



# GENERAL TERMS AND CONDITIONS

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OF SALE FOR MARINE BUNKERS, EDITION 2021

**ENLG SWISS**

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## A. GENERAL INTRODUCTION

- A.1 This is a statement of the terms and conditions according to which ENLG SWISS (hereinafter called "ENLG SWISS") will sell marine bunkers and lubricants.
- A.2 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 ENLG SWISS.
- A.3 General trading conditions of another party will not apply, unless expressly accepted in writing by ENLG SWISS. In the case that, for whatever reason, one or more of the (sub)clauses of these general conditions are invalid, the other (sub)clauses hereof shall remain valid and be binding upon the parties.

## B. DEFINITIONS

- B.1 Throughout this document the following definitions shall apply:

"Seller"	means ENLG SWISS
"Buyer"	means the party which placed the purchase order to the Seller and, jointly and severally, the Vessel supplied, her Master, her registered Owners, her Managers/Operators, her Disponent Owners, her Time Charterers, her Bareboat Charterers and her Charterers or any party requesting offers or quotations for or ordering Bunkers and/or Services for the vessel and any party on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made;
"Bunkers"	means the commercial grades of bunker oils and lubricants as generally offered to the Seller's customers for similar use at the time and place of delivery/ and/or services connected thereto;
"Owner"	means the registered Owner, Manager or Bareboat Charterer of the vessel; means the Buyer's Vessel, Ship, Barge or Off-Shore Unit that receives the supply/bunkers; either as end-user or as transfer unit to a third party;
"Nomination"	means the written request/requirement by the Buyer to the Seller, for the supply of the Bunkers;
"Order Confirmation"	means the written confirmation as issued by the Seller and forwarded to the Buyer to conclude the conclusion of the negotiated sale/purchase of the Bunkers. In case of conflict between the Nomination and the Order Confirmation, the wording and content of the Order Confirmation shall be deemed to contain the prevailing terms of the Agreement unless the Seller otherwise agrees in writing;
"Agreement"	means the concluded terms for the sale/purchase of the Bunkers;
"Supplier"	means any party instructed by or on behalf of the Seller to supply or deliver the Bunkers;
"GTC"	means these General Terms and Conditions which shall govern the contractual regulations between the Seller and the Buyer, along and in addition to the terms contained in the Order Confirmation;
"BDR"	means the Bunker Delivery Receipt, being the document(s) which is/are signed by the Buyer's representative(s) at the place of the supply of the Bunkers to the Vessel, evidencing the quality and quantity of the Bunkers supplied to and received by the Vessel.

## C. OFFERS, QUOTATIONS AND PRICES

- C.1 An Agreement shall only be concluded and binding on the Seller when the Seller sends the Order Confirmation to the Buyer. Each Order Confirmation shall incorporate these GTC by reference so that the GTC are considered a part of the Confirmation. In any event, the delivery & receipt of the Bunkers by the

vessel's Master & crew shall be construed as an unequivocal and undisputable acceptance of these GTC as well as of the terms contained in the Order Confirmation.

