of delivery is set out in the bunker delivery note.
- 6.9. Determination of quality – evidence. Any claims relating to quality shall be solved amicably or in arbitration in accordance with clause 19 below. The evidence obtained under the exclusive procedure that governs the taking of samples and the testing of such samples (the full procedure is detailed in clause 6.4 above) shall be final and binding on the parties and shall accordingly be conclusive evidence.
- 6.10. No liability for commingling. Any liability (or potential liability) of the Seller ceases, and the Buyer may not make any claim, if circumstances indicate that the Buyer has commingled the Products on board the Vessel with other similar products. Products which according to their specification or data sheet are similar may not be commingled.
- 6.11. Use of own Containers. The Buyer may not make any quality claim if the Products have been transported or stored in Containers not provided or approved by the Seller, unless the Buyer can prove that such use of own containers is not the root-cause of the alleged quality deficiency.
- 6.12. Duty of mitigation. The Buyer and the End User shall mitigate their losses and minimize the consequences of the Vessel receiving defective Products, e.g. by using additives, diluting the Product, heating the Product sufficiently or otherwise treating the Product as to ensure that it is used responsibly for the propulsion of the Vessel. The Buyer and the End User are at all times required to treat and handle the Product according to current standards, such as the standards set out in ISO 8217:2017, Clause 1 Scope ("*conventional onboard treatment (settling, centrifugation, filtration) before use*"), or any other agreed quality standard for the Product. The Buyer shall inform the Seller before any mitigating measures are performed.

## 7. Quantity – claims

- 7.1. Quantity. The Seller shall endeavor to deliver the quantity of Products stated in the Order Confirmation. The Seller is a trading company and relies on the Physical Supplier delivering the agreed quantity and cannot be claimed or held liable in any way for short supplies, in which case the Seller shall only invoice for the actual quantity delivered.
- 7.2. Determination of quantity – evidence. The quantity of the Products delivered shall be determined solely from the information on quantity inserted into the delivery note, or, if the delivery note has not been signed, a Mass Flow Meter (if applicable) or the official gauge/sounding of the delivering barge, road wagon, or rail tank car, delivery note for drum deliveries, or by gauging in the Seller's shore tank or by the Seller's oil meter, at the Seller's election. The Buyer is entitled to be present or represented by a properly accredited agent or surveyor when quantity measurements are taken. If the Buyer is not present or represented, the Seller's determination of quantity shall be **FINAL AND BINDING ON THE PARTIES. QUANTITIES CALCULATED FROM THE VESSEL'S OWN SOUNDINGS SHALL NOT BE CONSIDERED.**
- 7.3. Quantity claims – notification and time-barring. Unless the Buyer or the Master of the Vessel **IMMEDIATELY UPON DELIVERY AND PRIOR TO THE SIGNING OF THE DELIVERY NOTE** claims a quantity deficiency in the delivered Products, any allegation of short supplies or other forms of quantity claims **SHALL BE EXTINGUISHED AS NON-EXISTENT, BE DEEMED TO HAVE BEEN WAIVED AND SHALL BE ABSOLUTELY BARRED FOR ALL PURPOSES.** In addition, any and all claims of the Buyer that have been notified to the Seller in due time shall become time-barred unless arbitration has been commenced as per clause 20 below and served on the Seller **WITHIN 6 (SIX) MONTHS** from the date of delivery. The date of delivery is set out in the delivery note.

## 8. Claims Process

- 8.1. All parties are invited to follow the claims process set out in the Annex hereto.



