

**PEGASUS OIL TRADING**

**GENERAL TERMS & CONDITIONS**

**FOR BUNKERING ACTIVITIES**



**PEGASUS.**

PETROL & GAS UNITED SERVICES

# **GENERAL TERMS & CONDITIONS FOR BUNKERING ACTIVITIES**

## **CLAUSE 1 - APPLICABILITY**

- 1.1** These Bunkering Terms apply to all offers, quotations, orders, agreements, services and all subsequent contracts relating to the sales and/or delivery of Bunkers, made by or to or entered into directly or indirectly by PEGASUS OIL TRADING or a Group Company.
- 1.2** General conditions of another party shall not apply and are being rejected explicitly, unless expressly accepted in writing by the Seller.

## **CLAUSE 2 - DEFINITIONS**

For the purpose of the Agreement the following capitalized terms shall have the following meaning:

Agreement:	the terms and conditions agreed between Seller and Buyer, whether laid down in a signed agreement or a unilateral confirmation, including these GTC Bunkering;
Banking Day:	means a day on which the banks in the country of delivery are open for the transaction of normal banking business;
Bunkers:	the bunker fuel and/or lubricating oils and related services, which are subject to an offer, quotation or agreement;
Bunker Transport:	means bunker barge, tanker, tank truck or other form of transport supplying Bunkers to the Vessel;
Buyer:	is the Buyer of Bunkers and/or any party asking for offers or quotations for the purchase/delivery of Bunkers and any party on whose behalf such offers or quotations are being made;
C/O:	abbreviation for "care of". When a contract is signed by A c/o B, the principal would be viewed as A, with B treated as A's agent;
Confidential Information:	has the meaning given to it in Clause 20.1;
Delivery Period:	the period in which delivery of the Bunkers is to be commenced;
ETA:	estimated time of arrival of the Vessel at a designated place;
Events of Default:	has the meaning given to it in Clause 18.2;

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Force Majeure:	has the meaning given to it in Clause 13 - ;
Group Company:	any company in which at least 50% of the share capital is directly or indirectly owned by PEGASUS OIL TRADING ;
GTC Bunkering:	these general terms and conditions for bunkering activities;
Port of Delivery:	the port or position at which the Seller has agreed to deliver the Bunkers under the Agreement;
Seller:	is the Seller of the Bunkers, being PEGASUS OIL TRADING or one of its Group Companies as the case may be;
Specifications:	the specifications of the Bunkers as agreed between Buyer and Seller;
Vessel:	any designated ship or vessel to which the Bunkers are (to be) delivered;
Working day:	means Monday to Friday, not being a public holiday at the place of delivery as specified in the Agreement.

### **CLAUSE 3 - OFFERS AND QUOTATIONS**

- 3.1** All offers and quotations submitted by the Seller are without engagement to the Seller and are only valid for 30 minutes from the date and time the offer and/or quotations was submitted by the Seller in any form whatsoever (by telephone, instant messenger, email etc.), unless agreed otherwise.
- 3.2** An Agreement shall only be binding to the Seller upon written confirmation by the Seller thereof, or alternatively upon commencement by the Seller of the execution of the Agreement. The same applies for Agreements entered into by brokers or other representatives on behalf of the Seller.
- 3.3** If, after a written confirmation sent by the Seller as mentioned in Clause 3.1, the Buyer amends any of the following subjects, the Seller shall have the right to amend and/or cancel the Agreement unilaterally:
- Name of the Vessel;
  - Port of Delivery;
  - Date of supply;
  - Quantity of the Bunkers;
  - Quality of the Bunkers.

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## **CLAUSE 4 - QUALITY**

- 4.1** The specifications as given to the Buyer are approximate analyses and indicative only, unless stated otherwise by the Seller.
- 4.2** The grades of Bunkers and the quantity thereof available at the port of loading shall be the grades and quantities of Bunkers as agreed upon between the Seller and the Buyer.
- 4.3** Where standard specifications are being given, quality tolerances are accepted within the reproducibility and repeatability of the applicable test methods described in ISO 8217:2005 (b), without compensation.
- 4.4** Unless otherwise stated in the Agreement, the quality of the Bunker shall not be inferior to the Specifications.
- 4.5** Clause 4.1 constitutes the whole of Seller's obligations with respect to the description, quality and fitness for purpose of the Bunkers to be delivered and (save to the extent that exclusion thereof is not permitted or is ineffective by operation of law) all statutory or other conditions or warranties, express or implied, with respect to the description or satisfactory quality of the Bunkers or their fitness for any particular purpose or otherwise are hereby excluded.

