

## GENERAL TERMS AND CONDITIONS OF SUPPLY

### 1. DEFINITIONS AND INTERPRETATION

1.1 Unless the context requires otherwise, in these GTC's the following words and phrases have the meanings attributed to them in this clause:

1.1.1 "**Agreement**" means each agreement for the sale of Bunkers by FFS to the Buyer which is concluded when FFS sends the Buyer a Deal Confirmation and which comprises these GTCs, and the Deal Confirmation and any other document attached to either of them;

1.1.2 "**Bunker Delivery Receipt**" means a written acknowledgement of Delivery of a consignment of Bunkers signed by or for the Buyer upon completion of Delivery;

1.1.3 "**Bunkers**" means marine fuel supplied by FFS to the Buyer;

1.1.4 "**Business Day**" means between any day other than a Saturday, Sunday, or statutory public holiday in the Republic of South Africa.

1.1.5 "**Business Hours**" means between 08:00 and 16:30 on Business Days;

1.1.6 "**Buyer**" means the person contracting to buy Bunkers from FFS by signing the Order and for the avoidance of doubt includes without limitation the Vessel and, where that person is acting as agent for someone else, both the principal and agent jointly and severally;

1.1.7 "**Charges**" means all charges, fines, penalties, interest and other amounts payable for, and associated with, the Bunkers and Delivery of the Bunkers, including port charges, cargo dues, wharfage charges, berth movement charges, barging charges, demurrage and overtime charges incurred where Delivery occurs outside Business Hours.

1.1.8 "**Claim**" means any claim arising directly or indirectly from or in connection with any cause of action, including contract, delict, strict or statutory liability, and for any loss, damages (direct, special, indirect, and consequential), costs (including legal costs on the attorney and client scale and on a full indemnity basis), interest, fines, penalties, settlement payments or other liabilities;

1.1.9 "**Deal Confirmation**" means written confirmation given by FFS to the Buyer setting out at least the quantity and Specification of the Bunkers which FFS agrees to supply to the Buyer, the Delivery Period for which the Deal Confirmation is valid and the price, additional charges, and applicable payment terms;

1.1.10 "**Delivery**" means delivery of Bunkers by FFS to the Buyer which is deemed to occur when the Bunkers pass the flange connecting FFS's supply equipment to the Buyer's receiving equipment (including receiving equipment connected to a Vessel) and "**Delivered**", "**Deliver**" and, "**Receive**" and "**Received**" have corresponding meanings;

1.1.11 "**Delivery Period**" means the period within which FFS must Deliver the Bunkers;

1.1.12 "**Delivery Place**" means the place described in the Deal Confirmation and at which FFS must Deliver the Bunkers to the Buyer;

1.1.13 "**Dispute**" means any dispute which arises from or in connection with the Agreement, including any dispute relating to the interpretation, repudiation, rectification or termination thereof.

1.1.14 "**Force Majeure**" means any event or circumstance beyond the Parties reasonable control and which directly or indirectly prevents either Party from temporarily or permanently complying with any or all of its obligations in terms of any Agreement, irrespective of whether or not the event or circumstance is foreseeable including labour disputes, strikes, (whether or not legal), lockouts, riots, civil commotion or unrest, war, military or police actions, any intervention by, or requirement of, any regulatory or administrative authority including any port authority, compliance with any Laws, any changes in any applicable Law or any change to, suspension or termination of, any authorisation required by FFS to

enable it to supply Bunkers to the Buyer, fire, storm, flood, natural disasters, earthquake, explosion, spontaneous combustion, accident, interruptions of supply of any goods or services, acts of enemies of the state, failure of railway, pipelines, ports and/or roads, vis major or casus fortuitous, cybercrime, damage to or destruction of any FFS's infrastructure; or any other similar cause beyond the reasonable control of either Party;

1.1.15 "**Fuels Agreement**" means either a Marine Term Fuel Agreement or a Marine Spot Fuel Agreement;

1.1.16 "**Laws**" means all laws including the common law, primary and subordinate, national, provincial, and local statutes, regulations, by laws, directives, guidelines, practice notes, instructions, policies, rules, court orders, decisions by any regulatory authority and any other document which has the force of law;

1.1.17 "**Marine Spot Fuel Agreement**" means an agreement entered into between FFS and the Buyer in terms of which the Buyer makes a single purchase of Bunkers from FFS;

1.1.18 "**Marine Term Fuel Agreement**" means an agreement entered into between FFS and the Buyer in terms of which the Buyer purchases Bunkers from FFS over a period of time;

1.1.19 "**MARPOL**" means the International Convention for the Prevention of Pollution from Ships;

1.1.20 "Order" means a written order for the supply of Bunkers which the Buyer must send FFS at least 2 Days before the Delivery Period begins, and which order must set out at least:

1.1.21 the identity of the Buyer;

1.1.21.1 confirmation whether the Buyer is a foreign trader, local trader registered as a licensed distributor in terms of section 64F of the Customs & Excise Act 91 of 1964, an agent or buying the Bunkers in any other capacity;

1.1.21.2 the quantity and Specification of the Bunkers required;

1.1.21.3 the Delivery Period

1.1.21.4 the name, IMO number and draft of the Vessel to which the Bunkers are to be Delivered;

1.1.21.5 confirmation whether the Vessel is a foreign going vessel, harbour vessel, foreign fishing vessel or local fishing vessel;

1.1.21.6 the port at which the Buyer wishes to take Delivery of the Bunkers; the Delivery Place;

1.1.21.7 the Vessel's estimated times and dates of arrival and departure;

1.1.21.8 the names and contact details of the Vessel's agent at the port of Delivery;

1.1.21.9 any special conditions, difficulties, peculiarities, deficiencies, or defects in respect of the Vessel that may affect Delivery; and

1.1.21.10 all other information which may in any way affect Delivery;

1.1.22 "**the Parties**" means FFS, the Buyer or either of them, depending on the context;

1.1.23 "**Sanctions Laws**" means any sanction, prohibition or restriction imposed by the United Nations, the European Union, the United Kingdom, or the United States of America, including but not limited to the US Department of the Treasury Office of Foreign Asset Control ("OFAC") including the OFAC Specially Designated Nationals or Blocked Persons List (SDN) and the US Department of State.

