



# GENERAL TERMS AND CONDITIONS OF SALE

## Of Marlin Global Energy Private Limited effective from

1<sup>st</sup> June, 2020.

### 1. APPLICABILITY

**1.1** These general terms and conditions shall apply to all agreements under which MARLIN GLOBAL ENERGY PRIVATE LIMITED. (Hereinafter called "MGEPL") agrees to sell and deliver or procure the sale and delivery of marine fuels and other related services.

**1.2** These conditions apply to all offers, quotations, order confirmation(s), agreements, services and all subsequent contracts of whatever nature, except where otherwise expressly agreed in writing by MGEPL.

**1.3** The applicability of any terms and conditions to which reference is made by either the customer, the supplier or any other party is herewith explicitly rejected.

**1.4** Any deviations from these General Terms and Conditions or contracts concluded between parties need to be agreed upon in writing by MGEPL.

**1.5** In the case that, for whatever reason, one or more of the (sub)clauses of these general terms and conditions are invalid, the other (sub)clauses hereof shall remain valid and be binding upon the parties.

### 2. DEFINITIONS

Except where the context otherwise requires, the following definitions shall be applied throughout this contract:

**2.1 'The Company'** means Marlin Global Energy Private Limited.

**2.2 'Agent'** means the party acting on behalf of the Buyer, or the Vessel and/or both.

**2.3 'Marine Bunker Fuel'** means bunker fuel and/or oil products of whatever type or grade delivered by the seller under and pursuant to the terms of this bunker contract, including the services rendered in connection thereto.



**2.4 'BDN'** means Bunker Delivery Note or Bunker Delivery Receipt or equivalent delivery document is the document provided by the Bunker Tanker/Bunker Barge to the vessel when the delivery of the Bunker(s) is complete stating the quantity and grade(s) of Bunker(s) delivered.

**2.5 'Contract'** means the contract between the Buyer and Seller for the purchase of Products consisting of these General Terms and Conditions and the Order Confirmation issued by the Seller.

**2.6 'Order Confirmation'** written confirmation issued by the Seller to the buyer setting out the details of the supply for each sale and delivery of Bunker(s).

**2.7 'Buyer'** on a joint and several basis, the party ordering Marine Bunker Oil or the party on whose behalf the Marine Bunker Oil is being ordered which shall include the owners, managers, operators, time charterers, bareboat charterers and charterers of the vessel or any party requesting offers or quotations for or ordering Bunker Fuel and any party/entity on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made.

**2.8 'Banking Day'** shall mean a day on which banks are open in the places of business of the seller and the Buyer and, where a remittance is in US dollars, in New York or, if other than US dollars, in the country of the price currency.

**2.9 'Delivery Date range'** means the date range designated by the seller in the Order confirmation during which the Marine Fuel is to be delivered.

**2.10 'General Terms'** means these set of General terms of sale of Marine Fuel in force as of June 2020 and any amendments thereto and agreed that the Buyer has bought and the seller has sold the Products as per the terms of the Contracts and these set of GTCS.

**2.11 'Party'** means the Seller or the Buyer and the "Parties" means the seller and the buyer collectively.

**2.12 'Seller'** means the entity that appears as the seller in the contract, here it is Marlin Global Energy Private Ltd. with its office in Vizag, India.

**2.13 'Products'** means the Marine Fuel, Lubricants or related products to be delivered or that have been delivered.

**2.14 'Vessel'** means the vessel nominated by the buyer, including any shore-tank, rig, or other unit or installation supplied by the seller, to which the delivery of product is made.

### **3. OFFERS, QUOTATIONS, PRICES AND OTHER CHARGES**

**3.1** All offers of the company are without engagement and shall be subject to confirmation.



- 3.2** An Agreement shall only be binding on the Seller upon written confirmation from the Seller.
- 3.3.** Agreements entered into by brokers or any other representative on behalf of the Seller shall only bind the Seller upon written confirmation from the Seller.
- 3.4.** If the Buyer's confirmation differs from the confirmation given by the Seller, the latter shall be binding.
- 3.5.** The price of the Bunker Fuel shall be the amount expressed per unit in the Bunker Confirmation for each grade of Bunker Fuel delivered to the Vessel.
- 3.6** The Seller's offer is based on the applicable taxes, duties, costs, charges and price level of components for Bunkers existing at the time of the conclusion of the agreement (the time of Seller's confirmation). Any later or additional tax, assessment, duty or other charges of whatever nature and however named, or any increase of components for Bunkers or any additional costs borne by the Seller whatsoever caused by any change in the Seller's contemplated source of supply or otherwise, coming into existence after the agreement has been concluded, shall be added to the agreed purchase price, provided that the Seller shall give the Buyer prior notice of this effect within a reasonable time after the Seller becoming aware of the relevant circumstances.
- 3.7** The Buyer shall pay any additional expenses or costs such as barging, demurrage, wharfage, port dues, duties, taxes, fees and any other costs including, without limitation, those imposed by governmental authorities.
- 3.8** All prices and/or tariffs are exclusive VAT, GST, duties and other taxes unless specifically stated otherwise.
- 3.9** If the party requesting Bunkers is not the Owner of the Vessel, the Seller shall have the right to insist as a precondition of sale that a payment guarantee is provided by the Owner. Owner is specified in Section 1. The Seller shall have the right to cancel any agreement with the Buyer at any time, if such payment guarantee is not received upon request from the Seller to the Owner.
- 3.10** Unless confirmed otherwise by the Seller in the Bunker Confirmation, the price stipulated in accordance with this clause, and additional applicable charges associated with delivery, are only valid for delivery performed to the Vessel during the Delivery Date Range. The Seller is entitled to revise the price for sale and delivery of Bunker Fuel where (a) the Delivery Date Range as agreed upon and stated in the Bunker Confirmation changes for any reason, or (b) if the Vessel's actual arrival time is more than forty-eight (48) hours after the arrival time specified in the Buyer's notice.



