

Endeavour Bunker Trading Company Limited

STANDARD TERMS AND CONDITIONS OF MARINE BUNKER SUPPLY

1. APPLICATION

These terms including any revisions made at the date of delivery shall apply to any contract of sale in which these terms have been incorporated by express reference.

The Confirmation of Order and the Standard Terms and Conditions contained herein together form the entire agreement (“**Agreement**”) between the parties.

2. PRICE

The selling price shall have been agreed in advance by the BUYER and the ENDEAVOUR BUNKER TRADING COMPANY LIMITED (“**SELLER**”). The BUYER shall also pay the SELLER for any and all taxes (inclusive of any withholding tax), levies, duties, expenses and delivery charges and all other costs (including those imposed by government authorities) arising out of or incurred by the supply of Marine Fuel.

3. QUALITY AND QUANTITY

The Marine Fuel supplied to BUYER shall be SELLER’s or SELLER’s suppliers’ commercial grade of Marine Fuel offered generally to its customers at the time and place of delivery. The BUYER has the sole responsibility for the selection of proper Marine Fuel for use in the vessel being supplied. Quantity shall be determined at SELLER’s or SELLER’s suppliers’ option from the gauge or meter of shore or barge tanks and such determination shall be conclusive and binding in the absence of fraud or manifest error, although BUYER has the right to be represented or present at the time of measurement subject to the provisions of Section 9 hereof. If BUYER is not represented or present at the time of measurement then any complaint of wrong measurement or short delivery shall be deemed to be waived. The quantity shall be measured under the prevailing ASTM-IP Petroleum Measurement Tables or the methods of any other recognized standards authority at the discretion of the SELLER, and SELLER’s election of measurement method shall be conclusive and binding on BUYER.

4. NOMINATIONS

The BUYER shall give SELLER at least seventy-two (72) hours notice exclusive of Saturdays, Sundays and Public Holidays at the place of delivery (unless otherwise agreed to by SELLER) of the exact time and location at which delivery is required together with a confirmation of the quantity of the grade of Marine Fuel ordered. Notwithstanding the foregoing, the BUYER shall be liable for any cost and expense incurred by SELLER resulting from the failure of BUYER to take delivery of, delay thereof and/or rejecting in part or in full the quantity of Marine Fuel ordered by BUYER and accepted by SELLER. The nominated vessel is strictly subject to loading terminal acceptance. It must comply

with all applicable International Safety Management (“ISM”) requirements and the International Ship and Port Facility Security Code (“ISPS”) requirements.

In the event the Vessel is unable to take delivery of the full quantity of Marine Fuel ordered by the BUYER for any reason, SELLER shall have the right, at its absolute discretion, to store and/or dispose of the undelivered Marine Fuel to a third party or to cancel the delivery of Marine Fuel without incurring any liability whatsoever.

5. PAYMENT

Payment terms shall be as mutually agreed in advance by BUYER and SELLER. In the absence of any such terms being specified as aforesaid, then payment for each delivery of Marine Fuel shall be made by BUYER free and clear of any deduction, discount, withholding, set-off, and/or counterclaim whatsoever within thirty (30) days from the date of delivery unless otherwise agreed by SELLER. Sales of Marine Fuel are made on the credit of receiving vessels, as well as on BUYER’s promise to pay any amounts due, including claims for damages arising out of or in connection with this Agreement shall be liens against such vessels. SELLER shall be entitled to assert its lien in any countries where it finds the vessel if the laws applicable at the place of delivery of Marine Fuel and/or at the place of seizure of such receiving vessels grant or recognize a right in lien for Marine Fuel delivered to a vessel. Any exercise by SELLER of any right in lien as set out herein shall not preclude SELLER from exercising any other legal remedies and actions. All overdue payments shall bear interest at the rate of two per cent (2.0%) per month, commencing on the payment due date until the date of receipt of full payment of the amount outstanding and late payment interest. Such interest shall continue to accrue under this Section 5 notwithstanding the termination of the Confirmation of Order for any cause whatsoever.

The provisions of Section 5 shall not be construed as an indication of any willingness on the part of SELLER to provide extended credit as a matter of course, and shall be without prejudice to any rights and remedies which SELLER may have under the Confirmation of Order or otherwise. Any expenses incurred by SELLER, including but not limited to reasonable legal fees, court costs and collection agency fees, caused by delay or failure of payment by BUYER of the amount(s) due shall be for the account of BUYER and payable upon demand with supporting documentation.

6. DELIVERY

Delivery shall be made ex-wharf or ex-lighter/barge at the discretion of SELLER and the vessel will be bunkered as prompt as circumstances will permit. The SELLER shall not be liable for any cancellation loss damage delay or demurrage whatsoever which may be suffered by the BUYER as a result of any congestion at the delivery location or at the SELLER’s or SELLER’s suppliers’ facilities or from any other circumstance beyond the control of the SELLER or SELLER’s suppliers. If the vessel arrives earlier than the nominated estimated time of arrival, SELLER will not guarantee prompt delivery but will endeavour to supply the Marine Fuel ordered as soon as possible.

