

## GENERAL CONDITIONS OF THE DUTCH ASSOCIATION FOR THE ENERGY INDUSTRY

### 1 Applicability

- 1.1 Unless otherwise has expressly been agreed In Writing, these general supply conditions apply to all offers, quotations, orders, agreements and/or services, as well as to all agreements arising out of such of any nature whatsoever, made by or to or entered into by the Seller.
- 1.2 Any general terms and conditions used by the Buyer are not applicable and are hereby expressly excluded, unless the relevant general terms and conditions have been expressly accepted by the Seller In Writing.
- 1.3 If for any reason whatsoever one or more of the (sub)clauses of these general supply conditions are invalid or nullified, then the other (sub)clauses shall remain in force.

### 2 Definitions

- 2.1 Unless the context of a provision dictates otherwise, in these general supply conditions the following terms have the following meanings:
  - i) **Barge:** the lighter, smaller inland waterway vessel that is used by the Seller for the transportation of the BUNKERS over rivers, canals and inland waterways, which cannot be reached by the vessel the BUNKERS ultimately have to be delivered to.
  - ii) **BUNKERS:** The bunker fuel and/or lubricating oils which an offer, quotation, order or agreement relates to, including services.
  - iii) **Owner:** the registered owner, bareboat charterer or time charter owner of the vessel receiving the ordered BUNKERS.
  - iv) **ETA:** the Estimated Time of Arrival.
  - v) **Buyer:** any party that asks for offers or quotations for the ordering of BUNKERS and/or services and/or any party on whose behalf the said offers, quotations, orders and agreements or contracts arising out of such have been made.
  - vi) **Agreement:** the legal relationship between the Buyer and the Seller, which has been concluded because the Buyer has approved a quotation or offer issued by the Seller, and thereafter the Seller has confirmed the conclusion of the agreement In Writing to the Buyer.
  - vii) **In Writing:** by fax, email or in hardcopy by post.
  - viii) **Seller:** the member of the association using these trading conditions.



### 3 Offers, quotations and Agreement

- 3.1 All offers and/or quotations issued by the Seller are without obligation for the Seller, unless otherwise has been expressly stated In Writing by the Seller. If an offer and/or quotation has to be approved by the Buyer by a certain date (which would qualify as the offer of the Buyer), then in the absence of an approval of the Buyer by that date by operation of the law the offer and/or quotation will become irrevocably null and void upon the expiry of that date.
- 3.2 The Agreement between the Seller and the Buyer shall be concluded, and in that sense will be binding for the Seller and the Buyer, only after confirmation of that Agreement has been issued In Writing by the Seller to the Buyer, or directly after the Seller has commenced with the execution of the Agreement.
- 3.3 Offers and/or quotations issued by brokers or other representatives on behalf of the Seller, or Agreements entered into by brokers or other representatives on behalf of the Seller, shall only be binding for the Seller after confirmation has been issued In Writing by the Seller.
- 3.4 If the Buyer starts with the acceptance of the delivery, or if the Buyer asks the Seller to start with the commencement of the delivery, outside of the period of 48 hours after the specified ETA of the vessel, the Seller shall have the right to unilaterally change the sales price agreed in the contract.

