

# General terms & conditions

2021



## **Preamble**

These General Terms and Conditions shall apply to all agreements under which a Monjasa Group entity agrees to sell and deliver or procure the sale and delivery of Marine Fuels unless the Seller expressly confirms otherwise in the Bunker Confirmation.

## **1 Grades/Quality**

**1.1** The Seller warrants that the Marine Fuels are of a homogeneous nature, comply with the grades nominated by the Buyer and are of a quality widely accepted in the industry. Unless otherwise agreed in the Bunker Confirmation, the Marine Fuels will comply with ISO Standard 8217 (E):2005. There shall be no guarantee, condition, warranty or undertaking (whether express or implied), by common law, statute or otherwise that the Marine Fuels will remain of such quality and/or condition after the determination of quality. The Seller shall have no liability for any deterioration in the condition and/or quality of the Marine Fuels after the transfer of risk in the Marine Fuels to the Buyer for any reason whatsoever.

**1.2** There are no guarantees, conditions, warranties or undertaking (express or implied), by common law, statute, or otherwise as to the satisfactory quality, merchantability, fitness, durability or suitability of the Marine Fuels for any particular purpose or otherwise, which extend beyond the description in Sub-clause 1.1.

**1.3** It is strictly the Buyer's responsibility to keep Marine Fuels delivered to the Vessel segregated from other oil products aboard the Vessel and the Seller shall under no circumstances be held responsible for the quality of delivered Marine Fuels if the same has been comingled or blended therewith aboard the Vessel. The Buyer shall be solely responsible for losses caused as a result of Marine Fuels being comingled or blended with any other oil products aboard the Vessel, including any damage the Marine Fuels may cause to such other oil products.

**1.4** If the Marine Fuels deviate from the description in Sub-clause 1.1, the Buyer shall use best endeavours to mitigate the consequences hereof.

## **2 Delivery**

**2.1** Delivery of the Marine Fuels shall be made day and night, Sundays and holidays included, at the port or place of delivery, subject always to the custom of that port or place.

**2.2** When placing an order, the Buyer shall designate a date or range of dates for commencement of delivery of the Marine Fuels, which dates shall only apply once confirmed in the Bunker Confirmation. The Buyer, or its agents at the port or place of delivery, shall give the Seller or its representatives at the port or place of delivery, seventy-two (72) and forty-eight (48) hours approximate and twenty-four (24) hours definite notice of the Vessel's time of arrival and the location.

**2.3** The Seller shall be in possession of all permits required to comply with relevant regulations pertaining to delivery of Marine Fuels at the port or place of delivery and subject to local laws, render all necessary assistance which may be reasonably required to make connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold.

**2.4** The Buyer shall be responsible for making all connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold and ensure that the hose(s) are properly connected to the Vessel's bunker manifold prior to commencement of delivery. The Buyer shall further ensure that the Vessel is in possession of all certificates required to comply with relevant regulations pertaining to receipt of the Marine Fuels at the port or place of delivery and that the master of the Vessel a) advises the Seller in writing, prior to delivery, of the maximum allowable pumping rate and pressure and agree on communication and emergency shut-down procedures; b) notifies the Seller in writing prior to delivery, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Marine Fuels, and c) provides a free side to receive the Marine Fuels and render all necessary assistance which may reasonably be required to moor or unmoor the Bunker Tanker, as applicable.

## **3 Sampling**

**3.1** The Seller shall arrange for a representative sample of each grade of Marine Fuel to be drawn throughout the entire bunkering operation and that sample shall be thoroughly mixed and carefully divided into four identical samples. The Buyer or its representatives has the right to be present during the sampling, however, the absence of the Buyer or its representatives shall not prejudice the validity of the samples taken. The samples shall be drawn at a point determined in the Seller's sole discretion and using a sampling device which shall be constructed in such a way so as to prevent the sampling device and the sample from being tampered with throughout the transfer period. The samples shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, product name, delivery date and place, point of sampling and seal number, authenticated with the Vessel's

stamp and signed by the Seller's representative and the master of the Vessel or his authorised representative. If the Marine Fuel is delivered by more than one Bunker Tanker, the sampling procedure shall be repeated for each Bunker Tanker.