- C.2 Agreements entered into via brokers, or any other authorized representative on behalf of the Seller, shall only bind the Seller upon the Sellers' broker or other authorized representative sending the Order Confirmation to the Buyer or the Buyer's broker as the case may be.
- C.3 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. Any later or additional tax, assessment, duty or other charge 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 (under the prevailing circumstances) time after the Seller becoming aware of the relevant circumstances.
- C.4 All prices and/or tariffs are VAT exclusive, unless specifically stated otherwise. Any VAT or other charge and/or tax applicable and whenever imposed, shall be promptly paid by the Buyer, and unless otherwise agreed in writing all supplies are quoted and invoiced based on quantity calculated in metric tons in vacuum.
- C.5 If the party requesting Bunkers is not the Owner of the Vessel, the Seller shall have the right (but will not be obliged) to insist as a precondition of sale that a payment guarantee is provided by the Owner. The Seller shall have the right (but will not be obliged) to cancel any agreement with the Buyer at any time, if such payment guarantee is not received upon request thereof from the Seller to the Owner. The Seller's decision to forego obtaining a payment guarantee under this Clause C.5 shall have no effect on Seller's right to a lien on the Vessel for any Bunkers supplied under this Agreement.
- C.6 If the party requesting the Bunkers is not the Owner of the Vessel, it warrants that it is authorized as agent and representative of the Owner to order Bunkers for the Vessel, and that the Seller has a lien on the Vessel for any Bunkers supplied under this Agreement. If the party requesting the Bunkers is not the Owner of the Vessel, it shall assume the sole responsibility for communicating the terms and conditions of this Agreement to the Owner of the Vessel prior to the date of delivery. As such, if the Buyer is not the Owner of the Vessel, the Agreement shall be binding on them in all circumstances, and they shall be deemed to be jointly and severally liable with the Buyer.
- C.7 If at any time before the delivery the financial standing of the Buyer appears to the Seller (in its absolute discretion) to have become impaired or unsatisfactory, the Seller may require cash payment or security to be provided by the Buyer prior to delivery, failing which the Seller may cancel the delivery without any liability on the part of the latter or its subcontractors.

#### **D. SPECIFICATIONS (QUALITY – QUANTITY)**

- D.1 The Buyer assumes the sole responsibility for the choice of nominating the quantity and quality of Bunkers and determine (if applicable) potential compatibility with any Bunkers already on board the Vessel. The Buyer also assumes the sole responsibility for the selection and fitness of its choice of Bunkers for any particular use or purpose, and the Seller shall assume no responsibility whatsoever for the compliance or fitness of the Bunkers for a specific type of engine or equipment which the Buyer may or may not have agreed upon in any C/P (Charterparty) term or otherwise. This includes but is not limited to the quality, sulphur content and any other specific characteristics of the Bunkers whatsoever. Any and all warranties regarding the satisfactory quality, merchantability, fitness for purpose, description or otherwise, are hereby excluded and disclaimed. Where specifications designate a maximum value, no minimum value is guaranteed unless expressly stated in the Order Confirmation, and conversely where minimum values are provided in a specification, no maximum values are guaranteed unless expressly stated in the Order Confirmation.

- D.2 The quality and quantity shall be as agreed between the Seller and the Buyer and shall correspond to the Seller's Order Confirmation. Unless otherwise agreed to in writing, the Bunkers are delivered and sold based on metric tons in vacuum.
- D.3 Where standard specifications are being given or referred to, tolerances in accordance with ISO 4259 in respect of Reproducibility/Repeatability in quality are to be accepted without compensation or other consequences whatsoever.
- D.4 In respect of the quantity agreed upon, the Seller shall be at liberty to provide, and the Buyer shall accept a variation of 5% from the agreed quantity, with no other consequence than a similar variation to the corresponding invoice from the Seller.
- D.5 Information regarding the typical characteristics of the Bunkers at any delivery location shall only be indicative of the Bunkers that have been made available at that location and shall not form a part of the specification of the Bunkers to be delivered. All grades of produce may contain petroleum industry allowed bio-derived components.

