

## 1. INTRODUCTION

These terms and conditions are the general terms and conditions for sale of Bunkers which shall apply to every sale of Bunkers entered into between **C.I QUALITY BUNKERS SUPPLY S.A.S**, as Seller, and any Buyer. These terms and conditions shall be referred to as the “**C.I QUALITY BUNKERS SUPPLY S.A.S Terms and Conditions**”.

These conditions apply to all offers, quotations, orders, agreements, services and all subsequent contracts of whatever nature, except where otherwise is expressly agreed in writing by **C.I QUALITY BUNKERS SUPPLY S.A.S**.

The Sales Confirmation, as defined below, shall incorporate the **C.I QUALITY BUNKERS SUPPLY S.A.S** Terms and Conditions by reference such that the **C.I QUALITY BUNKERS SUPPLY S.A.S** Terms and Conditions are made part of the particular terms set forth in the Sales Confirmation. **C.I QUALITY BUNKERS SUPPLY S.A.S** Terms and Conditions together with the Sales Confirmation shall constitute the complete and exclusive agreement (the “**Sales Agreement**”) governing the sale of the Bunkers.

No addition or amendment to the Sales Agreement shall be of any force or effect unless and until expressly confirmed in writing by the Seller in the Sales Confirmation. If any provision of the Sales Agreement shall to any extent be invalid or unenforceable, the remainder of the Sales Agreement shall remain in full force and effect

General trading conditions of another party will not apply, unless expressly accepted in writing by **C.I QUALITY BUNKERS SUPPLY S.A.S** in the Sales Confirmation.

To the extent that **C.I QUALITY BUNKERS SUPPLY S.A.S** Terms and Conditions are not supplemented by Special Provisions, as defined herein, *Incoterms 2000* (and subsequent revisions) shall apply as supplementary provisions. In case of conflict, ambiguity or inconsistency between the provisions of the **C.I QUALITY BUNKERS SUPPLY S.A.S** Terms and Conditions and *Incoterms 2000* (and subsequent revisions), the provisions of these General Terms and Conditions shall prevail.

In the event that there is a conflict or inconsistency between the Special Provisions and the **C.I QUALITY BUNKERS SUPPLY S.A.S** Terms and Conditions, the Special Provisions shall prevail.

The invalidity, illegality or unenforceability of any one or more of the provisions of the **C.I QUALITY BUNKERS SUPPLY S.A.S** Terms and Conditions shall in no way affect or impair the validity and enforceability of the other provisions established in it.

## 2. DEFINITIONS

Throughout this document the following definitions shall apply:

- a) **Agreement:** These terms and conditions including any applicable special provisions;
- b) **API:** Means American Petroleum Institute;
- c) **ASTM :** Means American Society for Testing and Materials;
- d) **Banking day:** Means a day when the banks in the specified place are open for the transaction of normal banking business;
- e) **Buyer:** shall include:
  - The party identified in the Sales Confirmation as the Buyer (the “**Nominated Buyer**”) to whom the Seller contracts to sell Bunkers; and
  - The registered/head owner of the Receiving Vessel (which the Nominated Buyer and/or its agent warrant as having authorized the purchase of the Bunkers and consented to being liable as a principal for the purposes of this Sales Agreement); and
  - Any managers, managing company, charterers, brokers, agents or any

other party acting for the Nominated Buyer, duly authorized by the Buyer as set out in Clause 14 below, ordering the Bunkers.