1.1.24 "**SARS**" means the South African Revenue Services;

1.1.25 "**SDS**" means a safety data sheet for the Bunkers;

1.1.26 "**Specification**" means the specification set out in the Deal Confirmation and with which the Bunkers must comply;

1.1.27 "**Spill**" means any spillage of Bunkers during delivery;

1.1.28 “**GTCs**” means these general terms and conditions;

1.1.29 “**Tax**” means value added tax, general sales tax, sales tax, customs duty, excise and all other imposed by any fiscal authority applicable to the Bunkers excluding only income tax payable by FFS in respect of the sale of the Bunkers;

1.1.30 “**Vessel**” means the vessel described in the Deal Confirmation;

1.1.31 “Vessel Nomination” means the written notice which the Buyer must send FFS specifying at least the information about the vessel listed in clauses 1.1.21 to 1.1.21.10, both clauses included.

1.2 Clause headings are for convenience only and must not be used when interpreting the Agreement.

1.3 Unless inconsistent with the context, words relating to any gender include the other genders, words relating to the singular include the plural and vice versa and words relating to natural persons include juristic persons.

1.4 Any substantive provision conferring rights or imposing obligations on any Party which is included in a definition is still effective even though that provision is contained in a definition.

1.5 The rule of construction that a contract shall be interpreted against the Party responsible for drafting it (contra proferentem does not apply when interpreting the Agreement).

1.6 “Including” means “including but not limited to” and “includes” has a concurrent meaning. The use of the word “including” followed by a specific example does not limit the meaning of any general wording preceding it and the *eiusdem generis* rule does not apply when interpreting that general wording or specific example.

1.7 When any number of days is prescribed in these GTCs or in the Agreement, that number must be calculated excluding the first and including the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next Business Day.

1.8 A reference to any document (including any statute) includes every amendment of or supplement to, or replacement or novation of that document.

1.9 Words and phrases which are defined in these GTCs have the same meanings in any schedules attached to them unless otherwise indicated or clearly apparent from the context.

## 2. THE SALE AGREEMENT AND THESE GTCs

2.1 FFS agrees to sell to the Buyer the quantity of Bunkers, meeting the Specification, for the price, on the payment terms and scheduled for Delivery during the Delivery Period as set out in the Deal Confirmation and on the terms and conditions of these GTCs.

2.2 FFS only sells Bunkers in terms of these GTC's, its Deal Confirmation and Fuels Agreement. Irrespective of whether the Deal Confirmation is an offer or acceptance, **THE AGREEMENT COMPRISES THESE GTCs, THE DEAL CONFIRMATION AND FUELS AGREEMENT. NO OTHER TERMS AND CONDITIONS APPLY, unless otherwise agreed by both parties in writing.**

2.3 If the Buyer is an agent FFS may enforce the Agreement against the Buyer and its principal jointly and severally.

2.4 FFS may amend these GTCs from time to time, upon written notice to the Customer.

## 3. THE BUNKERS

3.1 FFS warrants that the Bunkers Delivered to the Buyer will meet the Specification.

3.2 **EXCEPT FOR THE WARRANTY IN CLAUSE 3.1, FFS DOES NOT GIVE ANY EXPRESS OR IMPLIED WARRANTIES OR ANY OTHER GUARANTEES, REPRESENTATIONS OR UNDERTAKINGS IN RESPECT OF THE BUNKERS WHETHER ARISING OUT OF CONTRACT, COMMON LAW OR STATUTE. ALL OTHER WARRANTIES (INCLUDING TACIT WARRANTIES), GUARANTEES, REPRESENTATIONS AND UNDERTAKINGS IN RELATION TO THE BUNKERS, WHETHER ARISING OUT OF CONTRACT, COMMON LAW OR STATUTE ARE EXCLUDED.**

3.3 The Buyer is responsible for ensuring that Bunkers which meet the Specification are fit for the purpose for which the Buyer wishes to use them. The Buyer has not relied on any representation made by FFS in choosing the Specification of the Bunkers which it purchases.

#### **4. TITLE AND RISK**

Risk in and to the Bunkers passes to the Buyer upon Delivery. Title in and to the bunkers passes to the Buyer when they are paid for, in full.

#### **5. ORDERING BUNKERS AND VESSEL NOMINATION**

5.1 The Buyer must send FFS an Order at least 2 days before the Delivery Period begins.

5.2 If FFS is willing to supply the Bunkers ordered, it will send the Buyer a Deal Confirmation. The Deal Confirmation is only valid for the Delivery Period.