#### **E. MEASUREMENTS - NON CLAUSING OF THE BDR(S)**

- E.1 The quantities of bunkers shall be determined only from the official gauge or meter of the bunkering barge, tank truck or of the shore tank in case of delivery ex wharf.
- E.2 The Buyer's representative shall together with the Seller's representative measure and verify the quantities of Bunkers delivered from the tank(s) from which the delivery is made. When supplied by bunkering barge/tanker the particular barge/tanker will present its tank calibration and Ullage sounding records, which are agreed to be the sole valid and binding document(s) to determine the quantity or quantities supplied. Quantities calculated from the Receiving Vessel's soundings shall not be considered.
- E.3 Should the Buyer's representative fail or decline to verify the quantities, the measurements of quantities made by the Seller or the Supplier shall be final, conclusive and binding and the Buyer shall be deemed to have waived any and all claims in regard to any variance.
- E.4 The Buyer expressly undertakes not to make any endorsement, complaint/ comment (including but without limitation any "No-lien" clausung) on the BDR when presented for signature by the Buyer's representative(s), any such insertion shall be invalid and of no effect whatsoever.
- E.5 In the event of complaint/comment on the quantity of Bunkers delivered, the Buyer or the Master of the Vessel shall give to the Seller/Supplier a letter of protest separately, immediately upon delivery completion, followed by a complaint in detail to the Seller verbally or in writing, setting out the exact quantity(ies) claimed short supplied. Additionally, full supporting vouchers, need also to be presented to the Seller in writing within 7 (seven) days thereof, failing which, any such claim by the Buyer shall be extinguished as nonexistent, and the Buyer shall be deemed to have expressly waived any such claim against the Seller/Supplier the relevant claim being time barred, and the Seller/Supplier's weight and measurements shall be conclusive evidence of the quantity of Bunkers delivered.

#### **F. SAMPLING**

- F.1 The Supplier shall arrange for four (4) representative samples of each grade of Bunkers to be drawn throughout the entire bunkering operation. The said samples shall be drawn through a sampling device, with the continuous dripping process. The Buyer's representative has the responsibility to witness that such samples are drawn correctly and shall confirm his witnessing thereof and also confirm the proper and correct sealing by signing the labels of the sample bottles.
- F.2 In case that drip sampling is not available onboard the barge, tank truck or shore tank, samples shall be taken as a composite of each tank from which supplies are made, onboard the barge (respectively at the shore tank or tank truck), divided with 1 /3 from each the top, mid and bottom of the tanks.
- F.3 The samples shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, product name, delivery date and place and seal number, authenticated with the Vessel's stamp and signed by the Seller's representative and the Master of the Vessel or his representative. The seal numbers shall be inserted into the BDR/Bunker Delivery Receipts, and by signing the BDR both parties agrees to the fact that the samples referred to therein are deemed valid and taken in accordance with the requirements as specified in this Chapter F.

- F.4 Two (2) samples shall be retained by the Seller for ninety (90) days after delivery of the Bunkers, or if requested by the Buyer in writing, for as long as the Buyer reasonably required. The other two (2) samples shall be retained by the receiving Vessel, one of which being dedicated as the MARPOL sample.
- F.5 In the event of a dispute in regard to the quality of the Bunkers delivered, the samples drawn pursuant to this Chapter F, shall be conclusive and final evidence of the quality of the Bunkers delivered. One, and only one, of the samples retained by the Sellers shall be forwarded to an independent laboratory to perform a set of tests, the result of which is to be made available to both parties. Those test results shall be final and binding upon both the Buyer and the Seller as to the parameters tested. The parties are to use best endeavors to agree the independent laboratory to perform the tests. If, however, no agreement can be reached on the choice of laboratory within 3 days of the Buyer being advised of the Seller opting to have the sample tested, the Seller is at liberty to send the sample to a reputable and independent laboratory of its choice for the tests to be conducted, and those test results will be final and binding upon Buyer and Seller as set out above. In case of a quality dispute, all other samples drawn by the parties (both during and after the conclusion of the bunkering operation), as well as any other evidentiary material or means (including witness statements and testimonies) shall be absolutely excluded and will have no value as evidence.
- F.6 The sample bottle seals must be breached only in the presence of both parties unless one/both in writing have declared that they will not be present, or unless one/both fail to be present at the appropriate time and place. Both parties shall have the right to appoint independent person(s) or surveyor(s) to witness the seal breaking.
- F.7 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.
- F.8 Any eventual samples drawn by Buyer's personnel either during bunkering or at any later date after bunkering shall not be valid as indicator of the quality supplied. The fact that such samples may eventually bear the signature of personnel on board the barge or tank truck or other delivery conveyance shall have no legal significance as such local personnel have no authority to bind the Seller to any contractual terms other than the present ones. The Seller shall have no liability for claims arising in circumstances where the Buyer may have commingled the products on board the Vessel with other fuels.