## 4. QUALITY

**4.1** The Buyer shall be solely responsible for nominating to the Seller the grade of Bunker Fuel for each delivery from the range of Bunker Fuel supplied by the Seller at the location in question. The Bunker Fuel supplied by the Seller shall conform to the specifications contained in the Bunker Confirmation. If the buyer requires a Marine Bunker Oil conforming to certain specific characteristics, these must, prior to the ordering, be discussed with the Company and mentioned in the order.

**4.2.** The selection and acceptance of a particular grade of Marine Bunker Oil for use in the vessel, incl. determination of compatibility with other Marine Bunker Oil already on board the vessel, shall be buyer's sole responsibility.

**4.3** The Buyer hereby warrants that it has not relied upon any representations made by or on behalf of the Seller but has relied exclusively on its own knowledge and judgement as to the fitness for its purpose of the Bunker Fuel nominated.

**4.4** Where standard specifications are being given or referred to, tolerances of 5% in quality are to be accepted without compensation or other consequences whatsoever.

## 5. QUANTITY

**5.1** The quantity of Bunker Fuel sold in each transaction shall be as agreed between the Buyer and the Seller as per the Confirmation.

**5.2** With respect to the quantity to be supplied the Seller reserves the right at all times to deviate up to ten (10) pct. from the quantity contracted for with no other consequence than corresponding invoicing. Furthermore the Seller reserves the right to deliver in one consignment or to make more than one part delivery. Each part delivery will be considered a separate contract with same conditions.

**5.3** The determination of quantity shall be made solely by the Seller (or its representative). The Seller (or its representative) shall measure the quantity of the Bunker Fuel delivered and the Buyer (or its representative) shall witness such measurement at its own expense and without delaying or hindering the delivery operations, but the absence of the Buyer (or its representative) during all or any part of the measurement process shall not prejudice the validity of the measurements.

**5.4** The quantity of Bunker Fuel delivered shall solely be determined by the gauge or meter or ullage of the barge or tank effecting the delivery or of the gauge or meter or ullage of the shore tank in case of delivery by ex-pipe and shall be conclusive of the quantity delivered. The Seller (or its representative) shall record the quantity of fuel delivered on the BDN. The Buyer accepts that the Seller's measurements in accordance with this Clause 5 shall be final and binding save for manifest error or fraud and shall be the



only measurements that will be referred to in the event of a dispute in relation to quantity. The Bunker Fuel to be delivered under this Bunker Contract shall be measured and calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables or the methods of any other recognized standards authority at discretion of the Seller. Measurements taken on board of the supplied vessel shall not be accepted.

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

## **6. SAMPLING**

**6.1** The Seller (or its representative) shall arrange for samples to be drawn at the time of delivery of the Bunker Fuel. The Buyer (or its representative) shall witness such sampling process at its own expense and without delaying or hindering the delivery operations but the absence of the Buyer (or its representative) during all or any part of the sampling process shall not prejudice the validity of the samples. Unless otherwise agreed between the Parties prior to entering into this Bunker Contract, samples shall be drawn from a point and in a manner chosen by the Seller (or its representative) in accordance with the MARPOL sampling procedures at the port or place of delivery of the Bunker Fuel.

**6.2** No samples subsequently taken shall be allowed as (additional) evidence. If any of the seals have been removed or tampered with by an unauthorized person, such sample (s) shall be deemed to have no value as evidence.

**6.3** The Seller shall take a minimum of four (4) representative samples of each grade of Bunker Fuel delivered. On completion of sampling, all samples drawn by the Seller or its representatives are to be securely sealed and labelled by the Seller (or its representative) as well as signed by the Seller (or its representative) and, if present, the Buyer (or its representative). At least two (2) of these representative samples shall be given to the Buyer, (one) of these shall be for MARPOL compliance purposes. (Two) samples shall be retained by the Seller for a period of thirty (30) days following delivery.

**6.4** Sampling shall be performed in the presence of the Buyer and Seller, or their representatives, but the failure of the Buyer to attend the sampling process shall not prejudice the validity of the samples. No samples subsequently taken shall be allowed as (additional) evidence. If any of the seals have been removed or tampered with by an unauthorized person, such sample (s) shall be deemed to have no value as evidence.