5.3 Except where the Vessel Nomination is included in the Order, the Buyer must send FFS a Vessel Nomination at least 2 days before the Delivery Period begins. Despite any other provision of the Agreement, FFS is only obliged to Deliver Bunkers to a Vessel described in an Order or Vessel Nomination if FFS agrees to do so, in writing.

5.4 The Buyer warrants that the person who orders Bunkers is duly authorised to do so.

5.5 If the Buyer is ordering Bunkers as agent for someone else, it warrants that it is authorised to do so.

5.6 If a Buyer is acting as agent for someone else, in the Order, that Buyer must disclose the name and contact details of the Buyer on whose behalf it places the Order.

5.7 FFS does not have to sell any Bunkers ordered unless and until it has issued a Deal Confirmation.

5.8 The Buyer must buy the Bunkers described in a Deal Confirmation.

5.9 The Buyer is solely responsible for ordering the correct grade and quantity of Bunkers for the Vessel.

#### **6. PRICE**

6.1 The price of the Bunkers is the amount specified in the Deal Confirmation. For the avoidance of doubt, the price specified in the Deal Confirmation is only valid for the Delivery Period.

6.2 The Price excludes Tax and all other Charges, and the Buyer must pay all applicable Tax and Charges, at the applicable rate, simultaneously with the price.

#### **7. PAYMENT**

7.1 The Buyer must pay the price for the Bunkers plus Tax and Charges in respect of the Bunkers and Delivery, in the currency, and in accordance with the payment terms, set out in the Deal Confirmation.

7.2 If the Buyer fails to make any payment when due, all amounts which are owing but not yet due and payable become immediately due and payable.

7.3 The Buyer must pay the price for the Bunkers, together with Tax and Charges, free of any deduction, withholding, set off, bank charges or counterclaim by way of electronic funds transfer in the currency designated in the Deal Confirmation and into the bank account nominated by FFS, by written notice to the Buyer. The Buyer will remain liable to pay the price, Tax and Charges payable in respect of the Bunkers until the whole amount due in that regard is freely available funds in FFS' nominated bank account.

7.4 At any time, FFS may in its sole and absolute discretion and by way of written notice given to the Buyer, withdraw any credit granted to the Buyer and require that the Buyer pay cash before Delivery for all future supplies of Bunkers.

## 8. DELIVERY

### DELIVERY PLACE AND DELIVERY PERIOD

8.1 Provided the buyer ensures that the Vessel is available and able to take Delivery of the whole quantity of the Bunkers specified in the Deal Confirmation at the Delivery Place during the Delivery Period, FFS must Deliver the Bunkers to the Vessel within the Delivery Period. FFS is not obliged to Deliver the Bunkers outside the Delivery Period. FFS is not obliged to Deliver the Bunkers other than in compliance with the applicable Laws.

8.2 Deliveries will be made ex pipeline, ex road tanker or ex barge as specified in the Deal Confirmation.

8.3 The Buyer must notify FFS in writing (through the FFS representative specified on the Deal Confirmation) immediately of any changes to the Vessel, any information relating to the Vessel, the Delivery Place, the Delivery Period, and any other information included in the Deal Confirmation or other information which FFS uses to prepare the Deal Confirmation.

### BUYERS WARRANTIES

8.4 The Buyer warrants that:

8.4.1 the information relating to the Buyer and the Vessel recorded on a signed Order and/or Deal Confirmation is true and correct;

8.4.2 the Vessel can safely receive the Bunkers;

8.4.3 the Buyer and the Vessel comply with all Laws relevant to purchasing, receiving, transport and using the Bunkers;

8.4.4 the Vessel's maximum pumping rate and pressure requirements specified in the Order or Vessel Nomination are accurate; and

8.4.5 all special conditions, difficulties, peculiarities, deficiencies, or defects in respect of the Vessel and which in any way affect Delivery of the Bunkers are specified in the Order;

### BUYERS OBLIGATION

8.5 The Buyer must assist and cooperate fully with FFS to the extent necessary to enable FFS to Deliver the Bunkers to the Vessel.

8.6 The Buyer is responsible for connecting and disconnecting FFS's supply equipment with the Vessel's receiving equipment. The Buyer must ensure that all supply equipment is properly and securely connected before commencement of the Delivery. If, in FFS's sole and absolute discretion, Delivery will be unsafe or if the Vessel cannot safely receive the Bunkers, then FFS may suspend Delivery until it can be effected safely or the Vessel can safely receive the Bunkers or FFS may terminate the Agreement and the Buyer will not have any claim against FFS arising from or in connection with that suspension or termination.

8.7 At all times, the Buyer must be in possession of all permits, authorisations and/or permissions required in respect of the purchase and Delivery of the Bunkers and those permits, authorisations and/or permissions must at all times be current and valid.

### DELAY IN DELIVERY

8.8 If Delivery is delayed as a result of:

8.8.1 the Buyers failure to give proper notices and/or the Vessel's failure to be ready to accept Delivery within Delivery Period and/or the Vessel failing to receive the Bunkers at the pumping rate and pressure specified in the Deal Confirmation; or

8.8.2 failure by FFS to deliver the Bunkers in accordance with the minimum hourly pumping rate and pressure referred to in the Confirmed Note; or

8.8.3 failure by FFS to commence Delivery within the Delivery Period, then the Party suffering such delay shall be entitled to compensation from the other Party for any loss suffered as a result of that delay.