## 9. Delivery and Risk of Delay

- 9.1. Approximate times. The time of delivery, as given by the Seller, is an approximate time.
- 9.2. 72 hours' notice. The Buyer shall always notify the Seller at least 72 hours (Saturday, Sunday and local holidays excluded) in advance of the Vessel's readiness to take delivery of the exact quantity of Products to be delivered to enable the Seller to make the necessary arrangements for the delivery.
- 9.3. Range for delivery. The Order Confirmation includes the earliest estimated time of the Vessel's arrival (ETA) as advised by the Buyer. The Vessel shall always begin to take delivery within the ETA provided for in the Order Confirmation, and, if the ETA listed in the Order Confirmation exceeds 3 (three) calendar days, the Vessel shall always begin to take delivery of the Products within the first 3 (three) calendar days. The Contract price shall be valid only for deliveries begun within the ETA stated in the Order Confirmation, or, within the 3 (three) calendar day-period if such period applies as provided for in this clause. If the Buyer begins to take delivery or requests delivery to begin beyond these periods, as applicable, the Seller shall – without prejudice to the Seller's potential claim against the Buyer – be entitled to amend the agreed price(s) under the Contract.
- 9.4. Failure to take delivery. If the Buyer fails to take delivery of the Products, or any part thereof, as provided for under clause 9.3 above, the Seller shall be entitled, at the Buyer's risk and expense, either, to transport the Products back to storage or sell the Products at the price available in the market and claim damages against the Buyer, without prejudice to the Seller's other rights and remedies. The Seller shall also be entitled to charge a minimum cancellation fee of 5% (five) of the agreed prices, and the Buyer shall indemnify the Seller for any cancellation fee or other charges or costs charged by the Physical Supplier.
- 9.5. Delivery circumstances permitting. The Vessel shall be bunkered as promptly as the prevailing circumstances permit, having regard to circumstances such as weather, ship traffic, congestion and bunker barge/delivery facility's accessibility and other delays caused by local authorities and other local conditions. The Seller and/or the Physical Supplier shall not be liable for any time lost or other consequences caused by circumstances preventing the commencement or completion of the bunkering operation. The Seller shall not be obligated to deliver prior to the nominated date or spread of dates.
- 9.6. Shortage of supply. If the Seller, for any reason and in its sole discretion, anticipates that there may be a shortage of Products available, the Seller may, in its own discretion, allocate the available supply, and the Buyer may raise no claim against the Seller in these circumstances.
- 9.7. Buyer's cause of delay. If the Buyer causes delay to the Seller's and/or the Physical Supplier's delivery when receiving the Products, the Buyer shall be deemed to be in breach of contract and be liable accordingly.
- 9.8. Permitted tanks only. The Seller shall not be required to deliver the Products into any of the Vessel's tanks which are not permitted for use with such products and/or which are not normally used for such products.
- 9.9. Port Licenses and permits. The Buyer and the Vessel shall, at its own risk and cost, comply with the requirements of local authorities to facilitate a smooth delivery. If the Buyer fails to comply with such requirements, the Buyer shall be deemed to have breached the Contract, and the Seller may exercise remedies for breach. It is the Physical Supplier, and not the Seller's, responsibility to ensure that all local licenses and permits have been obtained. The Seller has no strict liability for obtaining such permits and licenses and can only be held liable for any illegal bunkering if the Seller has acted with gross negligence.
- 9.10. Modes for delivery. The Seller may deliver the Products inland, in port, from a shore terminal, by a supply barge or any other customary method of delivery at the place of delivery, assuming such deliveries are available. In the case of more than one available method of delivery, the Seller shall, at its sole discretion, select one, provided that it does not breach any other conditions of the Contract.
- 9.11. The Buyer's obligation to provide a near and safe berth, position or anchorage. The Buyer shall provide a clear and safe berth, position or anchorage alongside the Vessel's receiving lines from where the Physical Supplier may deliver the agreed quantity at no extra costs. The Seller shall be under no obligation to make deliveries when a clear and safe berth, position or anchorage is not available, which shall be solely at the discretion of the Physical Supplier to determine. The Buyer shall indemnify the Seller against all claims, expenses, loss, damage, demurrage or delay, or and similar expense, irrespective of whether the circumstance causing the loss, damage, demurrage or delay was within the control of the Buyer, its agents and employees, or any local representative.
- 9.12. Assistance from the Buyer. The Buyer shall make all connections and disconnections between pipelines or delivery hoses and the Vessel's intake lines and shall render all other necessary assistance and ensure that the Vessel has sufficient tankage and equipment to promptly receive the Products.



- 9.13. Transfer of risk. The Products shall be delivered, and all risks in and liabilities arising from the Products, shall be deemed transferred to the Buyer, (a) once the Products have passed the flange connecting the pipelines or delivery hoses of the supply barge with the intake lines of the Vessel, or (b) in case of any other mode of delivery, such as Products delivered in Containers, once the Products have landed from the delivery vehicle to the ground at the agreed point or place of delivery (whether (i) on the quay or at any other point of land near to the Vessel, (ii) at any terminal, storage or warehouse facility designated by the Buyer, (iii) in the custody of the Vessel's local agent, (iv) in case of delivery using lifting equipment operated by the Seller or the Physical Supplier, when the Products are landed on the deck of the Vessel, or (v) if delivered by using lifting equipment operated by any other party, when the Products are lifted off the deck of the barge or off the delivery vehicle).
- 9.14. Delivery notes. The Master, or other authorized representative of the Vessel, shall confirm the delivery on behalf of the Vessel and the Buyer by signing a delivery note (or any similar document) provided by the Physical Supplier. The Seller shall not be deemed to have any constructive knowledge of the authority or lack of authority of any purported local representative of the Buyer or the Owner. The Seller or Physical Supplier may assume that such purported representative is authorized to sign the delivery note.
- 9.15. Normal working hours. Delivery shall be made during normal working hours. Unless otherwise agreed, deliveries outside normal working hours shall be subject to additional reasonable costs, which shall be borne by the Buyer and paid to the Seller in accordance with the Seller's invoice.