## **CLAUSE 5 - QUANTITY**

- 5.1** In respect of the quantity agreed upon, the Seller will be at liberty to provide, and the Buyer will then have to accept, 5% more or less than agreed in the Agreement, with no other consequences than corresponding invoicing.

## **CLAUSE 6 - DELIVERY**

- 6.1** Where the Agreement explicitly provides for a Delivery Period of more than one day, deliveries shall be done by the Seller on any day in the Delivery Period, as preferred by the Seller.
- 6.2** The Buyer shall accept actual delivery of the Bunkers at the permanent intake connections of the Vessel at the wharf or marine loading terminal at the Port of Delivery or, as the case may be, alongside barges or upon passing of the ship's flange, whichever is the earlier.
- 6.3** In all cases, risk in the Bunkers will pass from the Seller to the Buyer at actual delivery.
- 6.4** The Buyer warrants that the Vessel concerned will provide and keep provided throughout the delivery manipulations a free and safe side for the purpose of delivery.
- 6.5** Connection of the delivery hose to the intake of the Vessel concerned and disconnection there from as well as pumping and all other acts shall be performed under the direction and supervision of the officers of the Vessel concerned and under responsibility of the Vessel and the Buyer.

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- 6.6** In case the Buyer for whatever reason fails to accept the Bunkers in full or in part at the place or time designated for delivery, the Seller shall, without prejudice to all its other rights, be at liberty to either dispose of or store the Bunkers or take any other action which it may deem appropriate, such as at the Seller's sole discretion, leaving unaffected all the Seller's rights as set out in these conditions.
- 6.7** The time of delivery as given by the Seller will have been given approximately, unless specifically agreed otherwise. The time of delivery will only be binding upon the Seller when all information, necessary for the Seller to comply with its obligations, has timely come into the possession of the Seller.
- 6.8** In any case the Buyer must give not less than 48 hours notice, in writing by telefax, telex or confirmed email, (Sundays and holidays, whether by law or by custom of the port of loading, excepted) to the Seller and/or the Seller's agent in the port of loading of Vessel's readiness to receive delivery.
- 6.9** The Buyer guarantees that the Vessel will be ready for taking delivery on the agreed time of delivery.
- 6.10** The Seller shall be entitled to deliver the Bunkers in parts, in which case each partial delivery shall be construed as a separate agreement.
- 6.11** Vessels shall be supplied as promptly as circumstances permit taking into account the 'first in first serve' policy. Any supply within the Agreement is not guaranteed and time shall not be of essence in respect thereof. Seller shall not be liable for demurrage or for any losses due to congestion at Seller's storage or delivery facilities or due to any prior commitment or unforeseen inflicted delay of available transportation.
- 6.12** Notwithstanding the provision of Clause 12 - (Liability) hereof, the Seller can only be held liable for damages due to late delivery, when after renewed and explicit notice, the Seller fails to effect delivery.
- 6.13** One delivery receipt will be handed to the Vessel's representative. A copy may be forwarded to the Buyer by telefax, email or in hardcopy by mail at Buyer's request. Failure to produce the second copy does not exempt Buyer from his obligation to pay the invoiced amount in full within the agreed term.

## **CLAUSE 7 - MEASUREMENTS/QUALITY CONTROL**

- 7.1** Densities determined for the purpose of converting volumes into weight shall always be determined in vacuum. The quantity of Bunkers delivered shall be determined from the gauges of Seller's shore tanks, or the Bunker Transport or by the Seller's oil meter, at the Seller's option. In gauging shore tanks, barges or trucks the chief engineer of the respective vessel or his representative shall jointly with Seller's representative measure and verify the quantity of Bunkers before delivery from tanks from which deliveries are being made. Should said chief engineer or his representative fail or decline to verify quantities, measurements of quantities made by the Seller as aforesaid shall be final, conclusive and binding as to quantities sold and delivered, and in any such event the Buyer shall have waived all claims for variance. Ship's figures are not accepted.