- f) **Bunkers:** means the commercial grades of bunker oils as generally offered to the Seller's customers for similar use at the time and place of delivery and/or services connected there to;
- g) **Business hours:** Means 08:00 to 17:30 in Colombia;
- h) **Delivery Date:** Means the date on which the Marine Fuel is to be delivered to the vessel by the seller;
- i) **Delivery Document:** Means the document(s) that certifies the delivery of Marine Fuels on a certain date(s), specifying grade(s) and delivered amount(s). Depending on delivery location, such document may also be known as **"On Board Receipt"**, **"Bunker Receipt"**, **"Delivery Note"**, **"Delivery Receipt"**, **"Delivery Ticket"**, **"Certificate of Delivered Quantity"**, or other names;
- j) **ETA:** Means the vessel's Estimated Time of Arrival;
- k) **Marine Fuels:** Means any commercial grades of bunker fuel oil and/or marine gas oil or their mixtures offered at the time and place of delivery by the Seller according to local or standard specifications;
- l) **Nomination:** Means the document through which the Buyer requests the Seller a specific Marine Fuels delivery for a specific vessel in a specific bunkering port/area, and with other specific conditions, such as dates and others;
- m) **Physical Supplier:** the person or entity instructed by or for the Seller to deliver at the Place of Delivery to the Buyer the Bunkers which the Buyer has purchased from the Seller. If and where the Seller itself delivers the Bunkers to the Buyer, the Seller shall also be the Physical Supplier.
- n) **Place of Delivery:** the place at which the Seller agrees to deliver the Bunkers to the Receiving Vessel as specified in the Sales Confirmation or and thereafter as revised and confirmed, in writing, by the Seller or the Physical Supplier.
- o) **Sales Confirmation:** the confirmation sent by email, fax or other writing from the Seller to the Buyer for each sale of Bunkers.
- p) **Seller:** means **C.I QUALITY BUNKERS SUPPLY S.A.S**
- q) **Seller's Suppliers:** Means any corporate body or person being a direct or indirect source of supply for the Seller;
- r) **Special Provisions:** Means any form of agreement including , without limitation: contract telex, facsimile, or e-mail, or other form of written agreement by which the parties may amend or supplement the general terms and conditions contained in the Agreement;
- s) **Working days:** Means normal working days in the city where the Seller's office from which the sale has been agreed is located, or in the city where the delivery is to be made, whichever is applicable. A full working day means a total of 8 hours of one normal working day, or a period of 8 hours over two successive working days;

- t) **Gallon:** Means a U.S standard gallon of 231 cubic inches at 60° Fahrenheit;
- u) **Barrel or Bbl or Bb:** Means 42 U.S gallons at 60 ° Fahrenheit;
- v) **Metric tons or MT:** Means a total of 1.000 kilograms or 2,204.62262 avoirdupois pounds.

### **3. TITLE, OWNERSHIP AND PROPERTY**

The title to, ownership of and property in the Bunkers, free from liens and encumbrances, shall pass to the Buyer only after the Price has been payed and received by the Seller as provided in clauses 6 and 7. Until such time as the Price is received by the Seller, the person in possession of the Bunkers Delivered (e.g. the Receiving Vessel owner) shall hold the Bunkers as a mere bailee.

Title in and to the Bunkers delivered and/or property rights in and to such Bunkers shall remain vested in the Seller until full payment has been received by the Seller of all amounts due in connection with the respective delivery.

Until full payment of any amount due to the Seller has been made and subject to clauses 6 and 7 here of, the Buyer shall not be entitled to use the Bunkers.

### **4. RISK**

The Seller's responsibility for the Bunkers shall cease and the Buyer shall assume all risks and liabilities relating thereto, including loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage of Bunkers and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties at the time Bunkers have passed the flange connecting the Receiving Vessel's bunker manifold with the Supplying Vessel and/or Supplying Vehicle provided by the Physical Supplier. The Buyer agrees to indemnify without limit the Seller in respect of any liability, claim or demand for which the Buyer is liable.

### **5. PRICE & OTHER CHARGES**

The applicable Price of any product supplied shall be the one agreed in the Special Provisions; and shall remain in force during the agreed time frame. In the absence of the mentioned time frame, the initial period agreed for delivery of the products shall be deemed to be the agreed time frame. The Seller reserves the right to modify the Price if the vessel arrives 48 hours after expiration of the agreed time frame. The Buyer shall be liable for all costs, expenses and/ or charges incurred by the Seller or Supplier on account of the Buyer's failure, breach and/or non-compliance with its obligations under any agreed Nomination. All applicable taxes, duties, fees and other costs including, without limitation, those imposed by government and authorities, and barging and other delivery charges, shall be for the Buyer's account and shall be included in the Seller's invoice to the Buyer.

### **6. PAYMENT**

Each of the following terms apply unless the Sales Confirmation otherwise provides:

6.1. Payment shall be made against presentation of the before or on the due date. At the sole discretion of the Seller, invoices shall be submitted to the Buyer by any form of telegraphic communication, including but not limited to, e-mail or facsimile. Non receipt of invoice does not relieve the Buyer of its obligation to make full payment of the amount due.

6.2. The Buyer shall make payment to the Seller in United States Dollars or any other convertible currency agreed in the Seller's written confirmation (at the Seller's option) by telegraphic transfer.