## G. DELIVERY

- G.1 The time of delivery, as represented by the Seller, has been given as an approximate time, unless it has been otherwise specifically agreed in writing between the parties.
- G.2 The time of delivery will only be binding upon the Seller when all information necessary for the Seller to comply with its obligations hereunder, have been properly delivered to the Seller within reasonable time before the delivery. In the event the Nomination addresses a spread of dates for delivery, the Seller shall have the sole discretion to commence the delivery within any time, day/night of these dates, always subject to the circumstances set out below in Clause G.3.
- G.3 The Vessel shall, under all circumstances, be bunkered as promptly as the prevailing circumstances permit, having regard to congestion affecting the delivery facilities of the Seller, its Suppliers or Agents and to prior commitments of barges or other delivery means. The Seller and/or the Supplier shall not be liable for any consequences or any time lost due to the Vessel having to wait for berth with relation to bunkering or for the completion of the bunkering operation, and unless otherwise agreed to in writing, the Seller shall not be obligated to deliver the Bunkers prior to the nominated date or spread of dates. The Seller shall not be held responsible for any delays caused by local customs, pilots, port, or other authorities.
- G.4 In any case the Buyer, unless otherwise agreed to in writing, must give not less than 72 (seventy two) hours approximate notice of readiness of the Vessel for delivery, which is to be followed by 48 (forty eight) hours and 24 (twenty four) hours such notices, where the last notice must also specify the exact place of delivery. All these notices must be given to the Sellers and to the Seller's representatives/agents in writing.
- G.5 The Seller shall be entitled to deliver the Bunkers by separate part deliveries, in which case each part delivery shall be construed as a separate delivery.
- G.6 The Seller shall not be required to deliver any Bunkers if any customs and/or other government permit required for such purpose has not been obtained in due time before the delivery.