### 4 Prices, taxes and duties

- 4.1 The Seller's prices are based, amongst other things, on the price level of crude oil or the specific components of the relevant BUNKERS, as applicable at the time of the conclusion of the Agreement, as well as based on any additional (purchasing) costs.
- 4.2 Unless expressly stated otherwise In Writing by the Seller, all prices and/or tariffs are exclusive of VAT and/or similar taxes, charges and/or duties of any nature whatsoever.
- 4.3 The payment of any taxes, charges and/or duties in relation to the price, regardless of their regional, national, European, continental and/or worldwide applicability, shall be at all times for the account and risk of the Buyer. The Buyer is responsible for, and shall hold Seller harmless from, any and all claims by tax/customs authorities in connection with any irregularity in respect of taxes and/or duties and/or levies, including but not limited to claims in connection with documents issued in the name of the Seller in respect of the supply, export, transit and/or import of the BUNKERS, irrespective of whether or not there is any fault or negligence on the part of the Buyer. On demand and without any compensation or set-off of debt, the Buyer will pay all successfully claimed taxes and/or charges and/or duties, fines and interest, all amounts paid by the Seller and/or other third parties, and all the costs of putting forward a defence.
- 4.4 Provided the Seller has immediately notified the relevant change in the price to the Buyer, the Seller shall have the right to pass on any change that occurs after the conclusion the Agreement, and which leads to an increase of the price, to the Buyer, whereby the Buyer is obligated to pay the Seller this price increase if this change ensues from:
  - i) any extra tax, tax assessment, duty or other charge, of any nature and however named, or any increase thereof; or
  - ii) any price increase of crude oil or specific components for BUNKERS; or



iii) any increase in additional costs borne by the Seller caused by a change in the Seller's intended source of supply.

4.5 Both Parties shall make reasonable efforts to administer the Agreement and to implement its provisions in accordance with the intent to minimize, where reasonable and possible, the accrual of VAT and other indirect tax payment obligations.

## 5 Payment terms

5.1 Payment of the agreed purchase price and all extra costs incurred shall be due immediately against presentation of the Seller's commercial invoice in the manner as agreed at the time of the conclusion of the Agreement. Under normal circumstances, and without prejudice to the other provisions of these conditions, the Seller will not undertake collection measures within a period of 30 days after the delivery, unless a specifically different payment term has been agreed and confirmed In Writing. In the event of payment later than the 30th day after the delivery date - or after a different payment date expressly agreed In Writing -, interest of 1.5% will be owed per month or part thereof.

5.2 Payment must be made immediately in the event of bankruptcy, liquidation or suspension of payments or a similar situation of the Buyer, or if an attachment is imposed on assets and/or claims of the Buyer, or in the event of any other situation, which, in the sole opinion of the Seller, adversely affects the financial position of the Buyer.

5.3 Payment must be made, without any set-off of debt or deduction or compensation, to the bank account specified by the Seller on the relevant invoice (subsection 9.1).

5.4 By accepting the BUNKERS on board of its Vessel, the Owner accepts joint and several liability for payment of the agreed purchase price in the event of non-payment by the Buyer for any reason whatsoever. In that case, the Owner will become a co-debtor of the agreed purchase price towards the Seller.

5.5 In the event of late or non-payment of any (part) amount owed to the Seller, the Buyer will be immediately in default, without any notice of default being required. In that case, the Seller shall have the right to withdraw any discount. Interest will be owed on the outstanding amount of 1.5% per month or part of thereof as of the date of default.

5.6 The Seller shall at all times have the right to demand that the Buyer provides security, in a way that the Seller deems sufficient, for the proper fulfilment of all its obligations under the Agreement. If security is not immediately provided, the Seller shall have the right to suspend the further execution of the Agreement(s) until the Buyer has provided the requested security.

5.7 Notwithstanding the other rights of the Seller, the Buyer shall forfeit an amount of USD 1,500 in the event of an unjustified complaint.

5.8 If the Buyer sells on the BUNKERS to a successive buyer, the Buyer shall transfer to the Seller its claim to receive payment from the successive buyer, under the suspensory condition that in relation to the Buyer a petition for bankruptcy is submitted, a suspension of payments is applied for, or any similar application is made.