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- 7.2** Adjustment in volume owing to differences in temperature shall be made in accordance with the abridged volume correction table of the ASTM -IP Petroleum Measurement Tables.
- 7.3** During delivery four representative samples will be drawn, properly sealed, and number reported on bunker delivery receipts. Two samples will be handed over to the Vessel's officer responsible for accepting the delivery of Bunkers and/or to Buyer's representative. The other two samples will be retained by the Seller for a period of 3 months. In the event of a dispute in relation with the quality of the Bunkers, these samples will be conclusive and final evidence of the quality of the product as delivered. No samples subsequently taken will be allowed as (additional) evidence.

## **CLAUSE 8 - COMPLAINTS**

- 8.1** Buyer shall notify Seller in writing of any complaint with respect to the quality of the Bunkers within 10 days from transfer of risk to the Buyer.
- 8.2** Buyer shall be deemed irrevocably to have waived and relinquished any claim in respect of which Buyer has not complied fully with the provisions in Clause 8.1 as applicable.
- 8.3** Buyer shall notify Seller immediately in the case of any complaint with respect to the quantity.
- 8.4** Quantity claim can only be received by seller if the tanks of the delivering means (barge / trucks) were properly inspected and measured prior to the start of the delivery. No quantity claim can be received without this preliminary condition. Receiving vessel's figure cannot be accepted. Vessel will have to issue a Letter of Protest signed by all parties if quantity is contested.
- 8.5** In any event, no claim shall be admitted in respect of any deficiency of quantity where the difference between the loaded and discharged quantity is equal to or less than 0.5% of the loaded quantity.
- 8.6** In any case, claims will cease to exist, unless legal proceedings have been instituted before the competent court, within 12 months after the date of delivery or the date that delivery should have been made.

## **CLAUSE 9 - PRICES**

- 9.1** If Buyer fails to take delivery or requests delivery to begin outside of the stated ETA of the Vessel, Seller shall be entitled to change the agreed prices. This entitlement is without prejudice to any claim Seller may have against Buyer for failing to take delivery within the day referred to before in this clause.
- 9.2** The Seller's prices are based on taxes, duties, costs and charges and on the price level of crude oil or components for Bunkers existing at the time of the conclusion of the Agreement. Any later or extra tax, assessment, duty or other charge, of whatever nature and however named, or any increase thereof, or any price increase of crude oil or components for Bunkers and any increase in additional costs borne by the Seller caused by any change in the Seller's contemplated source of supply, coming into existence after the

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Agreement has been concluded, shall be added to the agreed purchase price, provided that the Seller shall give the Buyer prior notice to this effect.

**9.3** All prices and/or tariffs are exclusive VAT, unless specifically mentioned otherwise.

## **CLAUSE 10 - PAYMENT TERMS**

- 10.1** Payment of the agreed purchase price and all extra costs incurred is due within 21 days from the date of delivery against presentation of the Seller's commercial invoice in the manner as agreed at the time of the conclusion of the Agreement (i.e. by telefax, email or in hardcopy by mail). If more than one delivery takes place within the period of delivery, the aforementioned period of 21 days starts from the day of the first delivery.
- 10.2** However, payment will be due immediately in case of bankruptcy, liquidation or suspension of payment, or comparable situation of the Buyer, or arrest upon assets and/or claims of the Buyer, or if the Seller would have to withdraw or reduce the credit limit of the Buyer due to market information or insurance, or in case of any other situation, which, in the sole discretion of the Seller, adversely affects the financial position of the Buyer.
- 10.3** If the credit limit of the Buyer is withdrawn or reduced, the Agreement can be cancelled by Sellers without notice.
- 10.4** Payment must be made without any set-off or deduction or compensation, at the bank account, indicated by the Seller on the respective invoice as referred to in Clause 10.1 and in the currency and manner as agreed in the Agreement.
- 10.5** In case of late or non-payment of any (part) amount due to the Seller, the Buyer will be considered to be in default, without any notice being required. In such case the Seller has the right to cancel discount, if any. Interest of the then current European interest rate published by the European Central Bank plus 1,0% per month will be due over the overdue amount as of the date of default.
- 10.6** Payments made by the Buyer shall, notwithstanding the description, be credited with costs, subsequently with interest, and thereafter with invoices in the order of their age, also if not yet mature.
- 10.7** All costs borne by the Seller in connection to the collection of overdue payments, whether made in or out of court and in general all costs in connection to any breach of an Agreement by Buyer, shall be for Buyer's account.
- 10.8** The Seller shall at all times be entitled to require of the Buyer to give, in such manner as shall be deemed sufficient by the Seller, security for the proper performance of all its obligations under the Agreement. Failing immediate provision of such security, the Seller shall be entitled to suspend further execution of the Agreement(s) until such time as the Buyer will have provided the required security. Without prejudice to this Clause 10.8, Seller may set off amounts payable by Buyer against amounts payable to Buyer by Seller and/or any Group Company.