## **10. Health, Safety and Environment – dangerous goods**

- 10.1. Health and safety requirements. It shall be the sole responsibility of the Buyer to comply, and advise its personnel, agents and/or customers to comply, with all health and safety requirements applicable to the Products supplied, both before, during and after delivery. The Seller accepts no responsibility or liability for any consequences arising from the Buyer's failure to comply with such requirements. The Buyer acknowledges familiarity with the hazards inherent in any petroleum products and shall protect, indemnify and hold the Seller harmless against any claims and liability incurred as a result of the Buyer's failure to comply with the aforementioned requirements.
- 10.2. Environment and duty of mitigation. Unless caused by the Seller's gross negligence, in the event of any leakage, spillage, overflow or any other pollution, the Buyer shall, regardless as to whether the Buyer, the Seller or any third party is the cause of loss, immediately take such action as is reasonable and necessary to limit any loss or damage. This involves actions taken to effectuate clean up and/or preventive measures. If the Buyer fails to take prompt action when damage or risk of damage occurs, the Buyer (who hereby warrants that it has been authorized by the Vessel's Owner) hereby authorizes the Seller to take whatever measure(s) the Seller deems necessary to efficiently execute preventive measures, clean-up and restore the environment at the Buyer's cost and expense. The Buyer accepts that any decision to execute preventive or mitigating measures by the Seller is at the Seller's sole discretion, acting reasonably, and the Buyer is not entitled to reject indemnification or reimbursement of costs incurred by the Seller unless proven that the costs were unreasonably incurred or arose as a consequence of the Seller's gross negligence. The Buyer shall defend, indemnify and hold the Seller and/or the Physical Supplier harmless against any loss or damage, expense and costs incurred by the Seller.
- 10.3. Dangerous Goods. The Seller may from time to time deliver Products that constitute dangerous goods (hazardous material). The Buyer is solely responsible for selecting these goods and assumes all risks in receiving and handling such goods. Clause 10.2 shall apply mutatis mutandis hereto, except that "gross negligence" shall be replaced with the "Seller's recklessness committed with the intention of causing loss".
- 10.4. Regulations. The Buyer warrants that the Vessel complies with all applicable national and international laws and regulations. It shall be the responsibility of the Buyer and the Master of the Vessel to notify the Seller of any defects in the Vessel which might adversely affect the delivery of the Products.

## **11. Indemnity**

- 11.1. The Buyer shall indemnify and hold the Seller harmless of any liability, loss, claim, expense or damage the Seller may suffer or incur by reason of, or in any way connected with, the breach, fault or default by the Buyer and/or its agents in the purchase of, receipt, use, storage, handling or transportation of the Products or in any other way in relation to the Buyer's performance of the transaction.

## **12. Warranty**

- 12.1. The Seller's Warranty. Subject to clauses 12.2, 12.3 and 12.4, the Seller warrants that the Products conform to the Contract and are delivered with reasonable skill and care.



12.2. The Buyer's remedy for the Seller's breach of warranty. In the event of a breach by the Seller of the warranty in clause 12.1, the Buyer's sole remedy shall be at its option either to:

- A. be credited an amount equal to the decrease in value of the part of the Products delivered that does not confirm to the Contract; or
- B. demand that the Seller redelivers the Products in the same quantity as the part of the Products delivered that does not confirm to the Contract;

always provided that any non-conforming Products are sold at a reasonable price acceptable to the Seller. The Seller shall not be responsible for removing the products from the Vessel or for any other form of offloading of the Products, nor for storage, transportation, customs clearing and/or any other precondition necessary for removal of the products. The Seller shall, acting reasonably and if possible, assist in obtaining good prices in cooperation with the Buyer.

This clause 12.2 shall be the Buyer's sole remedy for breach in lieu of any other rights and remedies which are ordinarily available to the Buyer under the applicable law.

12.3. No liability beyond warranty. The Buyer accepts that the Seller has no further liability beyond the warranty that the Seller undertakes pursuant to the preceding clauses and that the Buyer may not exercise any other remedies for breach beyond these clauses.