7. RISK AND TITLE

7 A) Risk

For deliveries ex-wharf, delivery shall be deemed complete and risk in the Marine Fuel shall pass to the BUYER as the Marine Fuel passes the final permanent hose connection of the SELLER's delivery facility.

For deliveries ex-lighter/barge, delivery shall be deemed complete and risk to the Marine Fuel shall pass to the BUYER as the fuel passes the vessel's permanent hose connection.

7 B) Title

Title and property in the Marine Fuel shall be retained and deemed to be retained by the SELLER unless and until the SELLER has received full payment for the Marine Fuel delivered. If, prior to full payment, the Marine Fuel delivered by the SELLER to the Vessel is commingled with other Marine Fuel, the SELLER shall have title to such quantities of such commingled Marine Fuel which correspond to the quantities of Marine Fuel delivered to the Vessel and the BUYER and the owner of the Vessel shall be deemed to be trustee of the Marine Fuel who shall hold such Marine Fuel for the benefit of the SELLER until title and property formally passed. So long as the SELLER retains title in the Marine Fuel, the SELLER shall have an in-rem right against the Vessel which receives the Marine Fuel. The above is without prejudice to such other rights as the SELLER may have against the BUYER and/or the Vessel in the event of partial payment, non-payment or delayed payment.

8. INDEMNITY AND LIMITATION OF LIABILITY

The BUYER will indemnify the SELLER or SELLER's suppliers against any claims, demands, suits, liabilities, fines, penalties and expenses incurred or sustained arising out of or in connection with the act, omission, neglect or default of the BUYER, its servants or agents in the receipt, use, storage or transportation of the Marine Fuel delivered hereunder.

Notwithstanding anything contained herein, SELLER shall not be liable to BUYER, whether in contract or in tort or otherwise, for any consequential, indirect, special or economic loss or damage including but not limited to loss of profit or business, demurrage, loss of time or hire, cost of overheads thrown away, costs of substituted vessel, physical loss or damage (in whole or in part) of or to vessel or cargo due to delay or by reason of shutdown, non availability of supply of Marine Fuel, non operation or the like.

Any loss of or damage to Marine Fuel or to property of SELLER or its suppliers or any other party caused by BUYER's designated vessel shall as between parties hereto, be borne by BUYER and BUYER shall to such extent indemnify SELLER or its suppliers for the same.

SELLER's total liability under this Agreement whether in contract or in tort or otherwise (which shall include but not be limited to claims in respect of any breach of this Agreement, any deficiency in the quality and specification of the Marine Fuel or for failure to supply or delay in supplying any quantity of Marine Fuel for which SELLER is

responsible, or any liability/duty owed to BUYER in connection to this Agreement) shall not under any circumstances whatsoever exceed the agreed selling price of the Marine Fuel under the Confirmation of Order.

9. CLAIMS

Claims of short delivery shall only be admissible if made to the SELLER in writing with supporting evidence. This must be in the form of a written Note or Letter of Protest, and accompanied by full details of the claim or noted on the delivery receipt at the time of delivery and confirmed in writing to be received by SELLER within-seven (7) days from date of delivery. Claims of defect in quality shall be admissible only if notified in writing and received by SELLER within thirty (30) days from date of delivery and must be supported by evidence, including full details of any claim to be made by the BUYER. The SELLER shall provide BUYER with samples representative of the delivered Marine Fuel. Samples taken in a manner outside the control of the SELLER will not be recognized as representative of the Marine Fuel supplied. The submission of any claim to SELLER shall not release BUYER of the obligation to make full payment of the invoiced amount as required and no right of set-off or counterclaim is allowed to BUYER.

10. FORCE MAJEURE

As used herein, the term “Force Majeure” shall include, by way of example and not in limitation, fire, wars of belligerent action, riots or commotions, acts of god, navigational accidents, vessel damage or loss, accidents at or closing of navigation or transportation mechanism, strikes, grievances, or actions by or among workers, lock-outs, other labour disturbances, explosions or accidents to wells, pipelines, storage depots, refinery facilities, machinery and other facilities, any curtailment, failure or cessation of supplies of the products from any of the SELLER's or SELLER's suppliers' sources of supply for any reason (whether or not for the purpose of this Agreement), actions of any government, or by any person purporting to represent a government, or other cause not reasonable within the control of the respective parties.