6.3. Unless, the Supplier has granted the Buyer credit, the Buyer shall make full payment in advance of Delivery; Payment shall be made in full by the Buyer on the payment due date without discount or deduction for whatever reason including bank transfer fees, withholding, set-off or counterclaim of any kind whatsoever, or in the event of any dispute between the parties to the Agreement.

6.4. The Buyer shall pay the Price in full, and expressly agrees to make no deduction,

discount or set off for any reason whatsoever therefrom. Such payments shall be made free of all charges to the account of the Sellers stated in the invoice mentioned in clause 6.1. above, or to such other account as the Seller may notify in writing to the Buyer;

6.5. If the last day upon which payment is required hereunder is not a Banking Day, then payment shall be made on or before the nearest Banking Day immediately preceding that date;

6.6. In case that an irrevocable documentary letter of credit or stand-by letter of credit is issued:

6.6.1. All charges in respect of the letter of credit shall be for the account of the Buyer;

6.6.2. If the Buyer does not provide or provides an unacceptable letter of credit or stand-by letter of credit on or before close of normal banking business on the fifth working day prior to the first day of the agreed delivery date, the Seller may terminate the Agreement immediately without prejudice to any rights or remedies of the Seller;

6.6.3. In no event shall the Seller be obliged to commence or complete loading until the said letter of credit or stand-by letter of credit is opened at the Seller's satisfaction;

6.6.4. Any delay, costs and damages whatsoever arising from the failure of the Buyer to open the letter of credit or stand-by letter of credit as provided for in the Agreement shall be for the Buyer's account. Unless otherwise agreed, the Seller's invoice shall be prepared based on the quantities stated in the Delivery Document. Payment(s) shall be made to the Seller's bank, account name and account number as notified by the Seller to the Buyer in writing ("the payment account").

6.7. If payment is not received in full in advance of Delivery, or where credit terms have been agreed, at the expiration of the agreed credit period, any amounts outstanding shall bear interest at the maximum interest rate permitted by applicable law unless otherwise agreed in the Sales Confirmation;

The provisions of this section shall not be construed as an indication of any willingness on the part of the Seller to provide extended credit, and shall be without prejudice to any rights and remedies that the Seller may have under the Agreement or otherwise.

6.8. If at any time prior to Delivery the Buyer shall be in default of any of its obligations under this Sales Agreement or any other contract between the Seller and the Buyer, the Seller shall be entitled to cancel this Sales Agreement or to refuse to make the Delivery under this Sales Agreement, and shall be under no liability in damages or otherwise to the Buyer under this Sales Agreement.

## **7. DELIVERY SCHEDULE**

Vessels, including tankers, will be bunkered in turn as promptly as possible, and neither the Seller nor the Supplier shall be liable for demurrage, detention or any other or different damages due to any delay caused by weather (whether usual or unusual), or for any loss due to congestion at the terminal or to prior commitments of available barges, or when security is compromised according to the Supplier's judgment.

In case of failure to arrive at the contracted day, the Seller shall endeavor its best efforts to re-schedule the Buyer's vessel, but shall not be liable for any attendance delays nor for any damages resulting there from. In the specific case of re-schedules of vessels, delayed by weather conditions, berth congestion, draft restrictions, etc. for lifting bunkers; the Seller will use the "*first in, first out*" rule.

The Seller reserves the right to cancel any nomination without liability on the part of the Seller and without prejudice to any rights the Seller might have against the Buyer if the vessel does not arrive at delivery port or anchorage for bunker delivery within the delivery range agreed between both parties in written confirmation.

## **8. DELIVERY COST & OTHER DELIVERY ISSUES**

Delivery shall be made during normal working hours unless required at other times (including non-working days) and permitted by Port regulations, in which event the Buyer shall reimburse the Seller or its Supplier for all additional expenses incurred in connection therewith, including but not limited to overtimes and extra fees. All delivery extra charges, including but not limited to truck/barge overtime and wharf age extra costs, shall be for the account of the Buyer. In case that the Buyer fails to take the whole quantity nominated, the Buyer shall be liable for any cost resulting from such failure. If a Government permit is required for deliveries hereunder, no deliveries shall be made until the permits have been issued to the Buyer.

Once the delivery has been made, the Master/ Chief Engineer/Representative of the supplied vessel shall sign and seal the relevant Delivery Document. In case of any quantity claim in such delivery, the Master/Chief Engineer/Representative of the supplied vessel shall write such quantity claim in the Delivery Document. The absence of such claim shall be deemed to signify a full agreement with the delivery and therefore claims based on Clean Delivery Documents will not be accepted.