## 6 Delivery



- 6.1 Delivery of the BUNKERS will take place on board a vessel designated by the Buyer, and always as quickly as possible as the circumstances allow. Delivery by the Seller to the Buyer shall take place in such a way that the Seller is able to deliver the BUNKERS on board the designated vessel at a time to be specified by the Seller, and the Buyer has made sure the relevant vessel is able to receive the BUNKERS at that same time.
- 6.2 The time of delivery specified by the Seller shall at all times be considered to be approximate and concerns an estimated time which can be deviated from by the Seller. The time of delivery specified by the Seller shall only be binding for the Seller when the Seller has confirmed such unambiguously In Writing to the Buyer, and the Seller has all the information, which the Seller reasonably needs in order to satisfy its supply obligations, in its possession on time. The binding time of delivery shall not, however, in any case qualify legally as a fixed and final deadline for the fulfilment of any obligation on the side of the Seller.
- 6.3 Notwithstanding that provided for in paragraph 1 of this article, in any case the Buyer has to notify the Seller and/or the agent and/or representative of the Seller in the port of loading In Writing at least 48 hours before the time specified by the Seller (with the exception of Sundays and public holidays, or at least insofar as these are excluded under the applicable laws or local regulations or customary practices of the relevant port of loading) of the expected time that the vessel will be ready to accept delivery, in the absence of which the Seller shall have the right to refuse the delivery of the BUNKERS.
- 6.4 As of the moment when the Seller has specified a time of delivery, and the Buyer has confirmed that time in a timely fashion, the Buyer guarantees that the vessel will be really to receive the delivery at the time of delivery specified by the Seller. If the vessel does not then actually receive the BUNKERS, or at least if the actual delivery of the BUNKERS has not commenced, within a period of no later than 4 hours after the specified time of delivery, the Seller shall have the right to charge the Buyer for additional costs (such as mooring fees). Thereafter, if the vessel has not actually received the BUNKERS within a period of no later than 12 hours after the specified time of delivery, the Seller shall have the right to refuse the delivery of the BUNKERS.
- 6.5 If the Seller intends to refuse the delivery of the BUNKERS as a result of one of the situations described in article 6.3 or article 6.4, the Buyer can ask the Seller In Writing to set a new time of delivery, whereby any additional costs shall be for the account of the Buyer.
- In the situation referred to in article 6.3, the relevant request of the Buyer has to be made to the Seller In Writing at least 12 hours before the time of delivery to be set by the Seller.
- In the situation referred to in article 6.4, the relevant request of the Buyer has to be made to the Seller In Writing within a period of 6 hours after the expiry of the period of 12 hours referred to in that article.
- 6.6 If the Buyer does not make a request as referred to in article 6.5, and the Seller has definitively refused the delivery, the Buyer shall not be entitled to any form of compensation, unless the Buyer can provide convincing evidence to show that the reason why the vessel was not ready to receive the delivery of the BUNKERS on time not was not its fault.
- 6.7 Notwithstanding that provided for in this article, any costs arising out of the circumstance, that the vessel on board which delivery by the Seller had to take place was only ready to receive the delivery in the port of loading more than 12 hours after the time of delivery specified by the Seller, shall be for the account and risk of the Buyer.



- 6.8 If the Buyer does not take whole or partial delivery of the BUNKERS at the specified time and place of delivery, even though the vessel is able to accept the delivery at the time of delivery specified by the Seller, the Seller, without prejudice to all its other rights, shall be at liberty to dispose of or store the relevant BUNKERS, or to take any other measure that the Seller deems appropriate, such as at the exclusive discretion of the Seller, whereby all the rights of the Seller as set out in these conditions will remain unimpaired.
- 6.9 The Seller is not liable for demurrage or for any losses as a result of congestion in the storage or delivery facilities of the Seller or as a result of any prior commitment or unforeseen delay of available transportation. Notwithstanding that provided for in article 11, the Seller can only be held liable for damages caused by late delivery if the Seller fails to make delivery after a new and explicit notification.
- 6.10 One delivery receipt will be issued to the representative of the vessel. A copy can be sent to the Buyer by fax, email or on paper by post at the request of the Buyer. Failure to issue the second copy shall not discharge the Buyer from its obligation to pay the invoiced amount in full within the agreed period.
- 6.11 The Seller has the right to supply the BUNKERS in part deliveries, in which case each part delivery will be construed as a separate Agreement.