**6.5.** Where there is a complaint concerning the quality of the Bunker by the Buyer, the results of analysis of the Seller's or its representative's drawn samples performed by an independent laboratory mutually appointed by the Buyer and Seller shall be conclusive to determine the quality of the Bunker Fuel supplied and shall be the sole binding evidence for the quality of the Bunker Fuel supplied to the Vessel. Should



the independent laboratory determination of quality fall within the established test precision range (repeatability and reproducibility) for said parameter, no claim to the Seller shall be made by the Buyer.

6.6. The Seller and the Buyer shall seek to agree on an independent laboratory to perform analysis, but if the Buyer fails to reply to the Seller's request to agree an appointment within 7 days from receipt of such notice or if the parties cannot agree then the Seller shall select the laboratory and such selection shall be final and binding for all parties involved.

## **7. DELIEVERY**

**7.1.** The Buyer shall provide the Seller with a minimum of three (3) working days prior written notice before the arrival of Vessel specifying the following: Vessel's name, estimated date and time of arrival of the Vessel, delivery location at the port, method of delivery and confirmation of the receiving rates, grades and quantities of Bunker Fuel required.

**7.2.** In the event that the Buyer provides a notice of less than three (3) working days as required in Clause 7.1, the Seller shall use its reasonable endeavours, but shall be under no obligation to make the delivery. Where despite short notice the Seller agrees to make delivery, the Seller shall not be liable for any resulting delay in delivery and the Buyer shall reimburse any and all costs incurred by the Seller in making such delivery.

**7.3.** 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 arrival and the location and time at which delivery is required. If the Seller agrees to supply Bunker Fuel in circumstances where the Buyer does not give notice in the time periods required above, then the Seller's supply obligation shall be limited to a reasonable endeavours obligation.

**7.4.** Notwithstanding any other provisions of the Contract the Seller's obligation is to use reasonable endeavours to commence delivery promptly in accordance with the agreed delivery period stated in the Order Confirmation but the Seller does not guarantee the time of delivery or the pumping rate at which the Marine Fuel is to be delivered to the Vessel and the Seller shall not be liable for any consequences, losses or damages including demurrage howsoever caused suffered by the Buyer arising from the time of delivery or the rate at which Marine Fuel is pumped into the Vessel.

**7.5.** At all relevant times, delivery of Bunker Fuel shall be subject to the customs and regulations of the port or place of delivery. The Seller shall not be liable for any inability to delivery on public or dock holidays. The Seller shall not be liable for delays or for demurrage and/or for any loss due to congestion at the terminal and/or port and/or to prior commitments and/or unforeseen inflicted delay of available transportation.



**7.6.** The Buyer will take care of all the connections and disconnections of the delivery hose and will render all other necessary assistance and equipment to receive delivery of Bunker Fuels. The Buyer shall ensure that the Vessel provides a free, safe and always accessible side for the delivery of Bunker Fuels and that all necessary assistance as required by the Seller or the Seller's representative is rendered in connection with the delivery of Products. For safety reasons it is solely the master of the supply barge that determines whether mooring alongside the Vessel is safe, taking weather, swell and forecasts into decision. If clear and safe berth is unavailable, delivery may be delayed or cancelled by the Seller and all costs incurred will be for the Buyer's account.

**7.7.** Where barging is employed, barging charges shall be for the account of Buyer. The Buyer will be liable for all demurrage or additional expenses incurred by Seller if Buyer causes delay in the supply of Products. Buyer will also pay for mooring, unmooring and port dues incurred.

**7.8.** The Seller shall deliver the Bunker Fuel during regular working hours. Where, permitted by applicable regulations, the Buyer requires delivery outside such regular working hours, the Seller shall use its reasonable endeavours, but shall be under no obligation to deliver outside such regular working hours. Where the Seller delivers outside regular working hours as above, all additional costs including overtime charges incurred by Seller or its agents or contractors in making such delivery shall be borne by the Buyer.

**7.9.** The Seller is entitled to arrange deliveries based on the principle of "First Come-First Served" but reserves the right to arrange bunkering sequence following the Seller's logistics, prior engagements, priorities, obligations and deliveries. The Seller shall not be liable for demurrage or loss incurred by the Buyer due to congestion affecting the Seller's suppliers' delivery facilities, prior commitments of available barges or to any other delay in delivery. The Seller shall not be responsible for on-board safety or storage failures that may affect the delivery and shall have the right to recover from the Buyer any resulting cost incurred.

**7.10.** In the event Seller's capacity to perform becomes impracticable for any reason, including but not limited to a request, suggestion or direction by any official body in charge of supplies, priorities, rationing or allocations of bunker fuels, the Seller may, without liability, reduce or stop deliveries in such manner as it may in its sole discretion determine.

**7.11.** The Buyer shall render all necessary assistance and provide all necessary equipment required to receive delivery of the Bunker Fuel. The Buyer and the Vessel shall be responsible for all connections and disconnections between the delivery hose(s) and the Vessel's manifold and shall require the hose(s) to be properly secured and connected to the Vessel's manifold prior to the commencement of delivery of Bunker Fuel. In the event of delay in the use of delivery or barging facilities due to the Buyer or the Vessel for any reason whatsoever, the Buyer shall reimburse the Seller for any expenses, including demurrage, incurred due to such delay.