## **9. NOMINATIONS AND ETA**

The Buyer shall advise the Seller, during business hours, of the Vessel's nomination at least three (3) days prior to expected delivery date, unless otherwise agreed in writing. Nomination(s) shall be given in writing and shall at least include the following:

- a) The name of the vessel and such other information as may be required by the loading terminal operator from time to time;
- b) Bunkering port/ area;
- c) Delivery conditions;
- d) The grades and quantities of Marine Fuels to be delivered;
- e) The prices and payment terms;
- f) The time frame when the vessel is expected to be ready for bunker supply (max span: 36hs.);

- g) The ship agent at the bunkering port/ area;
- h) The Buyer's full style and invoicing address;
- i) Such other information as the Seller may reasonably require.

The Buyer hereby declares that it is familiar with all limitations of the loading port or area and shall not nominate a vessel exceeding such limitations and that in operational and technical aspects nominated vessels shall be in full compliance with all applicable laws, regulations and other requirements of the country of the vessel's registry and countries, port authorities and terminals at which vessel may be loading or calling.

The Buyer shall have no right to substitute the nominated vessel. The Buyer shall arrange for the vessel/ vessel's agent to give to the Seller or the Seller's Suppliers its ETA at the loading port by telex, cable or e-mail at least 48 hours before arrival, thereafter advising any variation. Such notice has to include specifically the place where and the time when delivery is required. Location changes, if any, subject to the Seller's consent.

## **10. CONNECTIONS**

The Buyer shall make all connections and disconnections between delivery hose and the vessel's intake pipe for bulk deliveries, unless otherwise agreed. The Buyer shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly all deliveries hereunder. The Buyer shall provide a clean, free and safe access alongside the receiving vessel to operate the Seller's delivery equipment; and shall render all necessary assistance which may reasonably be required.

## **11. QUANTITY MEASUREMENTS**

Unless otherwise agreed, the quantities of the Marine Fuels loaded shall be determined from the official gauge at the delivery barge, or at the delivery truck, or at any other delivery mean, or at Supplier's shore tank, or at oil meter at the Seller's choice; from which the delivery was made and carried out in accordance with good standard practice in use at the supply area/port at the time of delivery

The Buyer has the right to have, at its own expense, its representative or independent inspector present

during measurement, but only the Seller shall make quantity determination, and such a determination shall be conclusive.

The Delivery Document issued at the supply area/port shall be final and binding for the purposes of the quantity stated and the obligation of the Buyer to make payment in accordance with the Agreement. Nothing in this clause shall prejudice the right of either party to challenge the accuracy of the measurement taken and recorded in the Delivery Document.

.In any event, the Buyer shall sign for the measurement made; and if the Buyer is not present or represented by properly accredited agent when measurements are taken, then the Supplier's determination of quantities shall be deemed to be correct. In order for the Buyer to be represented as mentioned in this clause, the Buyer shall request the Seller's permission in writing at least 48 hours before the determination of quantity takes place.

#### **12. QUALITY**

The Marine Fuels to be supplied shall be of the quality, description or specification as set out in the Seller's written confirmation. The quality of the Marine Fuels shall be determined at the delivery port/area in accordance with the latest ASTM standards and API Manual of Petroleum Measurement Standards (MPMS) or according to good standard practice in use at the loading port at the time of shipment. The certificate of quality (or other equivalent document) issued at the loading port shall, except in cases of manifest error or fraud, be conclusive and binding on both parties. Unless otherwise agreed, the quality of the Marine Fuels shall be stated from a composite sample taken at the loading port in accordance with clause 13.

The Buyer shall have the sole responsibility for any determination of compatibility of Marine Fuels purchased from the Seller with marine fuels already on board the vessel. There are no guarantees or warranties express or implied of merchantability fitness or suitability of the marine fuel for any particular purpose or otherwise, which extends beyond this subsection.

#### **13. QUALITY SAMPLE**

The quality of the Marine Fuels shall be tested from a composite sample taken by the Seller or the Seller's representative at the source of supply (supplying barge, supplying truck or supplying terminal), in accordance with

good standard practice at the supply area at the time of delivery.