12.4. Exclusions from the scope of warranty. The warranty given in clause 12.1 will not apply:

- A. to claims arising from normal wear and tear, the Buyer's willful damage or willful misconduct, the Buyer's negligence, abnormal working conditions, use for unintended purpose, misuse, abuse or lack of maintenance;
- B. if the Buyer fails to comply with the Seller's and/or the Physical Supplier's advice or instructions, whether general or specific;
- C. if the Products are removed from the Vessel unless approved in writing by the Seller; such approval may be withheld by the Seller, acting reasonably, for instance if the Buyer has failed to agree with a third-party supplier to sell the products at a reasonable price;
- D. if the Buyer has not notified the Seller of the warranty claim within 14 days after the time the Buyer discovered, or ought to have discovered, the material circumstances which gave rise to the claim; or
- E. in the event the Buyer has not complied with the notification and time-barring provisions set out in clauses 6.6 and 7.2 above.

### 13. Limitation of Liability

13.1. Limitation of liability. Considering that the Seller undertakes certain warranty obligations (as set out in clause 12), the **SELLER SHALL BE UNDER NO LIABILITY WHATSOEVER TO THE BUYER FOR ANY LOSS, DAMAGE, DELAY OR EXPENSE INCURRED OF WHATSOEVER NATURE, WHETHER DIRECT OR INDIRECT**, including but not limited to (i) any loss of profit, time, hire, demurrage, detention, towage, business contracts, trading, revenues or anticipated savings, or (ii) for damage to the Buyer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special, indirect, consequential or incidental loss or damage of any nature whatsoever.

13.2. Liability Cap. The Seller's liability, whether based in tort or contract and including claims for quality, product liability, pollution and any other claims, **SHALL ALWAYS BE LIMITED TO AND SHALL NEVER EXCEED THE LOWEST OF (I) USD 300.000 OR (II) THE PRICE OF THE PRODUCTS.** If a Contract provides for the supply of two grades and liability arises from one grade being off-specification, then only the price for the off-specification Products shall be taken into account in calculating the limit of the Seller's liability.

13.3. Data Protection. The Seller shall in no event be held liable for having disclosed any data or information of any kind whatsoever, including, without limitation, in compliance with rules of law, market rules or trade custom.

13.4. Cyber risks. The Seller shall in no event be held liable for any reduction in the functionality, any breakdown, alteration, termination, damage to, intervention in (*hacking or similar*) or lack of access to the internet or other forms of tele- or datacommunication, computer systems, hardware, applications, software, data, microprocessor(s), integrated circuits or networks or similar computer- and not computer-related devices, whether or not owned or in the possession of the Seller, the Buyer or a third party. This includes any hacking of invoices. Such cyber risks are not within the control of the Seller and are assumed by the Buyer.

13.5. Validity and enforcement of limitation of liability clauses. The Buyer accepts that the clauses herein which limit the Seller's liability are valid and may be enforced by the Seller against the Buyer even for claims arising from the Seller's own negligence, whether simple or gross, or that of the Seller's agents or subcontractors. Only if damage or loss is caused intentionally or willfully by the Seller shall the Seller not be contractually entitled to limit or exclude its liability under the Contract.

#### **14. Seller's right of cancellation**

14.1. Cancellation. Without prejudice to any other remedies and rights and without any liability on the part of the Seller, the Seller shall have the option to cancel the Contract, in whole or in part, or to store or procure the storage of the Products, in whole or in part, for the account and risk of the Buyer and charge the Buyer the expenses thereby incurred and claim damages from the Buyer:

- A. if the Buyer, for whatever reason, fails to take timely delivery of the Products, in whole or in part, at the agreed place for delivery; or
- B. if the Buyer fails to pay any amount due to the Seller or otherwise is in breach; or
- C. if, before the date of delivery, it is apparent in the Seller's discretionary opinion that the financial position of the Buyer entails a risk to the Seller; or
- D. the Buyer is declared bankrupt; or
- E. the Buyer enters into any other form of insolvency proceedings, such as US Chapter 11 proceedings or similar proceedings in other jurisdictions, such as rehabilitation or reconstruction proceedings, compulsory agreements with creditors, suspension of payment or any other form of proceedings in contemplation of a structural debt arrangement being made vis-à-vis the Buyer and its creditors; or
- F. the Buyer makes any proposal to any of its creditor(s) for a reorganization, restructuring, rehabilitation or any other form of voluntary arrangement; or
- G. a receiver, liquidator, administrator or the like is appointed in respect of the Buyer's business; or
- H. the Buyer breaches any of its financial covenants or warranties provided by the Buyer to its financiers; or
- I. in case of force majeure (as defined in clause 16.1 below), or, if the Seller has reasonable grounds to expect force majeure; or
- J. in case of any breach of clause 15 below.