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## **CLAUSE 11 - TITLE**

- 11.1** Title in and to the Bunkers delivered and/or property rights in and to such Bunkers shall remain vested in the Seller until full payment has been received by the Seller of all amounts due in connection to the respective delivery.
- 11.2** Until full payment of all amounts due to the Seller, for whatever nature, has been made, the Buyer shall not be entitled to use the Bunkers other than for the propulsion of the Vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the Bunkers to third parties.
- 11.3** In case of breach of contract by the Buyer, the Seller is entitled to take back the Bunkers without prior judicial intervention, notwithstanding all other Seller's rights and all costs related will be for the Buyer's account.
- 11.4** In case the Bunkers, in part or in full, are no longer (definable) present, the Seller has the right to attach the Vessel and/or any other vessels owned, operated or controlled by the Buyer, and/or any other assets of the Buyer wherever situated in the world without prior notice.
- 11.5** Where title in and to the Bunkers delivered has passed to the Buyer and/or others, the Buyer grants a pledge on such Bunkers. The Buyer furthermore grants a pledge on any other bunkers present in the respective Vessel, inclusive of mixtures of the delivered Bunkers and other bunkers. Such pledge will be given for any and all claims, of whatever origin and of whatever nature that the Seller may have against the Buyer.
- 11.6** Buyers shall not blend the Bunkers with bunker on board for the express purpose of maintaining full title on the Bunkers until final payment.
- 11.7** Remaining quantities on board prior to delivery by Seller shall be considered to be used first before replenishment.

## **CLAUSE 12 - LIABILITY**

- 12.1** The Seller shall only be liable for damages in case of wilful misconduct or gross negligence on the side of the Seller itself.
- 12.2** Seller shall not in any circumstances be liable to Buyer whether under the Agreement or otherwise in connection with it, in contract, tort, breach of statutory duty or otherwise, in respect of any indirect or consequential losses or expenses including, if and to the extent that they might otherwise not constitute indirect or consequential losses or expenses, loss of anticipated profits, plant shut-down or reduced production, loss of power generation, blackouts or electrical shutdown or reduction, hedging or other derivative losses, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable. In any event the liability of the Seller shall not exceed the invoice value of the Bunkers supplied under the relevant Agreement.

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- 12.3** Without prejudice to Clause 12.1 and Clause 12.2, Seller's liability is limited to the amount payable under its relevant indemnity insurance cover plus the applicable amount of own risk and shall never exceed the total contracted value of the Bunkers sold under the Agreement.
- 12.4** The Buyer shall be liable towards the Seller and herewith undertakes to indemnify the Seller for any and all damages and/or costs (to be) suffered and/or (to be) made by the Seller due to a breach of contract and/or fault or neglect of the Buyer, its agents, servants, employees and the officers, crews and/or other people whether or not on board of the respective Vessel(s). The Buyer furthermore undertakes to hold the Seller harmless in case a third party institutes a claim against the Seller in connection to an Agreement under the terms of these GTC Bunkering. Third party shall mean any other (legal) entity or person than the Buyer.
- 12.5** No servant or agent of the Seller (including independent (sub)contractors from time to time employed by the Seller) shall be under any liability to the Buyer for loss, damage or delay, while acting in the course of or in connection with its employment and/or agency. Without prejudice to the above every exemption, limitation, condition and liberty herein contained, and every right, exemption from liability, defence or immunity of whatever nature applicable to the Seller or to which it is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the Seller acting as aforesaid.