#### **FAILURE TO ACCEPT DELIVERY**

8.9 If, for any reason, the Buyer fails to accept, in whole or in part, Delivery of the Bunkers as specified in the Deal Confirmation, FFS may:

8.9.1 reschedule Delivery during a new Delivery Period but at the price set out in the Deal Confirmation plus all costs incurred by FFS because of the rescheduled Delivery; or

8.9.2 issue a new Deal Confirmation at a new price for the new Delivery Period; and/or

8.9.3 terminate the Agreement and charge the Buyer a cancellation fee based on any Claim FFS may have as a result of the Buyers failure to accept Delivery.

#### **HEALTH, SAFETY AND ENVIRONMENTAL**

8.10 FFS will provide a SDS to the Buyer for the Bunkers meeting the Specification, on request.

8.11 The Buyer must ensure that its and the Vessel's, employees, agents, and contractors comply with all obligations, requirements and recommendations specified in the SDS and all applicable Laws. The Buyer is responsible for safety on board the Vessel.

8.12 In the event of a Spill which causes, or is likely to cause, pollution occurring during Delivery, the Buyer and FFS will jointly, and regardless as to whether the Buyer or FFS is responsible, immediately take such actions as are reasonable and necessary to effect clean up in accordance with the applicable local laws and regulations.

8.13 Each Party warrants that it will be fully insured, and that it will use its best endeavours to ensure that any third parties contracted by it to perform any of its obligations in terms of the Agreement are fully insured, for oil Spill liabilities as required by statutory rules or regulations. If that insurance is not obtained by such third parties, it will be the sole responsibility of the Party contracting the third Party to take out that insurance for its own account. Proof and conditions of that insurance must be made available to a Party requesting it as soon as practically possible.

8.14 Each Party hereby agrees to indemnify the other Party against any and all Claims as a result of a Spill occurring during the performance of the Agreement where the Spill is caused by any fault on the part of that Party.

#### **DRUGS AND ALCOHOL POLICY**

8.15 Each Party must enforce a company drug and alcohol policy on board the Vessel and any other tankers or facilities used during Delivery. Such company drug and alcohol policies must meet or exceed the standards in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended.

8.16 The Buyer must ensure that its, and the Vessels, employees, agents and contractors comply with FFS' drugs and alcohol policy upon entry into FFS' facilities, and FFS' personnel must comply with the Buyers or the Vessels drugs and alcohol policy when on board the Vessel.

8.17 Both parties acknowledge and agree that the selling, possession, distribution, use or being under the influence of alcohol or any controlled substance or dangerous drugs other than those medically prescribed is prohibited.

#### **BUNKER DELIVERY RECEIPT**

8.18 Upon completion of Delivery:

8.18.1 the buyer must sign the Bunker Delivery Receipt; and

8.18.2 the Buyer must ensure that the master or chief engineer of the Vessels signs and stamps the Bunker Delivery Receipt.

## **DUTIES AND CUSTOMS DOCUMENTS**

8.19 Within 24 hours after the Vessel's departure from the port where Delivery took place, the Buyer, must assist and cooperate fully with FFS to the extent necessary to provide FFS with the DA1 and DA3 forms prescribed by the Customs and Excise Act 91 of 1964 in section 7 read with rule 7 which forms must be duly completed and duly stamped or released by the Customs Division of the SARS.

8.20 Within 24 hours of request by FFS, the Buyer must assist and cooperate fully with FFS to the extent necessary to provide FFS with any other information required by FFS for the export clearance of, and/or any Tax refund claims in respect of, the Bunkers.

8.21 Despite anything to the contrary in the Agreement, the Buyer indemnifies FFS against any loss, damages (direct, special, indirect and consequential), costs (including legal costs on the attorney and client scale and on a full indemnity basis), interest, fines, penalties, settlement payments or other liabilities which FFS may suffer arising out of or in connection with the services rendered in this Agreement.

8.22 FFS supplies to the Buyer in good faith that the vessel is foreign going and will clear international port thereby making it eligible for duty free product. In the event that SARS does not for any reason whatsoever claim the foreign going Vessel as eligible for duty free product and impose a claim for duty on and/or impose a fine on FFS, the Buyer agrees such duties and fines shall be for its account.

## **9. DETERMINATION OF QUANTITY AND QUALITY**

### **QUANTITY**

9.1 FFS will Deliver to the Vessel the quantity of Bunkers stipulated in the Deal Confirmation, provided that FFS may, at its option, deliver up to 5% more or less than the quantity of Bunkers reflected in the Deal Confirmation.

9.2 The quantity of Bunkers Delivered will be determined based on the statutory 20 °C conversion rate and exclusively by the marine surveyor appointed by FFS on the basis of readings from FFS' flow meters or a shore quantity calculation (P2.01) as applicable as recorded on the Bunker Delivery Receipt. The Buyer may, at its cost, witness the measurement and recording of the quantity of Bunkers Delivered. The absence of the Buyer or its representative will not prejudice the validity of the measurement of quantity.

9.3 The Buyer must note any alleged short Delivery on the Bunker Delivery Receipt and the Buyer must notify FFS of any Claim arising out of an alleged short Delivery within 14 days after Delivery failing which all Claims by the Buyer for short Delivery shall be deemed waived and forever barred.

### **QUALITY**

9.4 FFS will take a primary sample in accordance with MARPOL at a sampling point specified by FFS. FFS may appoint an independent marine surveyor to carry out such sampling at the Buyers cost.

9.5 The primary sample taken by FFS will be thoroughly mixed and carefully divided into 5 identical samples, 1 of which will be retained by the Vessel for MARPOL purposes, 2 of which will be retained by the Vessel for other purposes and 2 of which will be retained by FFS for a period of at least 45 days.