The Seller cannot be held liable for any loss, delays, claims or damage arising from cancellation made pursuant to this clause 14. Upon the Seller cancelling the Contract, the Buyer shall at his own expense make the Products available to the Seller or the Physical Supplier or a third-party supplier at a place where the Products can be removed from the Vessel and allow the Seller/Physical Supplier/third party supplier to repossess them.

#### **15. Compliance**

15.1. Compliance with Sanctions. The Buyer represents, warrants and undertakes that:

- A. the Buyer and any of its assignees, agents, principals of agents, shareholders, subsidiaries, sister companies, associated companies and/or parent companies (including their successors);
- B. any person or entity (i) which the Buyer enters into transactions with, (ii) which beneficially owns or controls the Buyer, or (iii) which is controlled by the same interest(s) that own and/or exercise control over the Buyer;
- C. the Buyer's contractual counterparty(ies) for the Products and/or any other person or entity further downstream, including the End User;
- D. the Owner of the Vessel and/or her charterer, operator, manager, agent or Disponent Owner;
- E. the Vessel or other vessels that take delivery of the Products and/or which are within the beneficial ownership or control, management or charter of the Buyer; and

F. the cargo onboard the Vessel and the owner of the cargo;

is/are not covered by, subject to or the target of any Sanctions Regulations and that the Products will not be used directly or indirectly for any purpose contrary thereto, including any acts of circumventing Sanctions Regulations.

- 15.2. The Buyer further represents, warrants and undertakes that the Vessel or any other vessel under the Buyer's ownership, management, charter or otherwise controlled by the Buyer has not called and will not call any port in violation of any Sanctions Regulations.
- 15.3. The Seller shall not be required to carry out any act or omission which constitutes, or may constitute, in the Seller's sole discretion, acting reasonably, a violation of Sanctions Regulations or any other laws that may from time to time apply to the Seller.
- 15.4. If the Buyer at any point becomes aware of a breach, or a potential breach, of this clause 15, the Buyer shall immediately inform the Seller in writing and the Seller shall be entitled to cancel the Contract and/or exercise other remedies for breach, to notify the relevant authorities in any relevant jurisdiction and/or say or do any act to comply with the laws and regulations of any such authorities and to comply with the Sanctions Regulation, and the Buyer shall indemnify and hold the Seller harmless against any claims, damages, costs, losses, liabilities, and expenses, including but not limited to fines and attorneys' fees, arising as a consequence of any breach, or a potential breach, of this clause 15.
- 15.5. The Seller shall not be required to carry out any act or omission which constitutes, or may constitute, in the Seller's sole discretion, acting reasonably, a violation of Sanctions Regulations and/or any other the laws and regulations in force where Seller carries out business. This applies equally to any law to which the Seller is made subject pursuant to any contract.
- 15.6. Duty of disclosure and auditing. Upon demand and without delay, the Buyer is obligated to provide any and all information and documentation to the Seller, as required in the Seller's sole discretion, acting reasonably, for the Seller to perform reasonable compliance screenings or other due diligence to avoid breaching any Sanctions Regulation. The Seller may require auditing of the Buyer as part of the Seller's due diligence to mitigate against and avoid breaching any Sanctions Regulations.
- 15.7. Payment Interference. The Buyer shall bear the risk of any Payment Interference. Payment shall always be received by the Seller in the bank account designated by the Seller. The Buyer's payment obligations shall by no means be deemed performed, and the Buyer shall not be released, unless and until the funds are received in full in the Seller's account. Any funds frozen or otherwise blocked by the Seller's bank or its correspondent bank are not deemed paid into the Seller's account.
- 15.8. Anti-corruption, anti-bribery, anti-money laundering & anti-terrorist financing. The Buyer represents, warrants and undertakes to comply with all applicable anti-corruption, anti-bribery, anti-money laundering and anti-terrorist financing laws, rules and regulations by the United Kingdom, the United States of America, the European Union or any member state thereof or any other jurisdiction where the Products are supplied or where the Seller carries out business. This includes, but is not limited to, the UK Bribery Act 2010, UK anti-money laundering and anti-terrorism laws and regulations and the US Foreign Corrupt Practices Act, including both the effective versions and any successor versions thereof. The parties represent, warrant and undertake never to take action that would subject the other to any fines or penalties under such laws, regulations, rules or requirements. Clause 15.3-15.6 will apply mutatis mutandis to this clause 15.8.
- 15.9. Return of suspicious payments. The Seller is committed to complying with all laws and regulations and is not obliged to accept any suspicious payments. The Buyer is not allowed to route payment to the Seller via non-contractual entities. The Buyer accepts that the entity stated in the Seller's invoice shall always remit payment, and the Seller is not obliged to accept any payment made by a third-party on behalf of the Buyer. The Seller may reject such payments, may return the funds and demand payment from the Buyer.