**7.12.** The Buyer warrants that the Vessel can safely receive the Bunker Fuel and shall ensure that the Vessel has all certificates required to comply with all relevant regulations relating to delivery of the Bunker



Fuel at the port or place of delivery. If in the Seller's opinion the Vessel cannot safely receive Bunker Fuel, then the Seller has the option to suspend, without any liability, the delivery until, in the Seller's opinion, the Vessel can safely receive Bunker Fuel. In case of delivery by barge, delivery into the Vessel shall not be made whenever, in the opinion of Seller or the fuel barge contractor, safe passage or clear and safe berth for the barge, whether alongside the Vessel or otherwise, is not available, or when, for any other reason, in the opinion of the Seller or the fuel barge contractor, delivery would be unsafe or inadvisable.

**7.13.** If Buyer fails to take delivery, in whole or in part, of the quantities specified in the Order Confirmation, Buyer shall be responsible for any costs resulting from Buyer's failure to take full delivery, as well as for any losses incurred by Seller including loss of profit and loss of the value of the Bunker Fuel and any losses to downgrade and/or pump back of the Bunker Fuel. The Buyer shall bear the risk of the return transport, demurrage on the barge or trucks, storage or selling of the Products.

**7.14.** If the Seller is, on behalf of Buyer, requested to make any arrangements with and secure any permission of port authorities prior to making delivery, an appropriate and early notice from Buyer notifying the Seller of the same is required.

## **8. TITLE AND RISK**

**8.1.** Risk in the Bunker Fuel, including loss, damage, deterioration, evaporation, or any other condition or incidents related thereto shall pass to the Buyer as the Bunker Fuel passes through the flange of the Vessel's manifold.

**8.2.** The title to the Bunker Fuel which the Seller has delivered to the Buyer shall remain with the Seller until the Buyer has paid for the Bunker Fuel in full. Until that time, the Buyer shall hold the Bunker Fuel as Bailee, store it in such a way that it can be identified as the Seller's property and keep it separate from Buyer's own property and the property of any other person. In the event that the Buyer fails to make payment the Seller has the right to demand immediate return of the Bunker Fuel. The Buyer shall remain liable to the Seller in conversion even if the Bunker Fuel is consumed by a third party.

**8.3.** The Buyer shall be responsible to keep the delivered Bunker Fuel segregated from any bunker fuel(s) on board the Vessel or from a different delivery to the Vessel. In no event shall the Seller be responsible for the quality of the Bunker Fuel delivered if the Bunker Fuel delivered is mixed or comingled with any other product(s) onboard the receiving Vessel. The Buyer shall be solely responsible for any losses caused by mixing or comingling the Bunker Fuel with any other oil, including any damage the Bunker Fuel may cause on other products on board the receiving Vessel.





## 9. TRANSFER THE RIGHTS

9.1 The Seller shall be entitled to transfer or encumber its rights from the contract with the Buyer to third parties. The Buyer shall not be entitled to transfer or encumber its rights from contracts with the Seller and/or the Bunker Fuel to third parties without prior written consent of the Seller.

## 10. PAYMENT

**10.1** Payment shall be in accordance with the Seller's Invoice which may be sent by facsimile, transmission, email, mail or courier. A copy of BDN shall be provided to Buyer along with the Seller's Invoice but payment shall not be conditioned upon Buyer's receipt of the original BDN. The Seller's Invoice shall be based on the quantity of Bunker Fuel delivered, and shall contain other applicable charges associated with the delivery. The volume stated in BDN is to be considered final in respect of the quantity to be invoiced.

**10.2.** Payment shall be made in full without any discount or deduction, and there shall be no withholding either in part or in full by reason of any set-off, counter-claim or for any other reason, whether relating to the Contract or past agreements or Contracts. In the event of non-payment by the Buyer of the amounts due, including any interest thereon, the Seller reserves the right to pursue such legal remedies as may be available to them to recover the amount owed.

**10.3.** Payment shall be made in US Dollars (or any equivalent currency as the Seller may require) by telegraphic or telex transfer to the Designated Bank Account. If payment is made to any other account, the Buyer shall not be released from its obligation to make payment to the Seller. All payments shall be made net of transfer charges which shall be for the Buyer's account. Payment shall be deemed to have been made on the date the payment is credited to the Designated Bank Account. If payment falls due on a non-Banking Day, then payment shall be made on or before the last Banking Day before the due date. All bank charges in respect of payments shall be for the Buyer's account

**10.4.** Payment shall be due with effect from the date of delivery and the Buyer shall make the payment no later thirty (30) days (or such other credit period as is agreed in between the Parties and confirmed in writing in the Bunker Confirmation) from the completion of delivery of the Bunker Fuel in question.