## 7 Actual delivery

- 7.1 The Buyer shall accept the actual delivery of the BUNKERS at the permanent intake connections of the relevant vessel at the wharf or marine loading terminal at the port of delivery or, as the case may be, onboard lighters or upon the passing of the ships' rail, depending on which time is the earlier.
- 7.2 The connection of the delivery hose to the intake of the relevant vessel and the uncoupling of such, as well the pumping and all other acts, shall be carried out under the direction and supervision of the officers of the relevant vessel and under the responsibility of the vessel and the Buyer.
- 7.3 The Buyer guarantees that the vessel satisfies all the relevant laws and regulations that are applicable to the delivery of the BUNKERS in the port or the place of delivery, and that the vessel, if such is required, has all the relevant certificates that are required on the basis of those relevant laws and regulations.
- 7.4 The Buyer shall moreover make sure, and guarantees, that the captain of the vessel, or the legally authorised representative of the captain:
- i) will make a free side available, and keep it available, during the entire delivery in order to receive the BUNKERS, and thereby render all necessary assistance that might be reasonably required; and
  - ii) will give the Seller and/or the agent and/or representative of the Seller timely notification In Writing prior to the delivery about (a) the maximum permissible pump speed and pressure and hand over the communication and emergency stop procedures, and (b) all exceptional circumstances, difficulties, peculiarities, deficiencies or defects in relation to and specifically for the vessel that might adversely affect the delivery of the shipping fuels.



## 8 Transfer of risk

- 8.1 The risk of the BUNKERS shall be deemed to have passed from the Seller to the Buyer directly after the moment when the Seller has started with the actual delivery of the BUNKERS to the vessel; the moment that the first drop of the BUNKERS has passed the railing of the vessel of the Buyer (so-called 'Custody Transfer').
- 8.2 As of the moment that the risk in relation to the BUNKERS has passed to the Buyer, the latter will be responsible for the correct use of the BUNKERS, which includes, but is not limited to, the storage and use of the BUNKERS under the right circumstances, such as pressure, temperature etc.
- 8.3 The Agreement is limited to the transaction between the Buyer and the Seller. Any circumstances on the side of the Buyer, such as, but not limited to, if the Buyer is not the owner of the vessel that the delivery is made to, or that the Buyer is only an intermediary etc., shall at all times remain for the account and risk of Buyer and cannot be invoked against the Seller by the Buyer. Similarly, any rights of third parties vis-à-vis the Buyer in relation to the BUNKERS cannot be invoked against the Seller by the Buyer, but will continue to be for the account and risk of the Buyer.

## 9 Ownership and security rights

- 9.1 Title in and to the delivered BUNKERS and/or property rights in and to such BUNKERS shall remain vested in the Seller until payment has been received by the Seller of all amounts due in connection with the relevant delivery.
- 9.2 Until payment in full has been made of everything owed to the Seller, on any grounds whatsoever, the Buyer shall not be entitled to use the BUNKERS other than for the propulsion of the vessel, nor be allowed to mix, blend, sell, encumber, pledge, alienate, or surrender the BUNKERS to third parties.
- 9.3 In the event of a breach of contract by the Buyer, the Seller shall have the right to take back the BUNKERS without prior judicial intervention, and without prejudice to all the other rights of the Seller.
- 9.4 If the BUNKERS are no longer (definably) present, either in part or in full, the Seller has the right, without prior notice, to impose an attachment on the vessel to which the BUNKERS have been delivered and/or on any other vessels owned, operated or controlled by the Buyer/Owner, and/or on any other assets of the Buyer/Owner anywhere in the world.
- 9.5 If the ownership of the delivered BUNKERS has passed to the Buyer and/or others, where relevant at the first request of the Seller the Buyer shall provide its unconditional cooperation with the establishment of a right of pledge on these BUNKERS for the benefit of the Seller. Furthermore, at the first request of the Seller the Buyer shall provide its unconditional cooperation with the establishment of a right of pledge on all other bunkers present on the relevant vessel, such to include mixes of the delivered BUNKERS with other bunkers. This right of pledge will be granted for all claims, on any grounds and of any nature whatsoever, that the Seller might have against the Buyer.