**3.2** Two samples shall be retained by the Seller for a minimum of forty-five (45) Days after delivery of the Marine Fuels to the Vessel or, on being requested in writing by the Buyer, for as long as the Buyer may reasonably require. The other two samples shall be retained by the Buyer on board the Vessel for an equal number of Days. In the event of a dispute relating to the quality of the Marine Fuels supplied, the samples drawn by the Bunker Tanker and retained by the Seller shall be conclusive, notwithstanding whether other samples have been recorded on the Delivery Receipt and/or acknowledged by an agent or representative of the Seller. Only the results of the testing of these two samples shall be admissible in any proceedings to prove the quality of the Marine Fuels provided.

#### **4 Quantities/Measurements**

**4.1** The quantities of Marine Fuels delivered shall be the quantities nominated in the Bunker Confirmation with a tolerance of +/- ten percent (10%) in the Seller's option unless otherwise expressly agreed in the Bunker Confirmation, however the Seller's obligation to supply such quantities shall be subject to availability thereof from the Seller's source of supply at the time and place of requested delivery. The quantities shall, unless otherwise determined in the reasonable discretion of the Seller, be determined from the official gauge or meter of the Bunker Tanker effecting delivery, or in case of delivery ex-wharf, of the shore-meter. The Marine Fuels shall be measured and calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.

**4.2** The Seller shall measure the quantity of the Marine Fuels delivered and the Buyer (or its representative) may at its own expense witness such measurement. All such measurements made by the Seller shall be conclusive and final. The Seller shall record the quantity of fuel delivered on the Delivery Receipt and the Buyer will be charged for the Marine Fuels on the basis thereof.

#### **5 Documentation**

**5.1** Before commencement of delivery the Seller shall, without obligation, endeavour to present a bunker requisition form or similar document, duly signed by the Seller or its representative, which shall contain the quantities to be delivered and all information required in accordance with the Bunker Confirmation or any subsequent amendments thereof, including, in particular, the values for viscosity, density, sulphur and flash point.

**5.2** Once the delivery is completed and quantities measured, a Delivery Receipt shall be presented to the master of the Vessel or his authorised representative containing the delivered quantity in volume units, density in either kg/L or kg/m<sup>3</sup> at fifteen (15) degrees Celsius as per ISO 3675, flash point, sulphur content in % m/m as per ISO 8754 and viscosity. The master or his representative shall sign the Delivery Receipt, and return it to the Seller or its representative. A duplicate copy shall be retained by the Vessel.

**5.3** In the event the master of the Vessel is not satisfied with the sampling, quality, quantity or any other matter concerning the Marine Fuels or delivery thereof, he shall take immediate phone contact to the Seller's 24/7 phone number stated in the lower right footer of the Bunker Confirmation or to the Buyer, whom must take immediate action on the complaints to solve the issue raised by the master of the Vessel.

**5.4** The Buyer warrants that it is authorized by the Vessel's owner(s) and/or operator(s) to order the Marine Fuels delivered to the Vessel and that it has provided a copy of these General Terms and Conditions to the Vessel's owner(s) and operator(s). The Buyer further warrants that by receiving the Marine Fuels and signing the Bunker Delivery Receipt, the master or the chief engineer acknowledges with binding effect for the Buyer that the Vessel is bound by the terms and conditions contained herein.

#### **6 Price**

**6.1** The price of the Marine Fuels shall be in the amount expressed per unit and in the currency stated in the Bunker Confirmation for each grade of Marine Fuels delivered to the Vessel free delivered/ex-wharf as applicable and stated in the Bunker Confirmation. In the event the price is quoted in volume units, conversion to standard volume shall be at sixty (60) degrees Fahrenheit or at fifteen (15) degrees Celsius.