## 16. Force Majeure

- 16.1. The Seller and the Physical Supplier. Neither the Seller nor the Physical Supplier shall be liable for any loss, claim, damage, delay, demurrage, etc., or any failure in their performance under the Contract caused by the following circumstances;
- A. compliance with any order, direction or request from any public authority or person acting or purporting to act on their behalf; or
  - B. failure in, or unavailability of, the production, manufacture, supply, storage, transportation, distribution or delivery of the Products, or if the delivery cannot be completed by the Seller or the Physical Supplier due to congestion, shipping traffic or for any other reason outside the Seller's control; or



- C. any cause whatsoever not within the immediate control of the Seller, including (without limitation) if such is caused wholly or partly by labor disputes, strikes, stoppages, lock-out, governmental intervention, lockdown, wars, civil commotion, riot, quarantine, fire flood, earthquake, accident, storm, swell, ice, adverse weather, epidemic, pandemic or any act of God; or
- D. any cyber risks mentioned in clause 13.4; or
- E. any other similar circumstances;

any of which shall be considered force majeure. Neither the Seller nor the Physical Supplier shall be required to remove any such cause or replace any affected source or supply or facility if doing so shall involve additional expense.

## **17. Assignments**

- 17.1. The Seller's right of assignment. The Seller may assign/transfer/sell any/all of its rights and obligations under the Contract.
- 17.2. No assignment for the Buyer. The Buyer shall not assign/transfer/sell any/all of its rights or obligations under the Contract, without written consent of the Seller.

## **18. Title**

- 18.1. Retention of title. The Products shall remain the Seller's property and title therein shall not be transferred to the Buyer until the Seller has received payment in full in accordance with the Seller's invoice(s) and until the Seller has paid the Physical Supplier in full.

Until that time, the Buyer shall

- A. hold the Products as bailee for the Seller and shall not be entitled to use them other than for the propulsion of the Vessel; and
  - B. store them in such a way that they can be identified as the Seller's property and keep them separate from the Buyer's own property and the property of any third party; and
  - C. keep them at the Buyer's risk and expense from the time of delivery and until the time when the Seller takes redelivery or repossession; and
  - D. insure them against any loss or damage, and in the event of such loss or damage it shall notify the relevant insurers that the insured property is owned by the Seller, and that any insurance proceeds are to be paid out to the Seller. If the Buyer receives any such insurance proceeds, the Buyer shall always hold such proceeds on behalf of the Seller as trustee and shall notify the Seller thereof and request the Seller to inform to which of the Seller's bank accounts the proceeds may be wired to.
- 18.2. Passing of title (Res Cogitans clause). The transaction contemplated under these Conditions is not a contract for the sale of goods but a sui generis contract. The Contract is not subject to any express or implied terms for the transfer of title as a condition to the Buyer's obligation to make payment on the due date. The Buyer has agreed to contract not for the transfer of property in the whole of the Products but for the delivery of a certain quantity of Products which the Buyer has an immediate right to use for the Vessel's propulsion against not having to pay the price for the Products until the period of credit has expired.

## **19. Special Clause applicable to sales to Intermediaries (traders)**

- 19.1. The following clauses apply to Contracts entered with an Intermediary as the Buyer and notwithstanding anything to the contrary contained in these Conditions:
  - A. The Intermediary's claim for payment of the Products against its customer and the End User is assigned to the Seller as security for the Intermediary's due payment of the Seller's claim for payment against the Intermediary. Until the Seller receives payment from the Intermediary, the Intermediary shall have no right to collect payment from its customer or from the End User. This includes arresting the ship, which right is assigned to the Seller. If the Intermediary in whole or in part receives payment from its customer or from the End User prior to the Intermediary's payment to the Seller, the payment to the Intermediary shall be held in trust by the Intermediary on behalf of the Seller and the amount due to the Seller under the Contract shall be paid out to the Seller therefrom; the Intermediary shall only be entitled to retain its profit.