**10.5.** If in breach of the preceding clause payment is withheld or set-off by the Buyer, partly or in full, due to alleged short delivery, quality dispute or any other reason whatsoever or if any sum due pursuant to any Contract is not paid within the agreed time, the Buyer shall pay, in addition to the outstanding amount and any interest that accrues until the due date, compensation to the Seller of 20% of the outstanding amount. The Buyer recognizes that such compensation is a reasonable pre-estimate of the Seller's loss, taking account of factors including but not limited to the additional management time incurred in dealing with late payment, the loss of opportunity to reinvest the missing funds and currency exchange fluctuations.



**10.6.** Credit granted to the Seller shall at all times be subject to the following terms:

**(I).** Where credit is granted such that payment is deferred beyond the period stated in the preceding clause such credit is entirely discretionary and the Seller shall at all times be entitled to withdraw credit and demand immediate payment by giving written notice without providing reasons. For example, but without limitation, credit may be withdrawn if the Seller has reason to believe that the Buyer's (or companies related to the Buyer) financial circumstances have deteriorated or the Seller receives information that causes it to alter its assessment of the credit risk. Where credit is withdrawn prior to delivery of Products then the Seller shall be entitled to withhold delivery until payment of the Price is made or alternatively the Seller may cancel the order, without recourse by the Buyer.

**(II).** Credit (including for the 30 days payment period or any period otherwise agreed between the parties) will only be granted on the basis that it is secured by a maritime lien on the Vessel.

**(III).** Any notice by the Buyer that a maritime lien on the Vessel may not be created for any reason must be given to Seller in the initial order for Bunker Fuel, in which case no credit can be granted to Buyer and the Buyer shall, at the option of the Seller, make payment in accordance with the payment terms determined by the Seller. Any notice of such restriction given by Buyer, its agents, ship's personnel or other person later than in the initial order shall not effect a modification of the terms of sale of Bunker Fuel, except that any granting of credit by the Seller shall be rescinded on receipt of the notice, with full payment due forthwith. Any cancellation thereafter shall make the Buyer liable for cancellation charge hereunder. For avoidance of doubt, it is stated that any notice or any stamp in the BDN or similar document cannot adversely affect the Seller's maritime lien on the Vessel.

**(IV).** If payment is not made within thirty (30) days or any number of days otherwise agreed, or if credit is withdrawn and payment not made upon demand, the Buyer shall be liable for all costs (whether or not suit is filed) incurred by the Seller to recover such amounts including but not limited to attorneys' fees, court costs and collection expenses. If suit is filed, the Buyer shall be liable for all court costs in addition to attorneys' fees and expenses.

**(V)** If the party requesting Bunker Fuel is not the owner of the Vessel, the Seller shall have the right to insist as a precondition of sale that a payment guarantee is provided by the owner of the Vessel. The Seller shall have the right to cancel the Bunker Contract with the Buyer at any time, if the owner's payment guarantee is not received upon request thereof from the Seller to the Buyer and/or owner. The Seller's decision to forego obtaining a payment guarantee shall have no effect on the Seller's right to a lien on the Vessel for any Bunker Fuel sold and delivered under the Bunker Contract.

**10.7.** Delay in payment period by the Buyer beyond the due date or the expiration of the applicable credit period shall entitle the Seller to interest at the rate of two (2) per cent per month or any part thereof or as otherwise agreed as per the Bunker Confirmation. Moreover, where the currency of payment is other than US dollars, the Buyer shall indemnify the Seller against any loss which is caused by adverse currency



Fluctuations between the invoice currency as against the value of the USD for the period between the due date and the date of payment.

**10.8.** The Buyer accepts that Bunker Fuel delivered under this Bunker Contract is on credit of the Buyer as well as the credit of the Vessel, and it is agreed and Buyer warrants that, in addition to any rights against the Buyer, the Seller will have and may assert a maritime lien against the Vessel for the amount of the purchase price of such Bunker Fuel together with all other applicable charges payable under this Bunker Contract.

**10.9.** Notwithstanding any agreement to the contrary, payment will be due immediately and the Seller shall be entitled to cancel all outstanding stems and/or withhold future deliveries in case of: (i) bankruptcy, liquidation or suspension of payment or comparable situation of the Buyer, or (ii) arrest of assets of the Buyer including, but not limited to, the Vessel, or (iii) liquidation/bankruptcy or any other changed financial or legal position of the parent company, sister companies or affiliated companies to the Buyer which in the sole discretion of the Seller is deemed to adversely affect the financial position of the Buyer, or (iv) if the Buyer fails to pay any Seller's Invoice at the time of maturity set forth in such invoice, or (v) if the Buyer fails to comply with any other obligation pursuant to this Bunker Contract, including, but not limited to, the Buyer's failure to take delivery of Bunker Fuels in full or in part, or (vi) in case of any other situation which in the sole discretion of the Seller is deemed to adversely affect the financial position of the Buyer.

In any of the foregoing situations the Seller shall have the option to either (a) cancel this Bunker Contract, (b) to store the Bunker Fuel in full or in part for the Buyer's account and risk, (c) to demand that the Buyer complies with its obligations pursuant to this Bunker Contract or (d) to make use of any other remedy available under the law.