The sample will be retained in three sealed numbered/identified containers (name of the vessel, delivering facility, product grade, delivery date, place of delivery, and duly signed by both parties' representatives): **Container A: 'the official witness sample'**, to be kept at the supply source. **Container B: 'the Seller's sample'**, to be kept at the supply source. **Container C: 'the Buyer's sample'**, to be placed on board of the receiving vessel. Any samples drawn from receiving vessel's tank/manifold shall not be valid as an indicator of the quality supplied. In the event delivery is done by tank truck, no samples will be taken, unless requested by the Buyer in writing.

#### **14. QUALITY CLAIMS**

Any complaint of variation of quality shall be admissible only if both a) and b) are fulfilled:

- a) A fully documented claim is presented to the Seller within 15 days after the date on which the delivery of the Marine fuel has been completed, and,
- b) It includes a copy of the report of analysis carried out by the inspection company on the sample kept in Container C, showing that the quality of the sample in Container C is in discordance with the agreed quality differing by a greater amount than the reproducibility and repetitiveness as per applicable standards.

In the event that the report of analysis referred to at (b) above is not accepted by the Seller, the sample sealed in **Container A** shall be referred for new analysis to a mutually acceptable independent laboratory of international reputation. Each party has the right to appoint a representative for witnessing the new analysis.

The results of the new analysis shall be conclusive and binding for both parties and will determine each party's liabilities in this matter. In case that the results prove the product to be on specification, the cost of such analysis

shall be borne by the Buyer. In case that the results prove the product to be off specification, the cost of such analysis shall be borne by the Seller. If the Buyer fails to comply with the procedure in this clause, all claims regarding quality shall be deemed to have been waived by the Buyer and no claim may be brought in respect of them. Nothing in this Section shall relieve the Buyer of its obligation to make payments in full when due as provided herein.

#### **15. OTHER CLAIMS**

Notices of all other claims specifically excluding any and all claims related to or associated with those relating to matters of quantity or quality shall only be considered admissible if a fully documented claim is presented to the Seller within 15 days after the date on which the delivery of the Marine fuel has been completed. It is the duty of the Buyer to take all reasonable actions, including retention and burning of fuel in accordance with the Seller's instructions, to eliminate or minimize any costs associated with an off-specification or suspected off-specification supply.

The Seller's obligation hereunder shall not exceed direct expenses incurred for removal and replacement of fuel and shall not include any consequential or indirect damages, including without limitation, demurrage and any actual or prospective loss of profits. If the Buyer removes such fuel without the consent of the Seller, then all such removal and related costs shall be for the Buyer's account. The Seller shall not be liable for any claim arising in circumstances where there is or has been commingling of fuel delivered by the Seller with other fuel aboard the Vessel or the Buyer's delivery vessel.

#### **16. CANCELLATION AND BREACH**

In the event of the Buyer at any time cancelling a confirmed request for Bunkers or the Receiving Vessel failing to take Delivery of part or all of the requested Bunkers, the Seller shall have the right to pursue a claim against the Buyer and the Buyer shall indemnify the Seller for all loss and damage thereby suffered including loss of profit. The Seller may treat any other breach by the Buyer of any express term of the Sales Agreement as a breach of this Sales Agreement and it may at its discretion treat this Sales Agreement as repudiated and seek such remedies as it considers appropriate and the provisions of Clauses

#### **17. LIENS**

Where Marine Fuels are supplied to a vessel, in addition to any other security, the Agreement is entered into and Marine Fuels are supplied upon the faith and credit of the Vessel. It is agreed and acknowledged that a lien over the Vessel is thereby created for the price of the Marine Fuels supplied and that the Seller, in agreeing to deliver Marine Fuels to the Vessel, does so relying upon the faith and credit of the Vessel.

The Buyer if not the owner of the Vessel hereby expressly warrants that he has the authority of the owner to pledge the Vessel's credit as aforesaid and that he has given notice of the provisions of this clause to the owner. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien or liens attaching to a Vessel unless notice in writing of the same is given to the Seller before he sends its written confirmation to the Buyer.

#### **18. ASSIGNMENT**

The Buyer shall not assign its interest in this agreement without the prior written approval of the Seller. The Seller may assign this agreement and shall thereafter give notice to the Buyer.

#### **19. TAXES AND DUTIES**

All taxes, duties and all other charges on the vessel shall be the responsibility of the Buyer, save as provided for elsewhere in the Agreement. The Buyer shall also be responsible for the payment of any taxes, duties, imposts, and fees of any description on the Marine Fuels after the Marine Fuels pass the flange connection of the loading vessel's delivery hose at the bunkering port/area.