- B. In the event of the Intermediary's bankruptcy or any similar situation of insolvency as set out in clause 14, the Products, the Seller's claim for payment and the customer or End User's payment shall not constitute assets in the insolvency estate. The Seller retains title to the products, and the insolvency estate of the Intermediary is only entitled to the Intermediary's dividend and shall transfer any other sum to the Seller that it has received, or will receive, from its customer or from the End User. If the Intermediary or its insolvency estate has not received payment yet for the Products, the Seller shall be entitled to demand payment from the customer or the End User. Such payment will constitute fulfillment of the customer or the End User's payment obligations towards the Intermediary or its insolvency estate, and such payment shall also constitute fulfillment of the Intermediary's payment obligations towards the Seller, to the extent that the amount received by the Seller covers the aforementioned payment obligations. Any remaining balance in favor of the Intermediary after fulfillment of its payment obligations towards the Seller shall be the Intermediary's sole entitlement.
- C. The Intermediary must ensure that this clause is incorporated in every contract, concluded with or by other parties in the supply chain down to and including the contract that is concluded with the End User.

## 20. Governing law and arbitration

- 20.1. Law. These Conditions and any Contract shall be governed by and construed in accordance with Danish law, except with respect to the existence of the Seller's maritime lien. The General Maritime Law of the United States of America shall always apply with respect to the existence of the Seller's maritime lien, regardless of the country in which the Seller takes legal action. The Seller shall be entitled to assert its rights of lien or attachment or other rights, whether in law, in equity or otherwise, in any jurisdiction where the Vessel may be found.
- 20.2. Arbitration. Any dispute arising out of or in connection with a Contract, including any disputes regarding the existence, breach, validity or termination thereof, shall be finally settled by arbitration under the Nordic Offshore and Maritime Arbitration Association's ("NOMA") arbitration rules in force at the time when such arbitration proceedings are commenced. NOMA's Best Practice Guidelines in force at the time when such proceedings are commenced shall be taken into account. The arbitral tribunal shall be composed of a sole arbitrator, unless the total value of the Seller's principal claim(s) exceed USD 1,000,000 in which case the arbitral tribunal shall consist of three arbitrators. The place of arbitration shall be Copenhagen. The language to be used in the arbitration shall be English. The arbitral tribunal may consist of one or more arbitrators of Danish nationality, which also applies if NOMA appoints an arbitrator, including a sole arbitrator. The NOMA Rules on the Taking of Evidence shall apply. Danish law shall be the applicable law to the arbitration (*lex arbitri*). The arbitral tribunal shall endeavor to issue the award as soon as possible and no later than within 8 weeks from the date of the final oral hearing or the last written submission of the parties.
- 20.3. Fast Track Arbitration. The Seller or Buyer may elect to refer any dispute to the Fast Track Arbitration Rules of NOMA if the aggregate amount of the claim and/or counterclaim in dispute does not exceed USD 250,000 or the equivalent amount in another currency, or such other amount as the parties have agreed. There shall be a sole arbitrator. The arbitration shall take place in Copenhagen. The language of the arbitration shall be English. The arbitrator shall expedite the proceedings as swiftly as possible and shall render an award no later than 4 weeks after the date of the hearing.
- 20.4. Mediation. The Parties are encouraged to seek dispute settlement under the NOMA Mediation Rules version 2023, or a later version. A Model Mediation Agreement is available on the NOMA website. Mediation presupposes the consent of both parties.
- 20.5. Confidentiality. The arbitrators, the parties, their attorneys, their representatives and all the persons accompanying them shall keep confidential the existence and contents of the arbitration including any arbitral award, written and oral pleadings and all documents produced for or arising from the arbitration. Nevertheless, nothing in the present clause shall prevent a party from disclosing such information as required by law or insurers, or to protect or pursue a legal right, or to legal advisers or accountants, or for NOMA to publicize an anonymized copy of any award.
- 20.6. Enforcement of rights. Nothing in these Conditions shall preclude the Seller from taking any such legal action as it shall in its sole discretion consider necessary to enforce, safeguard or secure its rights under the Contract. The Seller is entitled to take such action in any court or tribunal in any state or country (such as arresting the Vessel or attachment of other ships or assets). Following any such legal action, the Seller may commence arbitration against the Buyer and/or the Owners to obtain an award for enforcement of the claim. The Seller may also choose to bring substantive proceedings to obtain judgement for the claim in any competent court.



**21. Entry into force and availability**

- 21.1. Entry into force. These Conditions enter into force with effect from 01/10/2023 at 12:00 hours (GMT) and shall apply to all Contracts and Order Confirmations agreed on 1st October 2023 or hereafter.
- 21.2. Availability. These Conditions are available at the [INSERT LINK](#), on which site the Seller may publish amendments, alterations, changes or verifications to the Conditions. Such amendments, alterations, changes or verifications are deemed to be a part of the entire Conditions once same have been published on the said website.