9.6 The Buyer may, at its cost, witness the sampling. The absence of the Buyer or its representative will not prejudice the validity of the samples taken.

9.7 The samples of Bunkers taken during Delivery in terms of clause 9.4 are conclusively and exclusively deemed to be representative of the quality of the Bunkers supplied by FFS. The Buyer agrees that samples taken from the 'Vessel's bunker manifold and/or tanks shall not be an indicator of the quality of the Bunkers. Samples taken by anyone other than by FFS in terms of clause 9.4 may not be used for determining the quality of the Bunkers supplied even if the samples have been signed by FFS or any of its employees, agents and contractors.

9.8 The Buyer must notify FFS of any Claim arising out of the quality of the Bunkers Delivered within 14 days after Delivery failing which such Claim will be deemed waived and forever barred. The Buyer must provide FFS with the results of any tests which it has carried out on samples of the Bunkers within 60 days after Delivery, failing which such Claim will be deemed waived and forever barred.

## **TIME BAR**

9.9 If the Buyer has notified FFS of a Claim in terms of clauses 9.3, or 9.8 the Buyer must institute any action in respect of that Claim within 6 months after notifying FFS of that Claim, failing which the action will be time barred.

## **10. EXCLUSIONS, LIMITATIONS OF LIABILITY AND INDEMNITY**

10.1 Neither party is liable to the other for any:

10.1.1 indirect, special or consequential damages, losses and costs including all associated interest, fines, penalties, settlement payments and other liabilities and which are deemed to include Claims for loss of profit, loss of revenue, loss of anticipated savings, any effect on business transactions, goodwill or other contracts, demurrage or interruption or cessation of operations; or

10.1.2 direct damages except those caused by that Party's gross negligence or that of its shareholders, directors, employees, agents, or contractors and which direct damages are caused by hazards inherent in the Bunkers.

10.2 In addition to clause 10.1 but without limiting its generality, FFS is not liable to the Buyer (and where the Buyer acts as agent for someone else, FFS is not liable to the Buyer and/or its principal) for Claims for:

10.2.1 demurrage or deviation costs unless caused by the gross negligence or wilful misconduct of FFS;

10.2.2 comingling of the Bunkers Delivered to the Buyer;

10.2.3 congestion at ports, at terminals, at berths or in relation to access to the pipelines required to effect Delivery of the Bunkers;

10.2.4 theft, fraud or misuse of the Bunkers by the Buyer.

10.2.5 any noncompliance by the Buyer with any Laws relevant to purchasing, receiving, transporting, and using the Bunkers; and

10.2.6 any failure to supply the Bunkers during the Delivery Period or at all because of a Force Majeure.

10.3 The maximum liability of each Party for Claims for direct damages including loss, costs (including legal costs on the attorney and client scale and on a full indemnity basis), interest, fines, penalties, settlement payments or other liabilities, is limited to the price of the Bunkers supplied or to be supplied, as reflected in the Deal Confirmation.

10.4 Each Party must take all reasonable steps to mitigate any Claims which it may have against the other, including retaining and/or burning the Bunkers in accordance with FFS' instructions.

10.5 The Buyer indemnifies FFS and its shareholders, directors, employees, agents and contractors against any and all Claims made by any person arising directly or indirectly out of the Agreement except if and to the extent that such Claims are caused by the negligence of FFS, its shareholders, directors, employees, agents or contractors.

10.6 This clause 10 shall survive termination of the Agreement for any reason.

## **11. FORCE MAJEURE**

11.1 Failure by either Party to comply fully and in part with any of its obligations under the Agreement because of a Force Majeure is not a breach of the Agreement and that Party is not liable to the other Party for any such failure.

11.2 The Buyer may purchase the Bunkers which FFS notifies it that it cannot supply because of a Force Majeure from another supplier provided that FFS is not liable to the Buyer for any additional costs in that regard.

11.3 If a Force Majeure continues for more than 5 days after the Party seeking to claim Force Majeure notifies the other Party thereof, either Party may cancel the Agreement by giving written notice to that effect to the other Party and neither Party shall have any claim against the other Party arising from or in



connection with that cancellation. The cancellation of the Agreement because of a Force Majeure does not affect the accrued claims of either Party.

## 12. DISPUTES

12.1 Any dispute that arises out of or in connection with this Agreement must be resolved by the Parties respective contact persons (as specified in the Deal Confirmation) within 14 days after either Party declares the dispute by written notice given to the other Party.

12.2 If a Dispute is not resolved within Either Party may refer any unresolved Disputes for resolution by the Parties chief executive officers or managing directors or their respective nominees.

12.3 If the Dispute remains unresolved or the Parties fail to agree on an alternative dispute resolution process (such as mediation) within 30 (thirty) days (or such extended period as may be agreed) after the date of the referral, either Party may refer the matter to arbitration as set out in clause 15.1.

12.4 If a Dispute is referred for mediation, then extinctive prescription stops running and is suspended in respect of any debt related to the Dispute while it is subject to mediation, as the case may be.

## 13. NOTICES AND ADDRESSES FOR SERVICE

13.1 All notices and communication in terms of the Agreement:

13.1.1 must be in writing to be effective;

13.1.2 must be marked for the attention of the relevant Party's contact person as specified in the Deal Confirmation; and

13.1.3 must be sent by hand or e-mail to the physical address set out in the Deal Confirmation which physical addresses the Parties select as their respective *domicilium citandi et executandi* for service of all notices and legal process.