#### **20. TERMINATION:**

If either party should go into liquidation (other than voluntary liquidation for the purpose of corporate reconstruction), or if a receiver or sequestrator is appointed in respect of the assets and/or undertaking (or any part thereof) of either party, or if either party should become bankrupt or insolvent, or should enter into a deed of arrangement or a composition for the benefit of its creditors, or should do or suffer any equivalent act or thing under any applicable law, or if either party has good reason to anticipate any such act or thing, the other party may, by written notice, immediately terminate the Agreement or immediately suspend delivery under the Agreement until further notice without prejudice to any

right of action or claim accrued at the date of termination or suspension.

If the Seller has any reason whatsoever to doubt the continuing ability of the Buyer to perform its obligations hereunder, the Seller may suspend deliveries until the Buyer has either agreed to make payment in advance for future deliveries or has provided such other security as the Seller, in its absolute discretion may require or, alternatively, the Seller may terminate the Agreement by written notice without prejudice to any right of action or claim accrued to the benefit of the Seller at the date of termination. If the Buyer should fail to pay in whole or in part the invoiced amount on the due date, the Seller may, on written notice to the Buyer, immediately suspend all or any supplies of Marine Fuels until the Buyer has paid all of the amount owing, or may, at the Seller's option, on written notice to the Buyer immediately terminate the Agreement without prejudice to any right of action or claim accrued at the date of termination.

If the Buyer should fail to take delivery of the Marine Fuels at the date specified under the Agreement (events of force majeure excepted), where a minimum quantity of Marine Fuels is to be taken by the Buyer within specified periods, the Seller may, on written notice to the Buyer, suspend all or any supplies of Marine Fuels until the Buyer has paid all of the amount owing, or may, at the Seller's option, on written notice to the Buyer immediately terminate the Agreement without prejudice to any right of action or claim accrued at the date of termination. According to clauses 6 and 7, the Seller may terminate the Agreement if the Buyer does not provide or provides an unacceptable letter of credit or stand-by letter of credit on time. Written notice of termination provided for under this clause shall be effective at the time it is dispatched to the Buyer.

## **21. FORCE MAJEURE**

The Seller shall not be liable for any failure to fulfill any term or conditions of the Sales Agreement if fulfilment has been delayed, hindered or prevented or made substantially more expensive by any circumstances whatsoever which are not within the immediate control of the Seller (whether foreseeable or not) including but without limiting the generality of the foregoing, any fire, explosion, mechanical breakdown, flood, storms, earthquakes, tidal waves, acts of God, war, military operations, national emergency, civil commotion, strike, lockout or labour dispute or reasonable apprehension thereof, any governmental order,

request or restriction, any limitation, restriction or interruption to existing or contemplated sources of supply of Bunkers or the means of supply thereof. Nothing in this provision shall be deemed to excuse the Buyer from its obligation to make payments for Bunkers received.

In the event that performance is prevented or delayed or made substantially more expensive by any of contingencies above, the Seller may reduce or stop Deliveries in any manner as it shall determine in its sole discretion, or elect to continue Deliveries and increase prices in fair proportion to the increased cost of operation under such contingency.

## **22. ENVIRONMENTAL PROTECTION**

If an escape, spillage or discharge of Bunkers occurs during the Delivery (a "Spill"), the Buyer shall promptly take such action as is reasonably necessary to remove the Bunkers and mitigate the effect of a Spill.

Notwithstanding the cause of such Spill, the Seller and Physical Supplier are authorized by the Buyer to take such measure and to incur such expenses, by employing its own resources or by contracting with other persons, either in co-operation with the Buyer and/or the Receiving Vessel, or alone as is in the opinion of the Seller or the Physical Supplier reasonably necessary to remove the oil and mitigate the effect of a Spill. The Buyer agrees that it and the Receiving Vessel will render such co-operation and assistance as is required by the Seller or the Physical Supplier in the course of such action. The Seller and Physical Supplier shall not be considered volunteers in taking such action or incurring such expense, whether or not they or the Buyer have caused the Spill.

In the event of a Spill, any expenses, damages, costs, fines and penalties arising from the Spill shall be paid for by the Buyer (or recoverable from the Buyer if the Seller has paid them in the first instance) unless the Spill arose out of the Seller's negligence in which case the Seller will be liable, provided that the Buyer shall prove such negligence, to the extent that such negligence caused or contributed to the Spill.