If either party is rendered unable by Force Majeure to perform or comply fully or in part with any obligations or condition of this Agreement, except in relation to the obligations to make payment under this Agreement, upon such party's giving written notice to the other of such Force Majeure within forty-eight (48) hours after receiving notice thereof, such performance or compliance shall be suspended during the continuance of the incapacities so caused for thirty (30) days (“**Suspension Period**”), and such party shall be relieved of liability and shall suffer no prejudice for failure to perform the same during the Suspension Period.

In the event that the suspension of performance shall continue in excess of the Suspension Period, this Agreement is deemed to be cancelled without liability of either party, unless otherwise mutually agreed. Upon the expiry of the Suspension Period, any amount payable to one party (“**Payee**”) by the other party (“**Payer**”) under the terms of this Agreement, will, at the option of Payee (and without prior notice to Payer), be reduced by its set-off against any amount(s) (“**Other Agreement Amount**”) payable (whether at such time or in the future) by the Payee to the Payer under any other

agreement(s) between the Payer and Payee (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off). Payee will give notice to the Payer of any set-off effected under this section.

11. SHORTAGE OF OIL

In the event it becomes impracticable for SELLER to supply Marine Fuel for any reason, including but not limited to requests, suggestions, directives of official or statutory bodies, relating to curtailment of or disruption of supplies, priorities, rationing or allocations of any petroleum product, SELLER may reduce or stop deliveries in such a manner as it may at its sole discretion determine and shall be relieved of its obligation to perform hereunder. SELLER shall not be liable to BUYER for or indemnify BUYER against any loss or liability incurred by BUYER arising from or as a result of any deficiency in the quantities delivered.

12. DISCLAIMER OF WARRANTIES

All warranties (whether express or implied) as to merchantability and fitness or suitability or satisfactory quality of the Marine Fuel to a particular purpose, condition and agreement whatsoever (whether statutory or otherwise) are expressly excluded and disclaimed.

13. BUYER'S POSITION

If the delivery or supply of Marine Fuel is contracted by an agent or by the BUYER on behalf of its principal(s) (disclosed or undisclosed) or by the BUYER on behalf of itself and as agent on behalf of another principal(s) (disclosed or undisclosed), such agent or BUYER, as the case may be, shall be jointly and severally liable with such principal(s), or other principal(s) as the case may be, for the due and proper performance of this Agreement.

14. GOVERNING LAW AND JURISDICTION

The laws of the United States shall apply with respect to the existence of a maritime lien, regardless of the country in which SELLER takes legal action. The construction, validity and performance of this Agreement shall be governed by the laws of Hong Kong. Any dispute arising out of or in connection with this Agreement or any documents hereof shall be submitted to the non-exclusive jurisdiction of the Hong Kong International Arbitration Center (“**HKIAC**”) in accordance with its Arbitration Rules for the time being in force. The place of arbitration shall be in Hong Kong unless agreed elsewhere. The reasoned arbitration award shall be final and binding upon both parties without recourse to any courts. Any costs related to arbitration, including reasonable attorney’s fees, shall be borne by the losing party.

Judgement upon any award rendered under this Section 14 may be enforced in any court of competent jurisdiction.

15. HEALTH, SAFETY, ENVIRONMENT

The SELLER shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of any Marine Fuel.

The BUYER shall at all times comply with any obligations, requirements, recommendations and/or industry best practices whether made by the SELLER or contained in any law, statute, directive or regulation of any territory, state or jurisdiction in or through which the Marine Fuels may be delivered, sold, transported or used and all Government, state or local regulations at the port such as, but not limited to, those related to fire, or loss of Marine Fuel.

If an escape, spillage or discharge of oil (hereinafter referred to as a “**Spill**”) occurs while Marine Fuel is being delivered to BUYER hereunder, BUYER will promptly take such action as is reasonably necessary to remove the oil and mitigate the effects of such Spill. However, notwithstanding the cause of such Spill, SELLER or its suppliers are hereby authorised, at its option, upon notice to BUYER, or the receiving vessel, to take such measures, either in cooperation with BUYER, or exclusively as the sole party, and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonably necessary, in the judgment of SELLER or its suppliers to remove the oil and mitigate the effects of such Spill. If SELLER has exercised its option to remove the oil and mitigate the effect of such Spill, BUYER agrees to cooperate and render such assistance as is required by SELLER in the course of such action. Any expenses, damages, costs, fines and penalties arising from escape, spillage, discharge or pollution of oil shall be paid by the party that caused such escape, spillage, etc by a negligent act or omission. If both parties have acted negligently, any expenses etc shall be divided between the parties in accordance with the respective degree of negligence.

16. NOTICES

Any communication by any party to the other shall be sufficiently made if sent by first class air mail, postage paid, or by facsimile transmission to the last address of the other party and shall, unless otherwise provided in the Confirmation of Order , be deemed to have been made to the other party:-

- (a) in the case of communication by letter, three (3) days (if overseas) and twenty-four (24) hours (if inland) after despatch or, if communication is delivered by hand, on the date of delivery; and
- (b) in the case of communication by facsimile, when upon receipt of a successful transmission receipt .