**6.2** In addition to the price stated in the Bunker Confirmation, and unless otherwise expressly agreed in the Bunker Confirmation, the Buyer shall pay any and all additional charges associated with the delivery, including, but not limited to, wharfage charges, barging charges, mooring charges, port dues, overtime charges incurred if delivery takes place outside of regular working days and hours at the relevant port of delivery, and duties, taxes, charges and tariffs in the country where delivery takes place. Where the Marine Fuels are supplied without payment by the Buyer of duties and taxes (which shall include, but not be limited to, customs duty, excise duty, VAT, GST and sales tax), the Buyer shall indemnify the Seller against any duties, taxes, charges, costs, liability, interest

and penalties that may be incurred by the Seller, at any time, as a result of the failure of the Buyer to provide any necessary proof or other supporting documentation, within the requisite time period specified by the applicable law, regulation or procedure.

## **7 Payment**

**7.1** Payment for the Marine Fuels shall be made in full, without set-off, counterclaim, deduction and/or discount, free of bank charges by the Buyer as stated in the Bunker Confirmation. In the event payment has been made in advance of delivery, same shall be adjusted on the basis of the actual quantities of Marine Fuels delivered and additional payment and/or refund shall be made within five Days after the completion of delivery. Should the Buyer appear, in the reasonable opinion of the Seller, to be in financial difficulty or unable to meet its obligations to other creditors as they become due, the Seller on written notice to the Buyer may accelerate the payment date hereunder in which case payment is immediately due. In consideration of this acceleration, the Buyer is entitled to a credit against the principal amount due of two per cent (2%) per Month (prorated over thirty (30) Days) for every Day the payment is early.

**7.2** Payment shall be deemed to have been made at the time the funds are credited to the bank account designated by the Seller. Payment shall be made on the due date or, where this is a non-business day, on the nearest business day prior to the due date.

**7.3** In the event the Buyer is requested to make payment to a bank account other than the one stated in the Bunker Confirmation and/or invoice, the Buyer must confirm such change before remitting payment, by either (1) verifying the account information's compliance with the information available through the invoice checker at [www.monjasa.com/company/invoice-checker](http://www.monjasa.com/company/invoice-checker) or (2) emailing the Seller directly to the email address from which the Bunker Confirmation was sent and by calling the responsible bunker trader at the Seller. If payment is made to an account other than the one designated in the Bunker Confirmation or verified in accordance with this Sub-clause, and the funds are not received in the Seller's account, payment has not occurred.

**7.4** Any delay in payment and/or refund shall entitle either Party to interest at the rate of two per cent (2%) per Month or any part thereof. Any payments made by the Buyer and received by the Seller shall be credited first against any interest owed under this section after which the balance of the payment, if any, shall be credited against the principal debt. Furthermore, the Buyer shall indemnify and hold harmless the Seller against any loss which is caused by currency fluctuations between the currency agreed in the Bunker Confirmation and the value of US Dollars from the due date of the invoice until payment is received by the Seller.

**7.5** Where the Seller has assigned the Buyer a certain credit line it has done so in its absolute discretion and without prejudice to any rights of the Seller in these General Terms and Conditions or otherwise. Such credit line will be on a global basis to cover combined outstandings under the Contract and any other contracts (the "Credit Limit"). The Seller reserves the right to vary this Credit Limit from time to time. Should the Seller's exposure (as defined by the Seller) between the Monjasa Group and the Buyer group at any given time exceed the credit limit or should the Seller decide (in its sole and unfettered discretion) to reduce or suspend the Credit Limit, then the Seller may require the Buyer, within two New York banking days, to (i) make a prepayment to the Seller or (ii) pay any outstanding invoices due under the Contract or any other contracts between the Seller or any Monjasa Group company and the Buyer or any Buyer Group company. If the Buyer fails to make such prepayment or payment within the period specified, the Seller may, in its sole and unfettered discretion, call on or cash any surety or collateral provided by the Buyer group, suspend, cancel or continue with the delivery and claim the Buyer for all damages occasioned by the Buyer's failure. Any costs incurred by the Seller whilst awaiting the Buyer's pre-payment or payment as above shall be for the Buyer's account.

**7.6** If the Buyer has not paid any amount due to the Seller in accordance with the Contract the Seller group shall be entitled to set-off any amounts under the specific Contract or any other contract against any amount owed to the Buyer group regardless of the title to the Marine Fuels, the place and method of payment, the currency of either payment obligation, whether the payment obligation has arisen from the specific Contract or not, and whether the payment obligation has arisen from agreements between the Parties and/or any affiliates or subsidiaries of the Parties.