## **23. HEALTH, SAFETY AND THE 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



Bunkers.

The Buyer shall at all times comply with any obligations, requirements or recommendations contained in any law, statute, directive or regulation of any territory, state or jurisdiction in or through which the Bunkers 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 spillage or loss of Bunkers.

The Buyer shall indemnify and keep indemnified the Seller against any liability, claim or proceedings whatsoever arising out of or in connection with any failure by the Buyer to comply with its obligations under this Clause.

#### **24. RIGHTS, POWERS AND REMEDIES**

No failure or delay on the part of the Seller or the Buyer in exercising any right, power or remedy under the Agreement and no course of dealing between the Seller and the Buyer shall operate as a waiver by the Seller or the Buyer of any such right, power or remedy, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy under the Agreement. The remedies in the Agreement provided to the Seller or the Buyer are cumulative and not exclusive of any legal rights or remedies which the Seller may otherwise have. Except as required by the Agreement, no notice or demand upon the Seller or the Buyer in any case shall entitle the Seller or the Buyer to any other or future notice or demand in similar or other circumstances or constitute a waiver of the right of the Seller or the Buyer to take any other or future action in any such circumstances without notice or demand.

#### **25. AMENDMENTS AND WAIVERS:**

Any amendment or waiver of any provision of the Agreement shall not be effective unless it is made by the express written agreement of both parties. Any waiver of any breach of any provision of the Agreement by either party shall not be considered to be a waiver of any subsequent or continuing breach of that provision unless expressly agreed otherwise by the parties in writing. No waiver by either party of any breach of any provision of the Agreement shall release, discharge or prejudice the right of the waiving party to require strict performance by the other party of any other of the provisions of the Agreement. Failure by either party to take action against the other party in case of any breach of any provision of

the Agreement shall not be considered to be a waiver by either party of their right to take action for any subsequent breach of that or any other provision of the Agreement.

#### **26. INDEMNITY**

The Buyer hereby indemnifies the Seller in respect of all damage or injury occurring to any person or to any property and against all actions, suits, claims, demands, costs, charges or expenses arising in connection therewith to the extent that the same shall have been occasioned by the negligence or default of the Buyer, his servants or agents or any third party in the course of performance of or arising out of the Sales Agreement.

#### **27. LIABILITY**

The Seller shall not be liable to the Buyer for any direct or indirect loss of damage including any loss of profit or any, other indirect, special, incidental or consequential loss or damage whatsoever arising from any cause whatsoever whether in contract, tort or otherwise including the acts or omissions or negligence of the Seller, its servants, agents or sub-contractors, including, without limiting the generality of the foregoing in any way whatsoever, no liability will be borne by the Seller for demurrage, detention or other vessel delay, or any damages or loss arising from the exercise of Seller's right to suspend and/or terminate Delivery of the Bunkers.

#### **28. COMPENSATION**

Notwithstanding the foregoing, in the event that the Seller is found to be liable to the Buyer, the total amount payable by way of compensation other than in respect of personal injury or death shall not exceed the Basic Cost of Bunkers charged to the Buyer for the Bunkers supplied under the Sales Agreement. It is a pre-condition to the payment of any compensation by the Seller that all sums due to the Seller from the Buyer are first paid and settled, in full, without deduction or set-off.

#### **29. INSURANCE**

The Buyer is responsible for effecting and maintaining in force adequate insurance which will fully protect the Buyer, the Seller and all third parties from all risks, hazards and perils associated with or arising from the Sales Agreement and Delivery.

#### **30. CHANGE IN REGULATIONS**

It is understood by the parties that the Seller is entering into the Agreement in reliance on the laws, rules, regulations, decrees, agreements, concessions and arrangements ("regulations") in effect on the date of the Agreement with governments, government instrumentalities or public authorities affecting directly or indirectly the Marine Fuels sold under the Agreement including, but without limitation to the generality of the foregoing, those relating to the production, acquisition, gathering, manufacturing, transportation, storage, trading or delivery of the Marine Fuels, insofar as such regulations affect the Seller or the Seller's Supplier(s). If at any time and from time to time during the currency of the Agreement any regulations are changed or new regulations have become or are due to become effective, whether by law, decree or regulation or by response to the insistence or request of any governmental or public authority or any person purporting to act for such organizations, and the material effect of such changed or new regulations is:

- a) Not covered by any other provision of the Agreement; and
- b) Has or will have a material adverse economic effect on the Seller, the Seller shall have the option to request renegotiation of the price(s) or other relevant terms of the Agreement.