Either party may change the correspondence addresses or facsimile numbers specified in the Confirmation of Order by not less than fifteen (15) days notice in writing to the other party.

17. TERMINATION

Notwithstanding anything elsewhere herein to the contrary, in the event that:

- (a) BUYER does not perform or is in breach of any terms and conditions or fails to observe any provision of the Confirmation of Order and more particularly,
 - (i) does not pay any amounts owing in full when due;
 - (ii) fails to take receipt, during a period or at an agreed date, of any quantity of Marine Fuel as provided for in the Confirmation of Order;
or
- (b) the BUYER is unable to meet its debts as they fall due or seeks or suffers to take any proceedings for the benefit of its creditors;
- (c) BUYER becomes insolvent, or goes into liquidation, or any step is taken by any person for the dissolution or winding-up of BUYER (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or enters into an arrangement or composition with its creditors;
- (d) a trustee in bankruptcy, receiver, receiver and manager or judicial manager is appointed in respect of the assets and/or undertaking of BUYER or any of its associated companies, or BUYER or any such associated company enters into an arrangement or composition with its creditors, or any similar appointment, arrangement or composition is made under any applicable law, or if SELLER has reason to anticipate any such appointment, arrangement or composition;
- (e) BUYER ceases, or threatens to cease, to carry on business;
- (f) BUYER is merged with or becomes the subsidiary of a third party other than its existing parent company (if any);
- (g) any event occurs which under the laws of any applicable jurisdiction has an effect equivalent to any of the events referred to in this Section 17;
- (h) the SELLER has at any time any reason whatsoever to doubt the continuing ability of BUYER to perform its obligations hereunder, or the reliability or financial responsibility of BUYER (or of any guarantor or other person furnishing security in support of BUYER) should in SELLER's reasonable opinion be or become impaired or unsatisfactory;
- (i) the SELLER at any time reasonably apprehends that any of the events mentioned above is about to occur in relation to the BUYER and notifies the BUYER accordingly;

the SELLER may in its absolute discretion and without prejudice to any other available right or remedy, or to any previous waiver, forbearance, or course of dealing, and without any liability to the BUYER whatsoever, be entitled to the following cumulative remedies available to SELLER at its option:-

- (a) terminate the Confirmation of Order immediately upon written notice to the BUYER ;
- (b) forthwith suspend any further deliveries and/or performance of any of its obligations under the Confirmation of Order;
- (c) decline to commence or complete loading, discharge or delivery under the Confirmation of Order;
- (d) require immediate payment for all Marine Fuel which has been delivered;
- (e) require payment of all other sums (whether or not then due) which shall become immediately due and payable;
- (f) alter any of the terms and conditions relating to the BUYER's obligation to pay;
- (g) demand payment in cash in advance of delivery or provide security or further security acceptable to the SELLER;
- (h) request the immediate discontinuation or rectification of BUYER's said breach, and
- (i) if the Marine Fuel has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

18. OTHERS

Terms and conditions mentioned in our Confirmation of Order shall prevail in case of any discrepancy from this Standard Terms and Conditions for that particular transaction.

Assignment of any right or delegation of any obligation hereunder by BUYER without SELLER's prior written consent shall be void. If such written consent is given and wherever the assignment is made, the BUYER shall remain jointly and severally liable with the assignee for the full performance of its obligations under the Confirmation of Order.

BUYER shall be responsible for obtaining all consents, authorizations, approvals and assurances of whatsoever nature to give effect to the provisions of the Confirmation of Order.

BUYER warrants that it has not in connection with the Confirmation of Order relied upon any representations, whether written or oral, made by or on behalf of SELLER, but has relied exclusively on its own knowledge, judgement and expertise.

A waiver by the SELLER of any breach of any term shall not prevent the subsequent enforcement of such term and shall not be deemed a waiver of any subsequent breach.

If at any time any provision of this Agreement shall be or shall become illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity and enforceability of such provision under the law of any other jurisdiction and of the remaining provisions of this Agreement shall not be affected or impaired thereby.

The Confirmation of Order and the Standard terms and conditions contained herein together form the entire agreement between the parties and supersedes all prior agreements, whether oral or written, and no additional terms, conditions, representations or warranties shall be incorporated herein except by written instrument executed on behalf of the respective parties.

Nothing in the Confirmation of Order contained whether express or implied shall be deemed to confer any right upon BUYER to apply for any trade mark owned by SELLER to any Marine Fuel supplied under the Confirmation of Order or to use such trade marks in relation to such Marine Fuel.

Neither the United Nations Convention on Contracts for the International Sale of Goods (1980) nor the Hong Kong Sale of Goods Ordinance (Cap 26) will apply to the Agreement.

Version dated 1st September 2013