13.2 From time to time and by written notice to each other, either Party may change its *domicilium citandi et executandi* to any other address which is not a post office box or poste restante, within South Africa in the case of FFS and in the case of the Buyer, in the same country as the address chosen in terms of clause 13.1.3. Such change will only take effect upon receipt or deemed receipt of such notice to the other Party.

13.3 Any notice and/or communication will:

13.3.1 if delivered by hand during Business Hours to the person apparently in charge of the premises selected by the addressee for the delivery of notices, be deemed to have been received on the date of delivery; and

13.3.2 if sent by e-mail to the addressee's selected email address, be deemed to have been received on the first Business Day after the date on which it was transmitted from the information system under the control of the sender.

13.4 Any written notice and/or communication which has actually been received by a Party shall be regarded as sufficient notice even if it has not been sent in the manner provided in this Agreement or to the addresses set out in the Deal Confirmation.

## 14. TERMINATION FOR SOLVENCY

Despite any other provision of the Agreement, either party may immediately terminate the Agreement without prejudice to any of its other rights and without notice to the other party if:

14.1 any steps are taken to place the other party or, whether the other Party is acting as agent, the other Party's principal, in business rescue or voluntary or compulsory liquidation or sequestration or any equivalent in the law of any other country; or

14.2 the other Party or its principal, where applicable, compromises generally with its creditors.

14.3 Notwithstanding the above, any obligations arising during the course of the agreement including those for payments, operations or any other commitments shall be performed by the parties.

## **15. GOVERNING LAW, ARBITRATION, JURISDICTION AND VESSEL ARREST**

The Customer has the option of choosing either English Law or South African law to govern the Agreement in event of a dispute arising: -

### **Option 1: English Law Arbitration**

15.1 Any dispute arising under, in connection with or incidental to this Agreement shall be conducted in the English language and the seat of arbitration shall be in London, England and shall be heard and decided by 3 (three) persons, one to be appointed by each of the Parties hereto and the third by the 2 (two) so chosen; their decision or that of any 2 (two) of them shall be final and for the purpose of enforcing any award, this Agreement be made a rule of the court. Should a party fail to appoint an arbitrator within 10(ten) days of notice of demand for arbitration, the demanding party may appoint the second arbitrator with the same force and effect as if appointed by the second party. Should the 2 (two) arbitrators be unable to agree on the appointment of a third arbitrator within 10(ten) days after the appointment of the second arbitrator, the President of the London Maritime Arbitrators Association (LMAA) shall make the appointment upon the request of either party without further notice. The proceedings shall be conducted in accordance with the Arbitration Act 1996 as well as the LMAA Terms, as revised. The arbitrators shall award reasonable attorneys fees and costs to the prevailing party.

15.2 The parties irrevocably consent to the jurisdiction of the courts of London, England for the purposes of compelling arbitration or confirming an arbitration award and the prevailing party in any such legal action shall be awarded reasonable attorneys fees and costs. With regard to petitions to compel arbitration or to confirm an arbitration award, the parties consent to service of process by email, certified international mail, Federal Express, or DHL courier service and irrevocably waive their right to personal service of these documents, a party that brings enforcement proceedings to enforce any arbitration award or judgement obtained under this clause shall likewise be awarded reasonable attorneys fees and costs incurred in enforcing such award or judgement.

15.3 The Agreement is governed by English law excluding its conflict of law rules. Despite the Buyers consent to the governing law and anything to the contrary in this Agreement and without prejudice to any of FFS' other rights or remedies:

15.3.1 if the Buyer breaches the Agreement, nothing in the Agreement prevents FFS from taking any such action as it, in its sole and absolute discretion considers necessary and, and without limiting the generality of this clause, FFS has the power to enforce, safeguard, secure or assert its rights under the Agreement and any rights of lien, attachment, arrest or otherwise in any court or tribunal or any state or country, including any jurisdiction where the Vessel or a sister or associated ship may be found, by concluding the Agreement, upon the Buyers failure to comply with any of its obligations in terms of the Agreement, FFS may arrest the Vessel in question, or any other vessel of the Buyer, under any applicable jurisdiction, as security for the performance by the Buyer of its obligations. If the Buyer fails to pay any amount to FFS immediately when due, then without prejudice to its other rights and remedies, FFS may dispose of such arrested vessel whether by sale or otherwise as applicable under the relevant jurisdiction. Any costs or expenses incurred by FFS in respect of such arrest shall be for the sole account of the Buyer and shall be added to the Claim for which the arrest is made.

### **Option 2: South African Law**

15.1 The Agreement is deemed to have been concluded in Cape Town and is governed by South African law, excluding its conflict of laws rules.

15.2 The Buyer consents to the jurisdiction of the High Court of South Africa, Western Cape, Cape Town in respect of any Claim arising out of the Agreement or any breach hereof.

15.3 In the event that the parties are unable to reach agreement through the process referred to in clause 12, it is hereby agreed that the dispute shall be referred to arbitration.

15.4 Unless otherwise agreed by the parties in writing, the arbitration shall be held in Durban, South Africa.

15.5 The arbitration shall be conducted by a single arbitrator appointed by the parties to the dispute and failing agreement by the parties on an arbitrator within 7 (seven) days of the delivery of the arbitration notice, nominated by the Arbitration Foundation of Southern Africa (“AFSA”).