**10.11.** Should the Bunker Fuel be purchased by an intermediary such as a manager, broker, trader or agent then such manager, broker, trader or agent shall (in addition to the Buyer) be bound by and liable for all obligations as fully and completely as if they were themselves the Buyer whether such principal be disclosed or undisclosed and whether or not such manager, broker, trader or agent purports to contract as manager, broker, trader or agent only. Furthermore, delivery shall always take place for the account of the registered owners and for the account of the current charterers all of whom shall, together with any intermediary, remain jointly and severally liable for the payment of the delivery as Buyer until payment has been received by the Seller in full. The Buyer warrants that it is authorized as agent to order the Bunker Fuel for delivery to the Vessel, and that the Seller has a lien on the Vessel for its claim.



## 11. CLAIMS

**11.1** A claim regarding the quantity of the Bunker Fuel delivered shall be notified verbally as well as in writing by the Buyer (or its representative) or the master of the Vessel to the Seller (or its representative) as soon as practicable at the conclusion of the delivery of the Bunker Fuels while the delivery hoses are still connected. Where notification of quantity claim is received by the Seller (or its

Representative) after completion of the delivery, such claim shall be deemed to be waived and barred. A notification inserted in the BDN or in a separate protest handed to the physical supplier of the Bunker Fuel shall not qualify as notice under this section and the Seller shall under no circumstances be deemed to have accepted such notice or protest handed to the physical supplier of the Seller.

**11.2.** In making a claim under Clause 11.1, the Buyer shall furnish all necessary information, including any analysis of the Bunker Fuel made by the Buyer and/or Vessel interests, as shall be required by the Seller to satisfactorily evaluate the claim. The Buyer shall immediately give the Seller all reasonable opportunity to inspect the Vessel, including, without limitation, its engines, fuel tanks, equipment, logs, records and copies of communications, including communications between the Vessel and the Buyer (and/or between the Vessel and its owner or operator) as well as communications to and from fuel testing organizations consulted by the Buyer or Vessel interests.

**11.3.** Any claim regarding the quality of the Marine Fuel delivered shall be presented in writing to the Seller as soon as an alleged quality problem has occurred or the Buyer is notified of any alleged problem and in any event no later than within 14 days from the date of delivery to the Vessel. Should the Buyer fail to make timely notification as stipulated herein of any claim regarding the quality of the Bunker Fuel the claim shall be deemed waived and barred.

**11.4.** The Seller shall not be responsible for any claim arising from the commingling of Bunker Fuel delivered by the Seller with other fuel or substances aboard the Vessel or aboard the fuel barge.

**11.5** A written claim for the purposes of clauses (11.1) and (11.3) must provide a complete and comprehensive explanation of the circumstances and basis of the claim, including where applicable the quantities short and/or the discrepancies in quality, a full test report for a test performed on one of the official samples mentioned in the Bunker Delivery Receipt performed by an independent laboratory along with copies of all correspondence with the independent laboratory and include copies of all supporting documents including the vessel's logs evidencing the matters complained of.

**11.6.** In the event of any claim presented in accordance with Clauses 11.1 and 11.3, the Buyer shall:

(i) Cooperate with the Seller and make all necessary arrangements for the Seller (or its representative) to investigate such claim, including but not limited to boarding and inspecting the Vessel, interviewing the crew and others in charge of delivery and reviewing and copying the Vessel documents.(ii)Take all reasonable steps and actions to mitigate any damages, losses, costs, expenses and any other



consequences related to any claim of alleged off-specification or defective Bunker Fuel.(iii)Take all reasonable steps to preserve the Seller's recourse against the physical supplier of the Bunker Fuel or any culpable third party.

**11.7.** A breach by the Buyer of any part of clause (11) will entitle the Seller to set off losses caused by the breach against any liability to the Buyer.

**11.8.** Any claims against the Seller in respect of a Contract, including those notified in accordance with the provisions of these GTCS, shall be brought before the relevant court within 6 months of the date of delivery of the Products, failing which such claims shall be deemed waived and time barred.

**11.9.** Buyer's submission of any claim does not relieve it of responsibility to make full payments as required under the Contract and Buyer shall not be entitled to set off any claim from payment.

## **12. LIABILITY**

**12.1.** The Buyer acknowledge that it is the Buyer's responsibility to test the fuel provided and to ensure that it is proper in all respects prior to the use of such fuel in the Vessel. Accordingly, the Seller shall not be responsible for any damage to the Vessel, including but not limited to its machinery or tanks or their contents caused by use of improper Bunker Fuel.

**12.2.** Sellers shall not be liable to the Buyer for any of the following:

(i) any loss of profit, loss of use or loss of production whatsoever and whether arising directly or indirectly from the performance or non-performance of this Bunker Contract, and whether or not the same is due to negligence or any other fault on the part of the Seller, its servants or agents; and (ii) any consequential loss or damage for any reason whatsoever, whether or not the same is due to any breach of contract, negligence or any other fault on the part of the Seller, its servants or agents, without limitation delay, detention, demurrage, charter hire, crew wages, towage, pilotage, port or wharf charges, lost profits, barge delivery charges and increased costs or expenses for obtaining replacement fuel; and (iii) subject to Clause 12.1, damage to the Vessel or the Buyer's other property or for any other loss sustained by the Vessel, its owners, charterers, underwriters, or other parties in interest, in contract, tort or otherwise, unless the such damage or loss is directly and solely caused by the negligence of the Seller's employees. In such event, the Seller's liability shall be strictly limited to repair the damage or loss that was directly and solely caused by the negligence of the Seller's employees provided that where the repair requires replacement, the Seller's liability for damage or loss shall be reduced by 20 (twenty) percent of the invoice value of spare parts for each year or fraction thereof in which the replaced part has been in use.