Such option may be exercised by the Seller at any time after such changed or new regulations are notified by written notice to the Buyer, such notice shall contain the new price(s) and/or terms and conditions desired by the Seller. If the parties do not agree upon the new price(s) or terms and conditions within 15 days after the date of the Seller's notice, either party shall have the right to terminate the Agreement immediately at the end of such 15 day period. Any Marine Fuels delivered during such 15 day period shall be sold and purchased at the price(s) and on the terms and conditions specified under the Agreement without any adjustment in respect of the new or changed regulations.

### **31. ENFORCED LAW**

The Sales Agreement is subject to the law of England. However, nothing in this clause shall, in the event of a breach of the Sales Agreement by the Buyer, preclude the Seller from taking any such action as it shall in its

absolute discretion consider necessary, and the Seller shall have the power to enforce, safeguard, secure or assert its rights under the Sales Agreement and any rights of lien, attachment, arrest in any court or tribunal or any state or country, including any jurisdiction where the Receiving Vessel or a sister or associated ship may be found.

The United Nations Convention on Contracts for the International Sale of Goods of Vienna dated 11th of April 1980, shall not apply to the Agreement. Each party to the Agreement warrants that it has entered the Agreement in its commercial capacity and that it is in this respect subject to civil and commercial law. Each party hereby irrevocably and unconditionally waives any rights of sovereign immunity (whether related to service of process, attachment prior to the execution, or attachment in aid of execution) which it may have or which it may subsequently acquire in respect of its status or any of its assets.

### **32. ARBITRATION**

All disputes arising in connection with this agreement or any agreement relating hereto, save where the Seller decides otherwise in its sole discretion, shall be finally settled by arbitration in London, England in accordance with the with the Arbitration Act 1996 (or any subsequent amendment).

A three member's tribunal of the LMAA and/or Chartered Institute of Arbitrators will be placed consisting of one arbitrator to be appointed by the Seller, one by the Buyer, and one by the two arbitrators already appointed. Either party may call for Arbitration by service of written notice in accordance with clause 34, specifying the name and address of the arbitrator appointed and a brief description of the dispute(s) or difference(s) to be the subject of the Arbitration. If the other party does not within 14 days serve notice of appointment of an arbitrator to arbitrate the dispute(s) or difference(s), then the first moving party shall have the right without further notice to appoint a second arbitrator, who shall have precisely the same force and effect as if a second arbitrator had been appointed by the other party.

In the event that the two appointed arbitrators fail to appoint a third arbitrator within twenty days of the appointment of the second arbitrator, either party may apply to the English courts for the appointment of a third arbitrator, and the appointment of a third arbitrator will have precisely the same force and effect

as if the third arbitrator had been appointed by the two appointed arbitrators. Until such time as the arbitrators finally close the hearing(s) either party shall have the right by written notice served on the arbitrators and on the other party, in accordance with clause 34, to specify further dispute(s) or difference(s) under the Agreement for hearing and determination.

Notwithstanding the foregoing, if the dispute or difference involves a claim by either party not exceeding US\$100,000 then the dispute or difference shall be resolved in accordance with the LMAA Small Claim Procedure 1998 (or subsequent amendment thereto).

### **33. NOTICES**

All notices and other communications given under the Agreement shall be in writing and unless otherwise specified in the Agreement shall be deemed to have been given and delivered when dispatched, provided the notice is dispatched within business hours, by cable or telefax to the Seller at its address at: Manzana 05, Lote 12, Oficinas de QBS, Parque Industrial Malambo, Malambo, Atlántico, Colombia; TEL: +57 5 376 9038, or +57 320 546 0177 , and to the Buyer at its address specified in the Agreement. Any change of address, telephone, telex or fax details must be notified to the other party in writing, at least 14 working days prior to the change taking effect.

### **34. VALIDITY**

These terms and conditions shall be valid and binding for all offers, quotations, prices and deliveries made by **C.I QUALITY BUNKERS SUPPLY S.A.S S.A.S**, representative or agent.

These terms and conditions are available at the website [www.qualitybunkers.com](http://www.qualitybunkers.com).