15.6 The arbitrator shall be entitled to:

15.6.1 investigate or cause to be investigated any matter, fact, or thing which he considers necessary or desirable in connection with any matter referred to him for decision.

15.6.2 decide the matters submitted to him according to what he considers just and equitable in all circumstances having regard to the purpose of this Agreement; and

15.6.3 make such award including an award for specific performance, an interdict, damages, or costs of the arbitration or otherwise as he in his discretion may deem fit and appropriate.

15.7 The finding of the arbitrator shall be final and binding on the parties and may only be made an order should one of the parties fail or refuse to give effect to the arbitrators finding or award.

15.8 The provisions of this clause shall not preclude any party from seeking relief in any court of law with the appropriate jurisdiction.

15.9 If a dispute is referred in terms of the processes set out in this clause 15, then extinctive prescription stops running and is suspended in respect of any debt related to the dispute.

15.10 This Agreement will be suspended during the course of the processes set out in this clause 15.

15.11 Despite the Buyers consent to the governing law and anything to the contrary in this Agreement and without prejudice to any of FFS’ other rights or remedies:

15.11.1 if the Buyer breaches the Agreement, nothing in the Agreement prevents FFS from taking any such action as it, in its sole and absolute discretion considers necessary and, without limiting the generality of this clause, FFS has the power to enforce, safeguard, secure or assert its rights under the Agreement and any rights of lien, attachment, arrest or otherwise in any court or tribunal or any state or country, including any jurisdiction where the Vessel or a sister or associated ship may be found; and

15.11.2 by concluding the Agreement, upon the Buyers failure to comply with any of its obligations in terms of the Agreement, FFS may arrest the Vessel in question, or any other vessel of the Buyer, under any applicable jurisdiction, as security for the performance by the Buyer of its obligations. If the Buyer fails to pay any amount to FFS immediately when due, then without prejudice to its other rights and remedies, FFS may dispose of such arrested vessel whether by sale or otherwise as applicable under the relevant jurisdiction. Any costs or expenses incurred by FFS in respect of such arrest shall be for the sole account of the Buyer and shall be added to the Claim for which the arrest is made.

## **16. ANTI-CORRUPTION/CORPORATE GOVERNANCE**

Each Party warrants and undertakes to the other that, in connection with the Agreement, they each respectively comply and will continue to comply with all applicable Laws and with the law, regulations, rules, decrees and/or official government orders and requirements of the United Kingdom, the United States of America and any other relevant jurisdiction relating to anti-bribery or anti-money laundering.

## **17. SANCTIONS COMPLIANCE CLAUSE**

17.1 The Buyer and FFS each warrant that at the date of entering into the Agreement and continuing until the completion of Delivery and payment by the Buyer to FFS in full:

17.1.1 neither Party is subject to any of the Sanctions Laws which prohibit or render unlawful any performance under the Agreement;

17.1.2 FFS is not selling and the Buyer is not buying the Bunkers as agent, trustee or nominee of any person with whom transactions are prohibited or restricted under Sanction Laws.

17.1.3 the Buyer further warrants that the Vessel is not a designated vessel in terms of Sanction Laws and will not be chartered to any entity or transport any cargo contrary to the restrictions or prohibitions in Sanction Laws; and

17.1.4 FFS further warrants that the Bunkers are not of an origin and have not been exported as a product from a place that is subject to any Sanction Laws.

17.2 If at any time during the performance of the Agreement either Party becomes aware that the other Party is in breach of any of the warranties in clause 17.1, the Party not in breach shall comply with laws and regulations of any Government to which that Party or the Vessel is subject and follow any orders or directions which may be given by any regulatory or administrative body, acting with powers to compel compliance. In the absence of any such orders, directions, laws or regulations, the Party not in breach may terminate the Agreement forthwith.

17.3 Notwithstanding anything to the contrary in this Agreement, the Buyer and FFS is not required to do anything which constitutes a violation of the laws and regulations of any state to which either of them is subject.

17.4 Each Party is liable to indemnify the other Party against any and all Claims whatsoever suffered by the other Party resulting from any breach of warranties in clause 17.1.

## **18. PROTECTION OF PERSONAL INFORMATION**

18.1 Certain documentation as requested, will contain Personal Information as defined in the Protection of Personal Information Act 4 of 2013 ("POPI") and the Buyer consents as follows:

- a) The Buyer acknowledges that in providing and receiving the Services, FFS may process personal information, as defined in POPI.
- b) The Buyer consents to FFS to process the Buyer's personal information;
- c) The Customer confirms that the information given by it is accurate and complete.
- d) The Customer further agrees to update the information supplied, as and when necessary, to ensure the accuracy and completeness of the above information at all times.

## **19. CONFIDENTIALITY**

19.1 Each party undertakes not to divulge, at any time during the course of (including during negotiations) or following termination of the Agreement, any Confidential Information relating to the services, business, or affairs of the other party to any third party without the prior consent of the other party save as it necessary for the proper performance of its duties hereunder or as is required by law.

19.2 The parties specifically record that all personal information received by a party, or to which a party may be exposed, shall constitute Confidential information and as such, the parties shall comply with all the provisions of the confidentiality clause with regard to such personal information. Personal Information to be interpreted as described in POPI.

19.3 The parties hereby warrant in favour of each other that they will at all times strictly comply with all applicable data privacy legislation and with all the provisions and requirements of the parties data protection policies and procedures (including encryption standards) in force, from time to time, and any further requirements of which the Parties may, from time to time advise the Applicant in writing, or which may be required by legislation, regulation or any relevant industry body, whether within the Republic of South Africa or elsewhere in the world.