**12.3.** In no event including supply of defective or improper Bunker Fuel shall the Seller's liability for any loss, damage, claim or other expenditure, however arising under this Bunker Contract and whether caused by negligence or not and whether based in tort or contract, exceed the value of the Bunkers Fuel as set



out in the Seller's Invoice. The Buyer undertakes to indemnify the Seller against any claims, losses or costs of whatever kind related to this Bunker Contract instituted by third parties against the Seller to the extent such claims exceeds the Seller's liability towards the Buyer according to this clause 12.

**12.4.** The Buyer shall fully indemnify, and keep fully indemnified and hold the Seller harmless against any and all liabilities, claims, losses, damages, fines, expenses, penalties whatsoever and howsoever incurred arising out of or in connection with (but not limited to) the delivery of the Bunker Fuel to the Vessel in accordance with the terms of the Bunker Contract, save to the extent that such liabilities, claims, losses, damages, fines expenses, penalties are incurred as a direct consequence of the negligence or omission of the Seller.

### **13. FORCE MAJEURE**

**13.1.** The Seller shall not be liable for any loss and/or damage of whatever nature resulting from any delay and/or failure in performance under this Bunker Contract for any of the following events ("Force Majeure Event"):

(i) caused by any circumstance beyond the Seller's direct control, and/or (ii) if the supply or source of the Bunker Fuel from any facility of production, distribution, storage, transportation or delivery contemplated or intended by the Seller's supplier is disrupted, unavailable or inadequate due to war or war-like situations, riots, strikes, congestion, governmental order or intervention, unavailability of barges or other means of transport or stem, weather, act of God, changed market conditions, or similar situations.

**13.2** In the event of a failure of performance as provided in Clause 13.1, the Seller may, but is under no obligation, to source, procure or obtain alternative Bunker Fuel or product, and in such case the Seller shall be entitled to receive from the Buyer payment of any and all additional costs of such performance by the Seller.

**13.3.** The occurrence of a Force Majeure Event shall not relieve the Buyer of responsibility to make full and timely payment of all amounts payable to the Seller pursuant to Payment Clause.

### **14. ENVIRONMENTAL PROTECTION**

**14.1.** The Buyer shall be responsible for ensuring that it complies with all national and international trading and pollution regulations, and all environmental and health and safety regulations with regard to the receipt and use of Products and shall indemnify the Seller for all financial consequences, including clean-up costs and fines, of a breach of this provision.



**14.2.** In the event of a spill or discharge, before, during or after supplying the Bunker Fuel, the Buyer and the Vessel shall, at their own expense, immediately take whatever action is necessary to give prompt notice to the official bodies and to affect cleanup. Failing prompt action, the Buyer and the Vessel authorize Seller to conduct and/or contract for such cleanup at the expense of the Buyer and the Vessel. The Buyer warrants that the Vessel is in compliance with all national, state and local statutes, regulations and ordinances, including those requiring proof of financial ability in regard to spills or discharges of oil.

The Buyer shall hold the Seller harmless as to any delays, claims, losses, expenses or penalties arising from breach by the Buyer of this warranty, including legal fees.

**14.3.** It is the responsibility of the master of the Vessel to notify the Seller of any conditions, difficulties, peculiarities, deficiencies or defects with respect to engines, boilers, fuel tanks, piping, navigation equipment, mooring lines, tackle, gear, and any other types of equipment, which might jeopardize or impose hazards or problems in connection with handling, mooring, unmooring or bunkering of the Vessel. The Vessel will not be moored at wharf or alongside any other marine loading facilities, or a fuel barge brought alongside the Vessel, unless the Vessel is free of the aforesaid conditions, difficulties, peculiarities, deficiencies or defects.

## **15. SUBSTITUTION**

Seller reserves its right to substitute for itself a third party for the performance of all or part of its obligations.

## **16. SAFETY**

It shall be the sole responsibility of the Buyer to ensure that the Vessel, its crew and those responsible for its operation and management observe and comply with all health, safety and environmental laws and regulations with regard to the receipt, handling and use of the Bunker Fuel.

## **17. CANCELLATION**

**17.1.** In the event that the Seller cancels a Contract by reason of (i) the Buyer's breach of the Contract or (ii) conduct on the part of the Buyer entitling the Seller to cancel (iii) the Seller establishing that sanctions against the Buyer were in force at the date of the Contract then the Buyer shall have no recourse to the Seller and the Buyer shall be responsible for all losses, costs and expenses suffered by the Seller.