## **Annex A. Claims Process**

FixEnergies DMCC is committed to acting diligently and professionally in the event of a complaint, claim or dispute pertaining to the Products supplied. Buyers and Physical Suppliers shall always adopt the same approach and full co-operation must be afforded between the parties in the supply chain to mitigate issues and solve or deal with claims & disputes amicably. This means but is not limited to answering any reasonable questions relevant to the issue accurately, in good faith and in a timely manner. Any parties shall always respect each other's points and positions even if not agreed with while working to resolve any claim or dispute. Notwithstanding this there is also a contractual duty on all parties to stay compliant with the contractual terms in force for the transaction in question alongside any standard, custom or other accepted industry practices.

In case of claims related to the quality or quantity of the Products supplied, the Buyer shall always provide answers to these questions:

### If Quality

- a) Have you had the fuel tested?
- b) Have you started burning the fuel? If so, how much has been burnt and what problems are you presently encountering?
- c) When did the fuel in question first start to get consumed and when did the current issues become known?
- d) Have you got a retained, signed, and sealed sample(s) of the fuel in question? If so by whom was this taken and can you please provide sample number(s)
- e) Has the fuel been mixed with previous fuel on board, even in the slightest way?
- f) Has any additive been added in the storage/settling/service tank(s) or during treatment of the product in the system?
- g) What is/was the temperature of the product during transfer from storage and settling-tank?
- h) What is/was the temperature of the product during the separation process?
- i) What is/was the temperature of the product during storage in the settling-tank?
- j) What is/was the temperature of the product during transfer from settling to service-tank?
- k) What is/was the temperature of the product during consumption of the product?
- l) Have/has there been any filter clogging and/or related problems?
- m) Did any excessive sludge formation or deposits occur during the separation process?
- n) Did any excessive sludge formation or deposits occur during the separation process?
- o) What was the delivered quantity of fuel as per the BDR, and what is the remaining quantity?
- p) Has the vessel been experiencing any problems related to fuel of any kind in the last 3 months? If so, please advise.

### If Quantity

- a) What was the quantity stated on the BDR?
- b) What is the alleged received quantity and therefore discrepancy in question?
- c) Have your personnel on board the Vessel signed for the quantity stated on the BDR? If so, has any comment been made as to the alleged discrepancy or any letter of protest been issued at the time of delivery?
- d) What makes you believe that any short supply has occurred? What evidence do you have to sustain such allegation?

Depending on the responses to these questions and the status of the claim, further questions might be asked, especially in a quality scenario, again such as but not limited to:

#### Fuel History

- a) Please provide details of last 3 fuel deliveries including copies of BDRs.
- b) Please provide ullage reports immediately prior to and after bunkering, listing all grades of fuel onboard including their location by tank number.
- c) Please provide copies of engine room logbooks showing entries made for up to a week immediately prior to delivering the fuel in question and during the delivery of the fuel in question.
- d) Which tanks were used to receive the fuels in question?
- e) Was the fuel mixed with fuel already on board? If yes:
  - a. Please advise quantities of existing fuel in each tank prior to receipt of new fuel.
  - b. Was an onboard compatibility test performed? If yes, please provide results.
- f) Please provide details of all fuel tanks onboard including service and settling tanks including their capacities

#### Reported Problems

- a) Please provide specific time, date, and location of the vessel when the problems were first encountered. Please also provide details of when the problems were first reported to your technical department.
- b) Please provide all logbook entries of any kind relating to the fuel in question and / or the problems encountered by the vessel.

#### Fuel Treatment

- a) Please provide details of all separators on board, including type (conventional / high density), make and model
- b) Please indicate if the vessel is using a homogenizer. If yes, please indicate if this is before or after separators.
- c) Were any fuel treatments or additives used, including biocides? If so, please provide details and copies of corresponding log book entries and dosage rate and injection location and whether it is added before or after purifier.
- d) Can the vessel discharge fuel products from the various fuel tanks? If so at what rate per hour?

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Once the answers have been received with sufficient detail the Seller will provide a full response, where necessary after consultation with the other third parties and after seeking appropriate advice (such as chemists, independent laboratories or other experts on fuel quality)

Next steps in terms of finding a solution will be communicated by the Seller to the customer and the supplier for their review and consideration.

Mutually agreed next steps will then be executed with full co-operation of the parties, including any agreed testing.

If a mutually acceptable way forward cannot be found, the terms of the contract in force are referred to for the formal and contractually binding dispute resolution process to be effected.

The Seller does not waive any right under these Conditions by engaging in a process for amicably trying to solve a claim, including by following the claims process described above in cooperation with the Buyer. Even if the Seller has not in terms reserved its rights under these Conditions, the Buyer accepts that the Seller retains the right to defend a claim inter alia by asserting contractual time bars under clause 6.6 and 7.3, or any other contractual right or defence.