**7.7** The Seller shall have the right to settle any payment(s) received by the Buyer or its representative against any due invoice(s) issued by the Seller group to the Buyer group, including but not limited to invoices for legal fees and other charges, regardless of the Buyer's designation or marking of the payment(s) or communication between the Parties.

**7.8** In the event of non-payment, the Seller reserves the right to pursue all legal remedies available to recover the amount owed. The Seller shall have a maritime lien on the Vessel until payment and interest have been received by the Seller. The Seller is entitled to rely on any provision of law of the flag state of the Vessel, the place of delivery or where the Vessel is located granting the Seller maritime lien in the Vessel and/or providing for the right to arrest the Vessel. Nothing in these terms or the Bunker Confirmation shall be construed to limit the rights or legal remedies that the Seller may have against the Vessel or the Buyer in any jurisdiction. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien attached to the Vessel. 'No-Lien' stamps or remarks in any form or wording on the Delivery Receipt(s) or in any other document, letter, e-mail or similar received from owners

shall be invalid and of no effect, and shall in no way impair the Seller's lien or discharge the Vessel's responsibility for debts under the Contract. If for whatever reason the Seller should not be able to exercise a maritime lien on the Vessel, the Seller shall subsequently have a contractual lien on the Vessel for all sums payable to the Seller under these General Terms and Conditions.

## **8 Claims**

**8.1** Any dispute as to the accuracy of the measurements of the quantity delivered must be notified by phone to the Seller on its 24/7 number stated in the lower right footer of the Bunker Confirmation at the time of delivery and before signing the Delivery Receipt or a letter of protest. Any claim as to short delivery shall be presented by the Buyer in writing within twenty-four (24) hours from the time of delivery together with all documents supporting the Buyer's claim, failing which any such claim shall be waived and barred. The Buyer shall be charged for the Seller's additional expenses and lost profits if the Buyer fails to take delivery of the quantity of Marine Fuels that the Seller opts to deliver in accordance with Clause 4.1.

**8.2** Any claim as to the quality of the Marine Fuels must be notified in writing promptly after the circumstances giving rise to such claim have been discovered. If the Buyer does not notify the Seller of any such claim and provide all supporting documentation for such claim within fifteen (15) Days of the date of delivery, such claim shall be deemed to be waived and barred. If a quality claim is raised in accordance with this Sub-clause, the quality of the Marine Fuels shall be analysed by a mutually-agreed, qualified and independent internationally recognized laboratory. The Seller shall designate a minimum of two such laboratories, and the Buyer shall choose one laboratory from those designated for a final and binding test. The Seller shall provide the laboratory with one of the samples retained by it as per Sub-clause 3.2. The analysis shall be established by tests in accordance with those specified under ISO Standard 8217(E):2005 or equivalent and only the parameters in dispute shall be tested. Unless otherwise agreed, the expenses of the analysis shall be for the account of the Party whose claim is found wrong by the analysis.

**8.3** Any notice of a claim regarding delay must be given to the Seller no later than fifteen (15) Days after the date of delivery, together with all documents supporting the Buyer's claim, failing which any such claim shall be waived and barred. If a delay results from the Buyer's failure to give proper notices and/or to comply with the notices given pursuant to Sub-clause 2.2 or the Buyer's Vessel failing to receive Marine Fuels at the pumping rate referred to in Sub-clause 2.4 then the Seller suffering such delay shall be entitled to compensation from the Buyer for such delay.

**8.4** If the Buyer fails to take delivery within the date or range of dates for delivery confirmed in the Bunker Confirmation, the Seller can choose to (i) deliver to the Buyer on a date of the Seller's choice at the price stated in the Bunker Confirmation plus any additional costs incurred by the Seller in delivering on a date other than the date or range of dates confirmed in the Bunker Confirmation, including any additional costs due to an increase in the relevant Platts publications or similar quotation, which may be obtained from the Seller upon request, (ii) accept a new date or range of dates for delivery of the Marine Fuels as the basis of a new contract for which a new price can be agreed upon with the Buyer, or (iii) deem the Contract as cancelled. Regardless of the Seller's choice, the Buyer shall be deemed in breach of the Contract and shall be fully liable towards the Seller.