**17.2.** If the Buyer cancels the supply after the Order Confirmation any costs, expenses or charges incurred by the Seller with its supplier/sub-contractors are for Buyer's account, and the Buyer shall be liable to pay to the Seller immediately all the loss including administration cost, price difference during the day of cancellation.

## **18. LIEN**

In addition to any other security the Seller may have, and as this Contract is entered into and product is supplied upon the faith and credit of the Vessel, it is agreed and acknowledged that a lien over the Vessel is created for the price of the Products supplied together with any interest accrued. The Buyer, if not the Owner of the Vessel, hereby expressly warrants that they have full authority of the Agents/Traders/Owners/Managers/Operators/Charterers to pledge the Vessel in favour of the Seller and that they have given notice of the provisions of this Contract to them. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien(s) attaching to a Vessel.

## **19. TERMINATION**

Notwithstanding anything to the contrary express or implied herein, the Seller (without prejudice to its other rights) may at its sole discretion either terminate this Bunker Contract immediately or immediately suspend delivery under this Bunker Contract until further notice, on notifying the Buyer either orally (confirming such notification in writing) or by notice in writing, if a liquidator, administrator, trustee in bankruptcy, receiver, receiver or manager or equivalent officer is appointed in respect of the assets and/or undertaking of the Buyer, or the Buyer enters into an arrangement or composition with its creditors, or any similar appointment, arrangement or composition is made under any applicable law, or if the Seller has a reason to anticipate any such appointment, arrangement or composition.

## **20. ORDER CONFIRMATION**

**20.1.** When the Seller sends an Order Confirmation to the Buyer a binding Contract comes into presence.

**20.2.** All ordered Product(s) are considered to be originated from the Master of the vessel, even if relayed by the Buyer to the Seller and even if no written request from the Master of the vessel exists, and the Buyer's obligations under a Contract shall be treated as a primary lien on the Vessel.

**20.3.** When a Contract is entered into by an Agent, whether disclosed or undisclosed, then such Agent with notice of these General Terms and Conditions shall (i) be jointly and severally liable with the Buyer





for the proper performance of all the obligations of the Buyer under this Contract as if acting as a principal; and/or (ii) guarantee the Buyer's obligations under the Contract.

## **21. ARREST OF THE VESSEL**

**21.1.** Notwithstanding anything to the contrary herein and without prejudice to any rights or remedies otherwise available to the Seller, the Buyer, by its acceptance of these conditions, expressly authorizes the Seller to arrest the Vessel in question, or any other Vessel owned or operated by the Buyer, under any applicable jurisdiction as security for the obligations of the Buyer. Should the Buyer fail to make any payment to the Seller immediately when due the Seller may dispose of such arrested Vessel whether by sale or otherwise as applicable under the relevant jurisdiction. Any costs or expenses of whatever kind incurred by the Seller in respect of such arrest shall be for the sole account of the Buyer and shall be added to the claim for which arrest is made.

**21.2.** The Seller shall have the right to obtain a payment guarantee from the Owner. If such guarantee has been given by the Owner and the Owner has not paid the outstanding amount to the Seller within 5 (five) business days after proper written notice has been received, the Seller has the right to arrest the Vessel or any other Vessel owned or operated by the Owner. The Seller shall further have the right to dispose of such Vessel as set forth in Clause 21.1. Above.

## **22. LAW AND JURISDICTION**

**22.1** This Bunker Contract shall be governed and construed in accordance with the laws of India. The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

**22.2.** The General Maritime Law of the United States shall always apply with respect to the existence of a maritime lien, regardless of the country in which Seller takes legal action. Seller shall be entitled to assert its rights of lien or attachment or other rights, whether in law, in equity or otherwise, in any jurisdiction where the Vessel may be found.

**22.3** For the sole benefit of the Seller it is further agreed that the Seller without prejudice to any rights hereunder of the Seller or any claim raised pursuant to Clause 21.2. above have the right to proceed against the Buyer, any third party or the Vessel in such jurisdiction as the Seller in its sole Discretion sees fit inter alia for the purpose of securing payment of any amount due to the Seller from the Buyer or the Owner (pursuant to a payment guarantee). In such circumstances the proceedings shall be governed by the law (substantive and procedural) of such jurisdiction.



## **23. MISCELLINEOUS**

**23.1** If any part of this Bunker Contract is declared invalid, it shall not affect the validity of the remainder of the Bunker Contract or any part thereof.

**23.2** All rights and remedies of Seller hereunder are cumulative, and election of one remedy shall not exclude another.

**23.3** This writing supersedes all previous general terms of sale of bunker fuel by the Seller and sets forth the final and exclusive expression of the parties' agreement unless it is modified in writing, which modification must be signed by the Seller. It supersedes all oral or implied agreements. Any disclaimer, notice or other writing by Buyer or the Vessel interests or their agents on the BDN or any other document, seeking unilaterally to alter or amend any part of this Bunker Contract shall be ineffective.

## **24. VALIDITY**

These general terms and conditions shall be valid and binding for all offers, quotations, prices and deliveries made by MARLIN GLOBAL ENERGY PRIVATE LIMITED, any associated company, representative or agent as of 1st JUNE 2020, or at any later date.