- G.7 If the Seller/Supplier, at any time and for any reason, believes that there may be a shortage of supply at any place and that, as a result thereof, it may be unable to meet the demands of all its customers, the Seller may allocate its available and anticipated quantity/ies of Bunkers among its customers in such a manner as it may determine appropriate in its sole discretion.
- G.8 The Vessel shall be accessible at all times to the Seller and to its Supplier and shall be bunkered as promptly as the circumstances permit. The Seller and/or the Supplier shall not be liable for any demurrage paid or incurred by the Buyer or for any loss, damage or delay of the Vessel (consequential and/or liquidating damages included) of any nature whatsoever due to congestion at the loading terminal, prior commitments of available barges or tank trucks or any other reason.
- G.9 The Buyer shall ensure that the Vessel provides a free, safe, and always afloat and accessible side for the delivery of bunkers and that all necessary assistance, as required by the Seller or the Seller's representative, is rendered in connection with the delivery. If in the Supplier's opinion, clear and safe berth is unavailable, delivery might be delayed or, in the Seller's option, cancelled and all costs related to above will burden solely the Buyer.
- G.10 The Vessel shall moor, unmoor, hoist and lower bunkering hose(s) from the barge(s) whenever required by the Seller, the Seller's representative or the Supplier, free of expenses and in any way as may be requested to assist the barge equipment to a smooth supply. The Buyer shall make and be responsible for all connections and disconnections between the delivery hose(s) and the Vessel's bunker intake manifold/pipe and ensure that the hose(s) are properly secured to the Vessel's manifold prior to commencement of delivery. During bunkering the Vessel's scuppers must be safely blocked, which blocking must be made by the Vessel's own crew. Furthermore, the Vessel must ensure that all pipes and manifolds and receiving tanks are properly checked and ready to receive the bunkers, including but not limited to ensuring proper opening/closing of relevant valves, without any risk for spillages, etc., during the bunkering. Local further special requirements for receiving bunkers must be followed strictly by the Vessel, whether advised or not by the Seller or the Seller's representative, as it is always the Vessel and the Buyer who remain solely responsible for the knowledge and awareness of such eventual additional requirements for safety reasons.
- G.11 In the event that the Vessel is not able to receive the delivery promptly, the Buyer shall be, thereby, in default and shall pay damages and/or any reasonable demurrage claim to the barging/supplying facilities and shall indemnify the Seller in each and every respect as a result thereof.
- G.12 Delivery shall be deemed completed and all risk and liabilities, including loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage to the Bunkers delivered and responsibility for loss, damage and harm caused by pollution or in any other manner to third parties shall pass to the Buyer from the time the Bunkers reach the flange/connecting pipe line(s)/delivery hoses provided by the Seller on the barge/ tank truck/shore tank.
- G.13 If the Buyer, for whatever reason, is unable or refuses to receive the full quantity ordered, the Seller shall have the right to invoice the Buyer for the loss incurred by having to transport the undelivered Bunkers back to the storage or by having to sell the Bunkers in a degraded form or at a lower price. The Seller may exercise this right without prejudice to the Seller's other rights for damages or otherwise pursuant to these conditions.
- G.14 The Vessel shall provide and shall have appropriate and segregated tanks to receive the contracted quantity of Bunkers. Moreover, the Vessel shall always be able to perform its own blending on board if any blending is deemed to be required by the Buyer. The Vessel shall upon delivery test the Bunkers supplied by running her engines or auxiliaries or equipment, for which the Bunkers are supplied, for a minimum of 1 (one) hour to determine that the Bunkers are satisfactory. In the event the Bunkers are not considered satisfactory, the Seller and Supplier are to be notified in writing immediately after such test period has expired. Otherwise, it shall be deemed that the Bunkers were satisfactory and that in any event the Buyer has waived any right to claim in this regard, both under the sale agreement and in relation to tort.

- G.15 If delivery is required outside normal business hours or on local weekends, Saturday, Sunday, national religious or public holidays the extra expenses incidental to such delivery shall be reimbursed by the Buyer as additional cost.
- G.16 In the event the Bunker delivery is made by vessel or barge as a ship-to-ship transfer, any damage caused by contact and/or collision and/or swell and/or other weather or sea-related condition or incident, is to be dealt with by the Owners directly with the owners of the units involved, and the Seller/Supplier shall not be held responsible nor accountable in any way for any such damages. If, however, any of the involved units choose to pursue the Seller and/or the Supplier with relation to such damages, the Buyer (as well as the persons jointly and severally liable with it under Chapter C hereto) will fully indemnify and hold the Seller harmless in relation thereto.
- G.17 For safety reasons it is agreed that it is solely the Master of the bunkering barge that determines whether mooring alongside is safe, taking weather, swell and forecasts into consideration. The Supplier and/or the Seller shall not be held responsible for any delays, demurrages, liquidating damages or similar whatsoever as a result of any eventual delays caused by any decision by the Master of the barge in this connection. The supplies will be always performed weather permitting.
- G.18 Without prejudice to any other article(s) herein, any and all supply/ies will be based on best endeavours only if the receiving Vessel arrives outside the originally agreed time split as per the Order Confirmation forwarded to the Buyer.