**8.5** Any claim against the Seller arising out of the Contract shall be deemed waived and time barred if the Buyer fails to commence legal proceedings for such claim at relevant court or arbitral tribunal within twelve (12) Months after the date of delivery of the Marine Fuels.

## **9 Liability**

**9.1** The Seller's total liability to the Buyer for any and all categories of loss and/or damages of whatsoever kind and type shall not exceed the total purchase price of the provision of the Marine Fuels that is the subject of the claim. This limitation of the Seller's liability to the Buyer shall apply regardless of whether that liability arises in contract, tort or any other way whatsoever and shall be in addition to any other exclusions or limitations available to the Seller under law. In any case, the Seller shall have no liability unless and until the Seller has received full payment from the Buyer of all sums due under the Contract.

**9.2** Except as stated in Clause 14 and 15, neither Party shall be liable, whether in contract, tort or any way whatsoever, for any indirect, special, punitive, exemplary, incidental or consequential losses, damages or expenses of any kind. Further the Seller shall not be liable for loss of actual, projected and/or prospective profits, anticipated costs savings, loss of other contracts or financial or economic loss, loss of time, detention, deviation and/or off-hire.

**9.3** The Seller and the Buyer recognize the risks inherent in ship-to-ship operations and that the decision to proceed with such operations is in the sound discretion of the masters of the vessels involved.

**9.4** The Buyer shall only be entitled to recover losses with respect to demurrage, quantity, quality and/or delay claims, damage caused by contact, collision, swell and/or any other weather or sea related condition or incident and any other losses or damages

from the Seller to the extent that the Seller is able to recover, and does recover, such costs, losses or damages from the Seller's supplier or the loading terminal operator. The Seller shall not be obliged to pay any amount to the Buyer in excess thereof. The Seller shall however use reasonable endeavours to recover such costs, losses or damages for which the Buyer has presented a claim in accordance herewith.

**9.5** The Buyer shall indemnify and hold harmless the Seller for all legal fees and court fees as well as any expenses and costs incurred by the Seller in connection with the Seller's recovery of damages and losses inflicted on the Seller due to the Buyer's breach of any of its obligations under the Contract and enforcement of maritime lien and other available remedies under applicable laws.

## **10 Risk/Title**

**10.1** Risk of loss and all responsibility for any damage caused by or to the Marine Fuels, including deterioration, evaporation or any other condition or incident related thereto, shall pass to the Buyer once the Marine Fuels have passed the Seller's flange connecting the Bunker Tanker to the Vessel's bunker manifold.

**10.2** Title to the Marine Fuels shall pass to the Buyer upon payment for the Marine Fuels delivered. Until payment is made, on behalf of themselves and the Vessel, the Buyer agrees that it is in possession of the Marine Fuels solely as bailee for the Seller, and shall not be entitled to use the Marine Fuels delivered other than for the propulsion of the Vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the Marine Fuels to any third party or other vessel. The Buyer agrees that upon demand the Seller may remove the Marine Fuels from the Vessel without judicial intervention if the purchase price is not timely paid.

## **11 Agents and brokers**

**11.1** The person or entity with whom the Seller is corresponding shall be deemed a Buyer and responsible for payment for the Marine Fuels unless that person specifically declares in writing to the Seller prior to dispatch by the Seller of the Bunker Confirmation that it is not the Buyer and at the same time provides in writing to the Seller the full name and address of the Buyer. If the person or entity with whom the Seller is corresponding is an agent, a broker or a manager of the Buyer then such person or entity shall however be jointly and severally liable with the Buyer for all obligations of the Buyer under the Contract notwithstanding that such person or entity purports to contract as an agent.

## **12 Cancellation**

**12.1** Both Parties are bound to perform their contractual obligations even if events have rendered performance more onerous or less favourable than could have been expected at the time of the conclusion of the Contract. Should the Buyer cancel the Contract or in the event the Vessel fails to take delivery of part or all of the requested Marine Fuels, the Buyer shall be deemed in breach of the Contract and shall pay to the Seller a) a cancellation fee of five per cent (5%) of the order price, and b) any documented costs and damages incurred by the Seller as a result of such cancellation or failure to take delivery.