## **CLAUSE 13 - FORCE MAJEURE**

- 13.1** Force majeure shall be considered to exist in all those circumstances which prevent or render impossible or make unreasonably burdensome to the Seller the execution of the Agreement or any part thereof, in and as far as such circumstances occur beyond the reasonable control of one or both parties.
- 13.2** As force majeure will be considered amongst others acts of God of the public enemy, hostilities, conditions of war (declared or undeclared), mobilization, insurrections, riots and civil commotions, perils of navigation, governmental measures, expropriation, confiscation, requisition, shortage or obstruction or delay in the supply of basic and auxiliary materials, or of producing, manufacturing, blending, selling, transportation, or delivery facilities and equipment, or of fuel and electricity, blockades, embargoes, labour conflicts, strike, shortage of labour, fire, flood, storm, snow, frost, and other catastrophes of nature, accidents, machine failure and other operational failure, disturbance of road -, inland-waterways and sea traffic, e.g. (floating) ice, prohibition of manufacturing and supply, non-observance or obligations and/or a breach of contract by (sub)suppliers, prohibition of export or import, failure to obtain import or export licenses, unforeseen economic conditions, market disturbing, governmental measures of national or international nature, quarantine, epidemics, contagious disease, veterinary measures, as well as circumstances which aggravated any disturbance, and further all other circumstances considered as force majeure in the trade. Non-providing by the Buyer of data relevant for the Seller in connection to the fulfilment of the Seller's obligations, will constitute force majeure on the side of the Seller.
- 13.3** If by any reason of any of the events referred to in Clause 13.1 and 13.2 either the availability from any of Seller's sources of supply of goods, whether deliverable under the Agreement or not, of the normal means of transport of such goods is delayed, hindered, interfered with, curtailed or prevented, then Seller shall be

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at liberty to withhold, reduce or suspend supplies hereunder to such extent as Seller may reasonably think fit and Seller shall not be bound to purchase or otherwise make good shortages resulting from any such event.

- 13.4** In case of force majeure, the execution of the Agreement by the Seller shall be suspended for the duration of the said circumstances. Force Majeure shall under no circumstance whatsoever suspend or release Buyer from its obligation to make payments when they become due.
- 13.5** The party which invokes force majeure shall immediately notify the other party in writing of the occurrence and cessation of any circumstances as aforesaid.
- 13.6** In the event that the Seller as a consequence of force majeure does not have sufficient quantities of bunkers available to supply all its buyers, the Seller shall have the right to choose which obligation(s) to meet and in which order, and/or to pro rata the quantity of bunkers available between the various buyers whereby the Seller shall not be required to purchase bunkers to replace its supplies so curtailed or to make use of other than its normal transportation and/or other facilities.
- 13.7** In the event that the Seller, as a result of force majeure, can only deliver a superior grade of Bunkers, the Seller is entitled to offer the said grade, and the Buyer must accept delivery thereof and pay the then applicable price.

## **CLAUSE 14 - CANCELLATION**

The Seller shall have the option to immediately cancel the Agreement in full or in part, or to store or procure the storage of the Bunkers in whole or in part for the account and risk of the Buyer and to charge the Buyer the expenses thereby incurred, or to hold the Buyer fully to the Agreement, or to take any other measures the Seller deems appropriate, without prejudice to its rights to indemnification, without any liability on the side of the Seller, in any (but not limited to) one of the following cases:

- a. when the Buyer, for whatever reason, fails to accept the Bunkers in part or in full at the place and time designated for delivery in the Agreement;
- b. when the Buyer fails in part or in full to comply with its obligations to pay any amount due to the Seller and/or to provide security as set out herein;
- c. when, before the date of delivery, it would become apparent that the financial position of the Buyer, in the Seller's judgement, entails a risk for the Seller;
- d. when, in case of force majeure, the Seller is of the opinion that the nature or the duration of the circumstances is such, that the execution of the Agreement can no longer be demanded.