## H. TITLE

- H.1 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 the amounts due in connection with the respective delivery. The provisions in this section are without prejudice to such other rights as the Seller may have under the laws of the governing jurisdiction against the Buyer or the Vessel in the event of non-payment.
- H.2 Until full payment of the full amount due to the Seller has been made and subject to Article G. 4 hereof, the Buyer agrees that it is in possession of the Bunkers solely as Bailee for the Seller, and shall not be entitled to use the Bunkers other than for the propulsion of the Vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the Bunkers to any third party or other Vessel.
- H.3 In case of non or short payment for the Bunkers by the Buyer, the Seller will be entitled (but not obliged) to repossess the Bunkers without prior juridical intervention, without prejudice to all other rights or remedies available to the Seller.
- H.4 In the event that the Bunkers have been mixed with other bunkers on board the Vessel, the Seller shall have the right to trace its proprietary interest in the Bunkers into the mixed bunkers and/or a right of lien to such part of the mixed bunkers as corresponds to the quantity or net value of the Bunkers delivered.
- H.5 The provisions of this Chapter H do not prejudice, or in any way limit, the Seller's right to arrest, attach or enforce against the Vessel and/or sister ship and/or any sister or associate ship and/or other assets of the Buyer (or the Owner of the Vessel or any other party liable), wherever situated in the world, without prior notice.
- H.6 Where, notwithstanding these conditions, title in and to the delivered Bunkers has passed to the Buyer and/or any third party before full payment has been made to the Seller, the Buyer shall grant a pledge over such Bunkers to the Seller. The Buyer shall furthermore grant a pledge over any other Bunkers present in the respective Vessel, including any mixtures of the delivered Bunkers and other bunkers. Such pledge will be deemed to have been given for any and all claims, of whatever origin and of whatever nature that the Seller may have against the Buyer.
- H.7 For the avoidance of doubt, where a mortgagee enforces any rights against the Vessel and becomes a mortgagee in possession of the Bunkers then as bailee the mortgagee will be liable to the Seller for the fulfilment of the Agreement.



## I. PAYMENT – MARITIME LIEN

- I.1 Payment for the Bunkers and/or for the relevant services and/or charges shall be made by the Buyer as directed by the Seller within the period agreed in writing and stipulated in the order confirmation.
- I.2 Payment shall be made in full, without any set-off, counterclaim, deduction and/or discount free of bank charges to the bank account indicated by the Seller on the respective invoice(s).
- I.3
- (i) If at any time after delivery of the Bunkers but before the due date the financial standing of the Buyer appears to the Seller (in its sole discretion) to have become impaired or unsatisfying, the Seller may require immediate full payment of all its invoices due and/or those not yet due, or may request such security as it shall deem to be satisfactory.
  - (ii) In the event that the Buyer shall default in making any payment due, the Seller may suspend deliveries of Bunkers until such payment has been made in full (together with default/delay compensation and costs), or the Seller may, in its discretion, elect to treat such default as a serious breach of the Agreement and thereupon terminate the Agreement, in whole or in part, without prejudice to any claim against the Buyer for damages, including cancellation charges. Such termination or suspension shall not relieve the Buyer of any obligation undertaken by virtue of an Agreement so terminated.