9.6 Remaining quantities onboard prior to delivery by the Seller shall be considered to be used up first before replenishment.

9.7

## 10 Specification (quality-quantity)

10.1 Any specifications issued by the Seller to the Buyer only concern an approximate analysis and/or specification, unless expressly stated otherwise In Writing by the Seller.

10.2 Notwithstanding the foregoing, if the Seller has issued a standard specification to the Buyer, quality tolerances will be accepted within the reproducibility and repeatability of the applicable testing methods as described in ISO 8217, without this giving the right to any form of compensation.

10.3 The quality and quantity of the BUNKERS, which are available in the port of loading, are the quality and quantity of BUNKERS agreed between the Seller and the Buyer.

10.4 Only a test in accordance with the applicable testing methods as described in ISO 8217 (table 1 and 2) can give a definitive determination between the parties about the quality of the delivered BUNKERS. Other tests, such as GCMS, are superfluous. The results of any other tests than a test in accordance with the applicable testing methods as described in ISO 8217 will not be accepted by the Seller. In no event can the results of such tests lead to any entitlement to compensation for the Buyer.

10.5 With respect to the agreed quantity of the BUNKERS to be supplied by the Seller, the Seller will be at liberty to supply 5% more or less BUNKERS. Where relevant, the Buyer has to accept this without the Buyer having a right to any form of consequences, except for invoicing by the Seller for the quantity of BUNKERS actually delivered.

## 11 Measurements/quality control

11.1 At the Seller's option, the quantity of BUNKERS delivered shall be determined using the gauges of Seller's shore tanks, or the gauges of the Barge that is used for the delivery, or using the Seller's oil meter. When gauging the shore tanks or the Barge, the chief engineer of the respective vessel or his representative shall jointly measure and verify the quantity of BUNKERS delivered together with Seller's representative.

11.2 If the said chief engineer or his representative fail or decline to verify the quantities, the measurements of the quantities carried out by the Seller shall be definitive, conclusive and binding in respect of the quantities sold and delivered, and in each such case the Buyer shall have waived all claims in respect of variances.

11.3 Densities determined for the purpose of converting volumes into weight shall always be determined in vacuum. Adjustments 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.

11.4 Four (4) representative samples, including the MARPOL Sample, will be taken for each delivery. Notwithstanding the exception that the MARPOL Sample has to be taken onboard the vessel, all 4 (four) samples will be taken as standard onboard the Barge (hereinafter called the 'Barge



Sample'). All samples, including the MARPOL Sample, will be properly sealed, signed and labelled. Two samples, one of which is the MARPOL Sample, will be handed over to the ship's officer responsible for accepting the delivery of the BUNKERS and/or to the Buyer's representative. The other two samples will be retained by the Seller for a period of 3 months.

- 11.5 Only if and insofar as such is expressly agreed In Writing, one or more samples will be taken from the manifold of the receiving vessel (hereinafter called the Manifold Samples). That provided for in article 11.4 will apply mutatis mutandis to these Manifold Samples, with the exception of the MARPOL Sample; in all cases a Barge Sample will be used for this.
- 11.6 The Buyer is obligated to take a sample onboard the vessel immediately after the delivery of the BUNKERS by the Seller (hereinafter called the Vessel Sample), and to have this Vessel Sample immediately tested for the relevant specifications in accordance with the applicable testing methods as described in ISO 8217, in the absence of which the right of the Buyer to complain about the quality of the delivered BUNKERS shall become null and void. A copy of the test report of that test must be sent to the Seller immediately after it is received by the Buyer.

If the Vessel Sample that the Buyer has had tested is satisfactory according to this report, this will constitute sufficient and binding evidence for the quality of the delivered BUNKERS, and consequently it shall be established that the BUNKERS delivered by the Seller comply with the specifications.