## **13 Termination**

**13.1** Without prejudice to accrued rights hereunder, the Seller shall be entitled to terminate the Contract if any application is made, any proceedings are commenced or any order or judgment are given by any court for the liquidation, winding up, bankruptcy, insolvency, dissolution, administration, re-organisation or similar of the Buyer. Similarly, the Seller shall be entitled to terminate if the Buyer or any of its affiliates fails to pay their debts as they become due, suspend payment of their financial obligations, cease to carry on business, make any special arrangement with their creditors or if any act is done or event occur which, under the applicable law, has a substantially similar effect to any of these acts or events.

## **14 Sanctions Compliance**

**14.1** This Clause shall apply where any sanction, prohibition or restriction is imposed on any specified persons, entities or bodies including the designation of any specified vessels or fleets under United Nations Resolutions or trade economic sanctions, laws or regulations of the European Union or the United States of America. The warranties set forth in this Clause shall apply at the date of entering into a Contract and continuing until delivery of the Marine Fuels and payment by the Buyer to the Seller has been made in full.

**14.2** The Parties warrant that i) neither Party is subject to any of the sanctions, prohibitions, restrictions or designation referred to in Sub-clause 14.1 which prohibit or render unlawful any performance under the Contract; and ii) the Parties are respectively selling and buying the Marine Fuels as principals and not as agents, trustees or nominees of any person with whom transactions are prohibited or restricted under Sub-clause 14.1 above.

**14.3** The Buyer further warrants that i) the Vessel is not a designated vessel and is not and will not be chartered to any entity or transport any cargo contrary to the restrictions or prohibitions in Sub-clause 14.1 above; ii) the Marine Fuels purchased under the Contract will not be sold to any entity subject to the sanctions, prohibitions, restrictions or designation referred to in Sub-clause 14.1; and iii) should the Buyer sell any of the Marine Fuels purchased under the Contract, it shall obtain the same warranty from its own buyers.

**14.4** The Seller further warrants that the Marine Fuels do not originate or have been exported from a place that is subject to any of the sanctions, prohibitions, restrictions or designation referred to in Sub-clause 14.1 above.

**14.5** If at any time during the performance of the Contract either Party has reasonable grounds to believe that the other Party is in breach of a warranty as aforesaid, the Party not in breach may terminate the Contract forthwith.

**14.6** Without prejudice to the generality of the foregoing, the Seller reserves the right at all times, whether prior to or after confirmation of nomination of a Vessel, to decline to supply Marine Fuels to such Vessel if the Seller reasonably considers that such supply could cause the Seller to be in violation of, or exposed to, punitive measures under any sanctions, prohibitions, restrictions or designation referred to in Sub-Clause 14.1 above.

**14.7** Notwithstanding anything to the contrary in this Clause, the Buyer and the Seller shall not be required to do anything which constitutes a violation of the laws and regulation of any state or intergovernmental organisation to which either of them is subject.

**14.8** The Buyer and the Seller shall be liable to indemnify the other Party against any and all claims, including return of any payment, losses, damage, costs and fines whatsoever suffered by the other Party resulting from any breach of warranty as aforesaid and in accordance herewith.

## **15 Anti-bribery & Corruption**

**15.1** The Seller and the Buyer warrant and undertake that in connection with the sale and purchase of Marine Fuels under the Contract they will each respectively comply with all applicable laws, regulations, rules, decrees and/or official government orders and requirements of the United States, the European Union, the United Kingdom, Denmark, and any other relevant jurisdiction relating to anti-money laundering and anti-bribery.

## **16 Force Majeure**

**16.1** Except in relation to payment obligations under the Contract, neither Party shall be responsible to the other for any loss, damage, delay or failure in performance of obligations required of them under the Contract, resulting from an Act of God, war, civil commotion, riot, quarantine, strike, stoppage, lock-out or labour dispute, epidemics, arrest, restraint of princes, rulers and people, piracy, acts of terrorism, trade restrictions, fire and explosion, accident, any government or lawful authority requisition, control, intervention, requirement, order or interference or any other event whatsoever which is beyond the control of the Parties and cannot be avoided or guarded against by the exercise of due diligence.