  - (iii) Where the Seller has extended any kind of credit facility to a group of companies or associated companies, default by any one relevant Buyer in respect to any invoice of the Seller shall give the right to the Seller to cancel all credit arrangements of the entire group or of all the associates, whereupon subclauses 1.3.(i) and 1.3.(ii) shall apply as appropriate.
  - (iv) Where the Buyer fails to pay timely, the Seller has the right to (without prejudice to its rights to receive default/delay compensation) take all appropriate steps to secure and enforce its claim; the Seller may also unilaterally cancel any credit arrangements agreed with/extended to the Buyer.
  - (v) All judicial and extrajudicial costs and expenses, including pre-action costs, fees, expenses and disbursements of the Seller's lawyers/attorneys-at-law, incurred in connection with non-payment or delayed payment or by any other breach by the Buyer of these conditions, shall be for the Buyer's account, immediately payable by the latter to the Seller. In case of litigation, the Buyers shall also pay all the relevant expenses to the Seller, including, but not limited to, all its reasonable attorneys/lawyers' fees, costs and disbursements.
- I.4 Payment shall be deemed to have been made on the date when the Seller has received the full payment, and such is available to the Seller. If payment falls due on a non-business day, the payment shall be made on or before the business day nearest to the due date. If the preceding and the succeeding business days are equally near to the due date, then payment shall be made on or before the preceding business day.
- I.5 Any delay in payment of the full amount due shall entitle the Seller to claim interest over the value of the Bunkers or over the unpaid balance thereof at the rate of 3 (three) per cent per month (compounded monthly for each month [or part thereof] of non-payment) without prejudice to any rights or remedies available to the Seller. Furthermore, the Seller will be entitled to charge a delayed payment administration fee of USD 1.50 per metric ton supplied, or the equivalent thereof in local currency, with a minimum administration fee of USD 350.00 for each delivery made. All reasonable attorneys' fees incurred by Seller in connection with the collection of overdue payments shall be for the sole account of the Buyer (as well as of the persons jointly and severally liable with it under Chapter C hereto).
- I.6 Payments made by the Buyer in respect of a supply of Bunkers shall at all times be credited in the following order: (1) costs of any kind or nature, including but not limited to legal costs and attorneys' fees, (2) interest and administration fee, and (3) invoices in chronological order, also if not yet due, or in Seller's sole discretion to specify a payment to any such invoice Seller considers relevant.
- I.7 All costs borne by the Seller in connection with the collection of overdue payments, including those of the Seller's own legal and credit department and, including but not limited to, reasonable attorneys' fees, whether made in or out of court and in general all costs in connection with the breach of any agreement by the Buyer, including but not limited to reasonable attorneys' fees, shall solely burden the Buyer (as well as of the persons jointly and severally liable with it under Chapter C hereto).
- I.8 The Seller shall, at all times, in its absolute discretion, be entitled to request from the Buyer to provide the Seller what the Seller deems to be proper security for the performance of all of Buyer's obligations under the Agreement. Failing the immediate provision of such security upon the Seller's demand, the Seller shall