If the Vessel Sample that the Buyer has had tested is not satisfactory according to this report, the Seller shall have the Barge Sample that it has retained tested for the relevant specifications in accordance with the applicable testing methods as described in ISO 8217. A copy of the report of that test must be sent to the Seller immediately after it is received by the Buyer. If the Barge Sample of the Seller is satisfactory according to this report, this will then constitute sufficient and binding evidence for the quality of the delivered BUNKERS, and consequently it shall be established that the BUNKERS delivered by the Seller comply with the specifications. In that case, the costs of the test that the Seller has had to carry out will be for the account of the Buyer.

If the Barge Sample of the Seller is also not satisfactory according to the report, only then will it be established that the delivered BUNKERS are "off-spec".

- 11.7 Any samples taken after this will not be admissible as (additional) evidence.

## 12 Complaints

- 12.1 Complaints of the Buyer concerning the quantity of the delivered BUNKERS must be submitted to the Seller In Writing immediately after the completion of the delivery, but by no later than within 24 hours after the delivery, in the absence of which the right to invoke a deficiency in the performance and/or the right to compensation of any nature whatsoever will become immediately and irrevocably null and void.
- 12.2 Notwithstanding that provided for in article 9, complaints of the Buyer concerning the quality of the delivered BUNKERS must be submitted to the Seller In Writing by no later than within 21 days after the delivery, in the absence of which the right to invoke a deficiency in the performance and/or the right to compensation of any nature whatsoever will become immediately and irrevocably null and void.





- 12.3 The Buyer is obligated to make payment in full and to fulfil all the other obligations in accordance with that provided for herein, regardless of whether or not it actually has any complaints.
- 12.4 In any case, all claims will become null and void unless legal proceedings are instituted before the competent court within 12 months after the date of delivery or the date on which the delivery should have taken place.
- 12.5 If the Buyer submits a claim in relation to the quality of the delivered BUNKERS, the Seller shall be entitled and the Buyer shall allow, or if the Buyer has chartered the Vessel, the Buyer shall obtain the owners' authorisation to allow, the Seller or the Seller's agent or representative to go onboard the Vessel to investigate the complaints of the Buyer, including but not limited to the inspection of the logbooks of the captain and/or the engine records of the vessel, and to take copies of these and other documents, and to allow the sampling/gauging of all the bunker tanks of the vessel that the Seller deems necessary for its investigation, and to be given access to the engine rooms of the vessel. In no event shall the Buyer deny the Seller access to these documents and/or refuse to make copies or refuse the sampling/gauging of the bunker tanks. If the Buyer, the charterer(s), the Owner(s) or the representative(s) of the vessel do not allow boarding, refuse to provide access and/or refuse to present copies of documents, or refuse to give permission for the taking of samples or the gauging of the bunker tanks by the representative of the Seller, then any right of the Buyer to compensation of any nature whatsoever will become immediately and irrevocably null and void.

### 13 Means of recourse

- 13.1 If the Buyer has complained In Writing about the quantity or the quality of the BUNKERS delivered by the Seller in a timely manner, and this complaint of the Buyer is found to be justified, the Seller, at its own choice, shall have the right:
- i) to uphold the Agreement, whereby the Seller will be obligated to supplement, rectify, or replace the delivered BUNKERS;
  - ii) to dissolve the Agreement, whereby the Seller will be obligated to take back the delivered BUNKERS and to pay back the paid purchase price to the Buyer, whereby only that part of the purchase price has to be paid by the Seller for the BUNKERS that have still not been used by the Buyer.
- 13.2 Unless otherwise has expressly been agreed In Writing, in all cases the Seller shall be deemed to be capable of continuing its performance under the Agreement, regardless of the factual circumstances. For that reason, the Buyer shall not have the right to dissolve the Agreement in the event of an attributable failure of the Seller. Dissolution of the Agreement by the Buyer can only take place after the Buyer has given the Seller notice of default In Writing and given the Seller a reasonable period to effect fulfilment, and the Seller has not availed itself of this opportunity.
- 13.3 The Buyer is obligated to provide all necessary cooperation that can reasonably be expected of it, which enables the Seller to avail itself of the means of recourse described in paragraph 1 of this article. If the Buyer does not provide such cooperation, or due to actions of the Buyer the Seller is no longer able to avail itself of the means of recourse described in paragraph 1 of this article, or is no longer able avail itself of these means of recourse on time, any entitlement on the side of the Buyer to the supplementation, rectification or replacement of the BUNKERS or the repayment of the purchase price shall become immediately and irrevocably null and void.