**16.2** In addition, the Seller shall not be liable for loss, damage, delay or failure to perform all or any part of its obligations under the Contract resulting from delay of the Bunker Tanker arriving at the delivery location due to breakdown, bad weather, bad visibility, the Buyer's failure to comply with the Seller's instructions, shortage or delay in the delivery of the Marine Fuels to the Bunker Tanker at the load port due to the producing, manufacturing or blending of the Marine Fuels outside the load port or the transportation of the Marine Fuels to the load port or any other cause beyond the control of the Seller.

## **17 Safety and Environment**

**17.1** In the event of any spillage (which for the purpose of this Clause shall mean any leakage, escape, spillage or overflow of the Marine Fuels) causing or likely to cause pollution occurring at any stage of the bunkering operation, the Buyer and the Seller shall jointly, and regardless as to whether the Buyer or the Seller is responsible, immediately take such actions as are reasonably necessary to abate the spill and effect clean up and which shall always be conducted in accordance with such local laws and regulations which may compulsorily apply.

**17.2** Where it is a compulsory requirement of the law of the port or place of delivery of the Marine Fuels that the Seller shall have in place its own oil spill contingency plans, the Seller shall ensure that valid oil spill contingency plans approved by the relevant authorities are in effect to the extent that is so required.

**17.3** Any loss of or damage to the Marine Fuels during discharge or any pollution of or harm to the environment shall in each case be the responsibility of and for the account of the Party responsible for the incident. Any claim made against or losses sustained by the other Party in respect of damage to any facilities at the discharge terminal or arising out of any pollution of or harm to the environment shall be for the account of the Party responsible for the incident.

**17.4** The Seller shall use its best endeavours to ensure that the bunker supplying company is fully insured for oil spill liabilities as required by statutory rules or regulations. Proof and conditions of such coverage established by the bunker supplying company shall be made available to the Buyer at its request, as soon as practically possible.

**17.5** The Buyer warrants that the Vessel is entered with a P&I Club and insured for pollution liability risks.

**17.6** The Buyer warrants that it enforces a company drug and alcohol policy on board its vessels, whereby the Buyer's personnel must not be intoxicated at any time on board and which the Seller's personnel must comply with while on board such vessels. It is understood and agreed that the selling, possession, distribution, use or being under the influence of any controlled substance or dangerous drugs other than those medically prescribed is prohibited.

**17.7** The Seller hereby advises the Buyer that it enforces a company drug and alcohol policy in its facilities and on board the Bunker Tanker, which the Buyer's personnel must comply with while in such facilities or on board the Bunker Tanker. It is understood and agreed 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.

## **18 Confidentiality**

**18.1** Neither Party shall disclose to third parties any Confidential Information except with the prior written consent of the other Party, or to the extent required by law or regulation or by request of a government or agency thereof, or to the extent the disclosure is made in connection with an arbitration between the Parties or an action to enforce or vacate an arbitration award. The Parties shall take reasonable precautions to ensure that no unauthorised disclosure of Confidential Information takes place. If a Party is uncertain to whether information is confidential, that Party shall consult with the other Party. Notwithstanding the above, the Seller may at its sole discretion disclose Confidential Information to third parties in its normal course of business, however the disclosure shall be limited to information relevant for the Contract.

**18.2** Should either Party be required by law to disclose Confidential Information, the disclosing Party must notify the other Party and shall disclose only the minimum Confidential Information required to satisfy legal requirements.

**18.3** Information is not confidential for the purposes of this Clause if it was in the possession of the Party prior to receipt from the other Party; becomes public available other than as a result of a breach of the Contract by one of the Parties; or is lawfully received from a third party.

**18.4** This Clause shall survive termination of the Contract.

## **19 Assignment and Subcontracting**

**19.1** The Buyer may only assign or novate any of its rights or obligations under the Contract with prior written consent of the Seller. The Seller may, at its sole discretion assign or novate the Contract wholly or partially, including but not limited to the right to receive payments thereunder, and/or perform through subcontractors. If supply is performed through subcontractors, these present General Terms and Conditions shall prevail over any subcontractor's general terms and conditions regardless of anything stated to the contrary on any subcontractor's bunker delivery note/receipt.