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## **CLAUSE 15 - ENVIRONMENTAL PROTECTION**

If a spill occurs while Bunkers are being delivered, the Buyer shall promptly take such actions as is reasonably necessary to remove the spilled Bunkers and mitigate the effects of such spill. The Seller is hereby authorized at its option on notice to and at the expense of the Buyer to take such measures and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonably necessary in the judgment of the Seller to remove the spilled Bunkers and mitigate the effects of such spill. The Buyer shall co-operate and render such assistance as is required by the Seller in the course of such action. All expenses, claims, losses, damages, liability and penalties arising from spills shall be borne by the party that caused the spill by a negligent act or omission. If both parties have acted negligently, all expenses, claims, losses, damages, liability and penalties, shall be divided between the parties in accordance with the respective degree of negligence. The burden of proof to show the Seller's negligence shall be on the Buyer. The Buyer shall give the Seller all documents and other information concerning any spill or any program for the prevention thereof, that are required by the Seller, or are required by law or regulation applicable at the time and place of delivery.

## **CLAUSE 16 - LIEN**

Seller has a lien on the Vessel to which the Bunkers have been supplied.

## **CLAUSE 17 - DESTINATION RESTRICTIONS**

It is a condition of the Agreement, that the Bunker delivered under the Agreement shall not be imported (by the Buyer or others), directly or indirectly and irrespective of means, to any destination which is at the time of such import either prohibited under the laws of the country in which such Bunker was produced or contrary to any regulation, rule, directive or guideline applied by the government of that country or any relevant agency thereof. The Buyer shall keep itself informed as to such laws, regulations, rules, directives and guidelines.

## **CLAUSE 18 - TERMINATION**

- 18.1** The Agreement shall be terminated upon the fulfilment of all the obligations of the parties under the Agreement, prior to which, the Agreement may be terminated at any time by written agreement of the parties.
- 18.2** Seller is entitled to immediately suspend performance or to immediately terminate the Agreement by written notice, if or more of the situations mentioned below occur (**'Events of Default'**):
- a. If Buyer fails to make payment of any amount due or fails to comply with the obligation to provide adequate security;
  - b. In case of any change of control in the ownership of Buyer;

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- c. If Buyer goes into liquidation, files a petition or otherwise commences or authorises the commencement of a proceeding under any bankruptcy, insolvency, reorganization or similar law or has any such petition filed or proceeding commenced against it;
- d. If Buyer has a liquidator, administrator, receiver, trustee or officer with similar powers appointed with respect to it or any substantial portion of its property or assets.

Termination on the basis of an Event of Default shall be without prejudice to any other remedy the terminating party may have. The terminating party shall not be liable for any damage or costs the defaulting party may occur as a result of the termination.

**18.3** Buyer shall immediately inform Seller of the occurrence of an Event of Default.

## **CLAUSE 19 - WAIVER**

No waiver by either party of any of its rights with respect to the other party or with respect to any matter or default arising in connection with the Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver shall be in writing signed by the waiving party. Each party agrees that it has a duty to mitigate damages.

## **CLAUSE 20 - CONFIDENTIALITY**

**20.1** Buyer and Seller agree to treat the Agreement and all information (including price), whether written or oral, and which concerns the contents of the Agreement ("**Confidential Information**") as strictly confidential and agree not to disclose, without prior written consent of the other, any Confidential Information to any third parties, such third parties not to include Buyer's and Seller's respective employees, independent, agents, affiliates, lawyers, auditors, and accountants who have a need to know such information.

**20.2** However, neither Buyer nor Seller shall be required to obtain prior written consent of the other in respect of the disclosure of Confidential Information:

- a. to any court or governmental authority or other such entities requiring such information to the extent necessary to comply with any legal or governmental requirement or judicial or arbitral proceedings;
- b. to the owners or operators of a vessel, who have entered into a confidentiality undertaking substantially similar to the one contained in the Agreement, to the extent necessary with respect to the disclosing party's contractual rights and obligations;
- c. to the extent that it is required by law, by an appropriate regulatory body or by the applicable rules of any exchange, regulatory or listing authority or national securities association,

provided, however, that:

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- d. the disclosing party shall give prior notice to the other party if the disclosing party intends to disclose Confidential Information under Clause 20.2a or Clause 20.2c so that the other party may, if it deems appropriate, take steps to restrain the proposed disclosure of Confidential Information; and
- e. if Confidential Information is disclosed under this Clause 20 - , the disclosing party shall use all reasonable endeavors to ensure that the third party receiving such Confidential Information maintains its confidentiality.