## 14 Liability

- 14.1 The Seller shall be liable towards the Buyer for the consequences of any attributable failure in the fulfilment by the Seller of its obligations towards the Buyer, as well as the consequences of any unlawful actions of the Seller towards the Buyer. However, in all cases the liability shall be limited to the taking of the means of recourse described in article 13, and it shall also be limited by that provided for hereafter in this article.
- 14.2 The liability of the Seller shall be fully excluded in respect of delay losses or consequential damages, such to include, but not limited to, loss of profits or loss of earnings and immaterial damages.
- 14.3 In any case, at no time shall the liability of the Seller amount to more than 20% of the invoice value of the BUNKERS that are delivered under the relevant Agreement, or amount to more than the damage amount that the insurer of the Seller pays out in the relevant case, whereby in all cases the lowest amount of these two amounts will be paid to the Buyer as compensation, and in all cases such will be limited to a maximum amount of USD 200,000.
- 14.4 Articles 6:100 Dutch Civil Code and 6:101 Dutch Civil Code will at all times apply mutatis mutandis to the determination of the amount of compensation to be paid by the Seller, so that (i) if the same delivery of the BUNKERS has also created benefits for the Buyer in addition to damages, then these benefits will be charged to the Buyer when the determination of the damages to be compensated is made, and the Seller will only be obligated to compensate the 'net damages' (Article 6:100BW), and (ii) if the damages on the side of the Buyer partly arose due to actions or events that can be attributed to the Buyer, the compensation that the Seller has to pay will be reduced by the amount of damages that these actions or events have contributed to the total damages (Article 6:101 Dutch Civil Code).
- 14.5 No agent or representative of the Seller (such to include independent (sub-) contractors who are engaged by the Seller from time to time) shall be liable towards the Buyer for any losses, damages or delays if they were acting during the course of or in connection with their employment and/or agency. Notwithstanding the foregoing, every exemption, limitation, condition and freedom comprised herein, and every right, exemption from liability, defence or immunity of any nature whatsoever that is applicable to the Seller, or which it has a right to on the grounds of such, will also be available and extend itself to protect every agent and/or representative of the Seller acting in the aforementioned way.

## 15 Indemnification

- 15.1 The Buyer shall be liable towards the Seller and hereby undertakes to indemnify the Seller for all damages and/or costs that the Seller suffers and/or incurs as a result of a shortcoming in the fulfilment of the Agreement and/or any fault or negligence of the Buyer, its agents, contractors, employees and the officers, crew, and/or other persons onboard the respective vessel(s) or otherwise.
- 15.2 The Buyer furthermore undertakes to indemnify the Seller if a third party institutes a claim against the Seller in connection with an Agreement under the terms of these general supply conditions. A third party means any other (legal) person than the Buyer.