## **20 Partial Validity**

**20.1** If any provision of the Contract is or becomes or is held to be illegal, invalid or unenforceable in any respect under any law or jurisdiction, the provision shall be deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if such amendment is not possible the provision shall be deemed to be deleted from the Contract to the extent of such illegality, invalidity or unenforceability, and the remaining provisions shall continue in full force and effect and shall not in any way be affected or impaired thereby.

## **21 Dispute Resolution**

**21.1** The construction, validity and performance of the Contract and any dispute or claim arising out of or in connection with it or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and con-



strued in accordance with the Maritime Law of the United States, Title 9 of the United States Code, and the Uniform Commercial Code as applied in New York. Any dispute arising out of or in connection with the Contract shall be referred to arbitration before three persons at New York, one to be appointed by each of the Parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. In cases where neither the claim nor any counterclaim exceeds the sum of US\$75,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced. The arbitrators shall be commercial men and/or familiar with shipping matters.

**21.2** This agreement to arbitrate is without prejudice to Seller's right to use any and all legal process to obtain security for its claims in the United States and/or anywhere in the world pending resolution of the merits of its claim in arbitration.

**21.3** This agreement to arbitrate shall not limit the right of the Seller to commence any proceedings against the Buyer in any other jurisdiction, hereunder to commence proceedings on the merits in the jurisdiction pending an arrest of the Vessels and/or other property.

**21.4** The Parties hereby agree that any arbitration award issued by the Society of Maritime Arbitrators, Inc. shall be confidential and may not be published by the Society of Maritime Arbitrators, Inc. or disclosed in any way unless expressly agreed and authorized by the Parties in a signed writing.

## 22 Notice

**22.1** Any Party giving notice under the Contract shall ensure that it is effectively given. Notice shall be considered as received by a Party on the date it is received by that Party during normal working hours. If notice is received after normal working hours it shall be considered as received on the recipients' next working day. Notice to the Buyer is effective if sent by email and/or regular mail to the Party ordering the Marine Fuels. Notice to the Seller is effective if sent by email and/or regular mail to the Monjasa entity named on the Bunker Confirmation.

## 23 Definitions

**23.1** Throughout these General Terms and Conditions, except where the context otherwise requires, the following definitions shall be applied:

**"Bunker Confirmation"** means the Seller's written confirmation of each sale and delivery of Marine Fuels.

**"Bunker Tanker"** means bunker barge or tanker, tank truck, terminal, container or shore tank supplying Marine Fuels to the Vessel.

**"Buyer"** means the Party or Parties contracting to purchase and/or take delivery of the Marine Fuels. **"Clause"** means a clause in these General Terms and Conditions, and **"Sub-clause"** means a section thereof.

**"Confidential Information"** means business details and proprietary information of the Parties, including but not limited to pricing and credit terms, not generally available to the public.

**"Contract"** means an agreement between the Parties for a sale and delivery of Marine Fuels as codified by the Seller's Bunker Confirmation and being subject to these General Terms and Conditions.

**"Day"** means a calendar day, unless otherwise stated.

**"Delivery Receipt"** means the document provided by the Bunker Tanker to the Vessel after delivery of the Marine Fuel(s) is complete stating the quantity and grade(s) of Marine Fuel delivered.

**"General Terms and Conditions"** means the present document.

**"Marine Fuels"** means products delivered or to be delivered to the Vessel.

**"Monjasa Group"** means Monjasa Holding A/S and any fully or partly owned subsidiaries thereof bearing or operating under the **"Monjasa"** name.

**"Month"** means thirty (30) calendar days.

**“Parties”** means the Seller and the Buyer collectively.

**“Party”** means the Seller or the Buyer.

**“Seller”** means the Monjasa Group entity contracting to sell and deliver Marine Fuels. Any warranty, assurance, guarantee of performance or liability under the Contract shall only be related to the Monjasa entity contracting to sell and deliver the Marine Fuels and shall not extend to other Monjasa Group entities.

**“Vessel”** means the vessel nominated by the Buyer to receive the Marine Fuels.