19.4 The parties shall take, implement, and maintain all such technical and organisational security procedures and measure necessary or appropriate to preserve the security and confidentiality of personal information processed by it and protect such personal information against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage.

19.5 The Parties shall promptly return or destroy any personal information in the possession or control of the other, at the request of and on instruction in accordance with any specific retention, destruction and purging requirements as may be prescribed by the Companies.

19.6 The Buyer shall ensure and warrants that it has obtained the necessary written consent for personal information to be processed by FFS. The Buyer shall keep a record of all consents required in terms of this clause.

19.7 The parties shall notify each other as soon as possible after a party becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take

all necessary remedial steps to mitigate the extent of the loss or compromise of personal information. The Parties shall cooperate in any investigation relating to security of personal information which is carried out by or on behalf of another party.

#### **THE BUYER WARRANTS THAT:**

- It has obtained all necessary consents contemplated in this clause, and as may be required in terms of POPI:
- The Buyer indemnifies and holds FFS harmless against any damages or losses of whatsoever nature (including penalties or fines and legal costs on the scale of attorney and own client) that may be suffered by FFS because of a breach of its obligations set out in this POPI clause.

#### **20. GENERAL**

20.1 The Agreement is the whole agreement between the Parties containing all the express provisions agreed by them about its subject matter. This Agreement supersedes all prior oral and written arrangements or agreements between the Parties.

20.2 No Party may rely on any representation of any kind which allegedly induced that Party to enter into this Agreement unless the representation is recorded in this Agreement.

20.3 No agreement varying, adding to, deleting from, or cancelling the Agreement (including this clause) and no waiver of any right under the Agreement will be effective unless in writing and signed by or on behalf of the Parties.

20.4 By not exercising or enforcing any right in terms of the Agreement, a Party does not waive that right.

20.5 Neither Party may cede, delegate, or assign any or all of its rights or obligations in terms of the Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

20.6 Since the provisions of the Agreement have been settled by negotiation and each Party has been free to get independent legal advice about its provisions, the Agreement must not be interpreted against the Party primarily responsible for drafting it.

20.7 In the Agreement, whenever any period of time is prescribed, it excludes the first and includes the last day unless the last day falls on a day which is not a Business Day, in which case the last day will be the next Business Day.

20.8 Any costs incurred by a Party because of the other Party's breach of this Agreement must be borne by the Party in breach on the attorney and client scale and on a full indemnity basis, even if the matter is settled before legal proceedings commence.

20.9 Any reference to an amount in this Agreement means that amount excluding Tax unless specified otherwise.

20.10 The various documents comprising the Agreement are mutually explanatory. If they conflict or are inconsistent, the provisions contained in the Deal Confirmation prevail.

20.11 Each Party must bear its own legal costs of and incidental to negotiating, preparing, and implementing the Agreement.

20.12 Each provision of the Agreement is a separate term or condition. If this Agreement is affected by any Law or any amendment or replacement of any Law or if any of its provisions are found to be illegal, invalid, prohibited, or unenforceable, then those provisions shall be ineffective only to the extent of that illegality, invalidity, prohibition or unenforceability and all the remaining provisions shall remain of full force and effect.

20.13 Each Party represents and warrants and shall obtain all appropriate government approvals applicable to the performance of its obligations under this Agreement.

20.14 Each Party represents that it will comply with all laws applicable to the performance of this Agreement, including anti-bribery laws and trade restrictions of the United States and the United Kingdom. Each Party represents that neither it nor, to its knowledge, any director, officer, agent, employee,

or other person acting on its behalf, has made, offered or authorised, or will make, offer or authorise, either directly or indirectly, any unlawful payment, gift, promise or other advantage related to this Agreement.

20.15 Each Party represents that it will comply with all trade restrictions applicable to the performance of this Agreement, which regardless of whether they are directly applicable to a Party, as a minimum include sanctions enforced by the United States government against facilitating unauthorised transactions involving certain countries and territories (namely Venezuela, Iran, Syria, Cuba, North Korea, and the Crimea region of Ukraine) and certain individuals and entities (namely those appearing on the United States list of Specially Designated Nationals). Each Party represents that neither it nor, to its knowledge, any subsidiary, affiliate, director, officer, agent, employee, or other person acting on its behalf is subject to such trade restrictions.

20.16 Each Party represents that it will conduct its activities applicable to the performance of this Agreement in a manner that complies with the UK Modern Slavery Act 2015 and the United Nations Universal Declaration of Human Rights, which include, but are not limited to: refusing to use forced or child labour; refusing to tolerate discrimination, harassment, abuse, or retaliation in their work place; and providing wages, benefits, and working hours that meet or exceed the applicable legal standards and regulations.

20.17 Either Party may terminate this Agreement immediately upon written notice to the other Party if at any time, in its reasonable judgement, the other Party is in breach of this clause.

SIGNED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

20\_\_\_\_\_

Representative Signature: \_\_\_\_\_

For FFS REFINERS (PTY) LTD  
Who hereby warrants that she/he is duly authorised to sign this Agreement  
On its behalf

Full Names: \_\_\_\_\_

Designation: \_\_\_\_\_

SIGNED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

20\_\_\_\_\_

Representative Signature: \_\_\_\_\_

For  
Who hereby warrants that she/he is duly authorised to sign this Agreement  
On its behalf

Full Names: \_\_\_\_\_

Designation: \_\_\_\_\_