## 16 Force Majeure

- 16.1 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, if and insofar as such circumstances occur beyond the reasonable control of one or both parties.
- 16.2 Force majeure will be considered to include, amongst other things, circumstances beyond the control of the parties, hostilities, conditions of war (declared or undeclared), mobilization, insurrections, riots and civil unrest, dangers for shipping, governmental measures, expropriation, confiscation, requisition, shortage or obstruction or delay in the supply of basic and auxiliary materials, or in the production, manufacturing, blending, selling, transportation, or delivery facilities and equipment, or of fuel and electricity, blockades, embargoes, labour conflicts, strikes, labour shortages, fire, flood, storm, snow, frost, and other natural disasters, accidents, machine failure and other operational failure, disruption of road traffic, inland waterways and sea traffic, e.g. (floating) ice, prohibition of manufacturing and supply, non-fulfilment of obligations and/or a breach of contract by (sub)suppliers, prohibition of export or import, failure to obtain import or export licences, unforeseen economic conditions, market distortions, governmental measures of a national or international nature, quarantine, epidemics, contagious diseases, veterinary measures, as well as circumstances that have aggravated any disruption, and furthermore all other circumstances considered as force majeure in the trade. Non-provision by the Buyer of information relevant for the Seller in connection with the fulfilment of the Seller's obligations will constitute force majeure on the side of the Seller.
- 16.3 In the event of force majeure, the execution of the Agreement shall be suspended for the duration of the relevant circumstances.
- 16.4 The party which invokes force majeure shall immediately notify the other party In Writing of the occurrence and cessation of the relevant circumstances.
- 16.5 In the event that the Seller does not have sufficient quantities of BUNKERS available to supply all its buyers (and/or parties allied to them) as a consequence of force majeure, the Seller shall have the right to choose which obligation(s) will be fulfilled and in which order, and/or to prorate the quantity of BUNKERS available between the various buyers, whereby the Seller shall not be required to purchase BUNKERS to replace its supplies that have been reduced in this way or to make use of other than its normal transportation and/or other facilities.
- 16.6 In the event that the Seller can only deliver a superior grade of bunkers as a result of force majeure, the Seller is entitled to offer the said grade, and the Buyer must accept delivery thereof and pay the then applicable price.

## 17 Cancellation

- 17.1 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, and without any liability on the side of the Seller, in (but not limited to) one of the following cases:



- i) when the Buyer, for whatever reason, fails to accept the BUNKERS in part or in full at the specified place and time of delivery;
- ii) 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;
- iii) when, before the date of delivery, it becomes apparent that the financial position of the Buyer, in the Seller's judgment, entails a risk for the Seller;
- iv) when, in the event 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.

## 18 Environmental protection

- 18.1 If a spill occurs while BUNKERS are being delivered, the Buyer shall promptly take such action as is reasonably necessary to remove the spilled BUNKERS and to mitigate the effects of such a spill. The Seller is hereby authorized at its option, after giving notification and at the expense of the Buyer, to take such measures and incur such expenses (whether by deploying its own resources or by contracting with others) as are reasonably necessary in the judgment of the Seller to remove the spilled BUNKERS and to mitigate the effects of such a spill. The Buyer shall cooperate 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 lie with the Buyer.
- 18.2 The Buyer shall give the Seller all documents and other information concerning a spill or a program for the prevention thereof, that are required by the Seller, or are required under the laws and regulations applicable at the time and place of delivery.

## 19 Applicable law and competent court

- 19.1 The Agreement entered into with the Buyer shall be governed by Dutch law. However, the federal laws of the United States of America shall apply to the substantive issue of whether a maritime lien exists. The applicability of the CISG is excluded.
- 19.2 All disputes between the Seller and the Buyer shall, at the Seller's option, be settled (i) by arbitration in accordance with the UNUM Transport Arbitration & Mediation Arbitration Rules, or (ii) by the competent court in Rotterdam. If the Buyer intends to start legal action against the Seller, the Seller shall declare within 8 working days after a notice of intended legal action by the Buyer (such notice to be sent by registered mail) whether it opts for arbitration or the competent Rotterdam court. Notwithstanding this provision, the Seller shall at all times be entitled to start legal action before the court which would otherwise have jurisdiction.
- 19.3 If the Buyer has its head office outside of the Netherlands, it chooses domicile at the office of the Dutch Association of Independent Bunker Suppliers/NOVE, Kosterijland 15, 3981 AJ BUNNIK, for all matters relating to the offers, quotations, agreements or contracts described herein.



**20 The text of these conditions**

- 20.1 The text of these conditions **(in the Dutch version)** has been filed at the office of the clerk of the District Court of Rotterdam on **(April 5, 2023)** the document number is **(10/2023)**.