**20.3** The provisions of this Clause 20 - shall remain in force for two years after the Agreement.

## **CLAUSE 21 - ASSIGNMENT AND SUBCONTRACTING**

**21.1** Seller may assign or transfer all or any portion of its rights and obligations under the Agreement to one or more of its Group Companies. For every other assignment or transfer, in whole or in part, either voluntarily or by operation of law, a party needs the prior written consent of the other party.

**21.2** Seller is entitled to subcontract its obligations to third parties.

## **CLAUSE 22 - SEVERABILITY**

Each of the provisions of the Agreement is severable. If any such provision is or becomes illegal, invalid or unenforceable (whether in whole or in part) in any respect under the law of any jurisdiction:

- a. that shall not affect or impair the legality, validity or enforceability in that jurisdiction of the other provisions; and
- b. parties will use reasonable endeavours to negotiate in good faith with a view to replacing it with one or more provisions which are not illegal, invalid or unenforceable and which differ from the replaced provision as little as possible, always taking into account the substance and purpose of the Agreement.

## **CLAUSE 23 - RECORDING OF TELEPHONE CONVERSATIONS**

Parties are entitled to electronically record telephone conversations between their respective employees or agents.

## **CLAUSE 24 - NOTICES**

**24.1** All notices to Seller given under the Agreement shall be in writing using the contact details stated on the Agreement. Notices may be presented by (registered) mail, e-mail and/or facsimile, unless indicated otherwise in the Agreement.

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**24.2** If the notice is received on a Working Day after 5 PM or on a day not being a Working Day, then such notice shall be deemed to have been received on the following Working Day.

## **CLAUSE 25 - WARRANTIES**

Each party warrants and represents to the other party that:

- a. in entering into the Agreement it is acting on its own account and not as agent or nominee of any other party, unless specifically indicated, e.g. by using "C/O";
- b. it has not assigned or transferred to any other person, company, partnership, unincorporated body or other entity any right or claim it would have, but for the Agreement, against the other parties and each of them;
- c. in entering into the Agreement it has not relied on any representation, warranty or undertaking which is not contained in the Agreement;
- d. its entry into and performance of the Agreement are within its corporate powers and have been duly authorised by all necessary corporate actions and approvals;
- e. its entry into and performance of the Agreement does not and will not contravene in any respect any law, regulation or contractual restriction which does or may bind the party or any of its assets;
- f. the individual who makes the Agreement on its behalf has full authority to bind the party to the Agreement.

## **CLAUSE 26 - THIRD PARTIES**

No term of the Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Agreement.

## **CLAUSE 27 - IMMUNITY**

Each Party irrevocably waives any claim to immunity in relation to any arbitration or court proceedings arising out of or connected with the Agreement, including without limitation immunity from:

- a. jurisdiction of any court or tribunal;
- b. service of process;
- c. injunctive or other interim relief, or any order for specific performance;
- d. any process for execution of any award or judgment against its property.

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## **CLAUSE 28 - ENTIRE AGREEMENT AND VARIATION**

- 28.1** The Agreement contains the whole agreement between the parties relating to the subject matter of the Agreement to the exclusion of any terms implied by law. The Agreement supersedes any previous written or oral agreement between the parties in relation to the matters dealt with in the Agreement. No confirmation or other document provided by brokers or any other third party with respect to the Agreement shall be of any effect between parties.
- 28.2** No variation to the Agreement shall be of any effect unless it is agreed in writing and signed by or on behalf of each Party, it being understood that any variation by facsimile or e-mail message with confirmation by the other Party is deemed to be in writing and signed for the purposes of this Clause 28 - .

## **CLAUSE 29 - LAW AND JURISDICTION**

- 29.1** The Agreement shall be governed by and construed in accordance with English law. Applicability of the CISG is excluded.
- 29.2** Any dispute, controversy or claim between the Seller and the Buyer arising out of or in connection with an Agreement including, without limitation, any dispute as to the construction, validity, interpretation, enforceability or breach of the Agreement, shall be subject to the exclusive jurisdiction of the competent court of London, England.

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