be entitled to stop any further execution of any agreement(s) between the parties until such time as the Buyer has provided the requested security.

- I.9 Where Bunkers are supplied to a Vessel, in addition to any other security, the Agreement is entered into and the Goods are supplied upon the faith and credit of the Vessel. It is agreed and acknowledged that the sale of Bunkers to the Buyer and/or their acceptance on the Vessel create a maritime lien over the Vessel for the price of the Bunkers (and all interest and costs payable in respect thereof; including but not limited to the reasonable attorney's fees), such maritime lien afforded to the Seller over the Vessel. In any event any applicable Law shall not prejudice the right of the maritime lien of the Seller afforded hereunder or by any other applicable Law, be it of the place of delivery, or the flag of the Vessel, or the place of jurisdiction and/or an arrest of the Vessel, or otherwise howsoever.
- I.10 It is mutually agreed that the Bunkers provided by the Seller to the Buyer under the terms of this Agreement have been ordered by the Buyer in the ordinary course of business between the Seller and the Buyer. All payments from the Buyer to the Seller for the Bunkers supplied under this Agreement are deemed to have been made in the ordinary course of business between the Seller and the Buyer, according to these ordinary business terms agreed between them.

## J. CLAIMS

- J.1 In addition to the obligations referred to in Articles E.4 and E.5 herein, any claim in connection with the quantity of the Bunkers delivered must be notified by the Buyer, or the Master of the Vessel, to the Seller and to the Supplier immediately after completion of delivery in the form of a letter of protest. If the Buyer or the Vessel's Master fail to present such immediate notice of protest to the Seller and the Supplier, such claim shall be deemed to have been waived and shall be absolutely barred for all purposes.
- J.2 Always without prejudice to Article G.14 herein, any and all claims concerning the quality of the Bunkers delivered or time consumed for the entire operation, shall be submitted to the Seller in writing within 15 (fifteen) days after delivery with a clear statement as to the nature or the claim(s) along with appropriate supporting documentation, failing which any rights to complain or claim compensation of whatever nature shall be deemed to have been waived and absolutely barred for all purposes.
- J.3 The Buyer shall be obliged to make payment in full and to fulfil all other obligations in accordance with the terms of the Agreement including these conditions, whether it has any claims or complaints or not. If the Buyer submits a claim against the Seller with respect to the quality or quantity of the products supplied, the Seller or the Seller's nominated representative shall be entitled to board the Vessel and investigate the Vessel's records, log books, engine logs, etc., and to make copies of any such documents the Seller or the Seller's nominated representative may consider necessary for their investigations connected to the case. The Buyer shall allow this, or in case the Buyer has chartered the Vessel then the Buyer shall obtain authorization from the Owner to allow the herein stated steps and to provide full assistance and support by the Vessel's officers and crew in any such manner as the Seller or the Seller's nominated representative may require. Failure to allow the boarding and/or to produce the required copies of documents and/or lack of full cooperation on behalf of the Vessel's officers and crew shall constitute a waiver of the Buyer's claim.
- J.4 The Seller shall be allowed, and the Buyer, Owner, Officers and Crew onboard the receiving Vessel shall agree and in any way support and cooperate with the Seller and/or its representative, to draw samples from the Vessel's storage tanks, settling tanks and service tanks and/or from before and after the Vessel's centrifuges to have extra tests carried out for such samples at independent laboratory.
- J.5 In each and every case, any and all claims of the Buyer shall be time barred unless arbitration/legal proceedings have been commenced/issued at the competent tribunal/court set forth in Chapter P hereof and served within 12 (twelve) months from the date of delivery of the Bunkers, or the date that delivery should have commenced pursuant to the Order Confirmation from the Seller.

**K. LIABILITY – LIMITATION OF SELLER'S LIABILITY**

- K.1 The Seller and/or the Supplier shall not be liable for damages of whatever nature, including physical injury, nor for the delay in the delivery of the Bunkers or services, regardless of whether such damages or delay have been caused by fault or negligence on the side of the Seller. The Seller shall furthermore not be liable for damages or delay as described above when such damages or delay have been caused by the fault or negligence of its personnel, representatives, Supplier or (sub)contractors.
- K.2 Liabilities of the Seller for consequential and/or liquidated damages including but not limited to loss of time, loss of cargo or charter cancelling date, loss of income or profit/earnings, are excluded. In any event and notwithstanding anything to the contrary herein, liability of the Seller shall under no circumstances exceed the invoice value of the Bunkers supplied under the relevant agreement to the relevant Vessel.
- K.3 The Buyer shall be liable towards the Seller and herewith undertakes to indemnify the Seller for any and all damages and/or costs suffered or otherwise incurred on the Seller due to a breach of contract and/or fault or negligence of the Buyers, its Supplier, agents, Servants, (sub)contractors, representatives, employees and the officers, crews and/or other people whether or not on board of the Vessel(s). The Buyer furthermore undertakes to hold the Seller harmless in case that any third-party institutes a claim of whatever kind against the Seller whether in direct or in indirect relation to any agreement regulated by these terms and conditions. Third party shall mean any (physical or legal) person other than the Buyer.
- K.4 No servant, supplier or agent of the Seller/Supplier (including independent (sub)contractors from time to time employed by the Seller/Supplier) shall be liable to the Buyer for loss, damage or delay, while acting in the course of or in connection with its employment and/or agency for the Seller. Without prejudice to the above every exemption, limitation, condition and liberty herein contained, and every right, exemption from or limit to liability, defense or immunity of whatever nature applicable to the Seller or to which it is entitled hereunder shall also be available and shall extend to protect every such servant, representative or agent of the Seller and/or the Supplier acting as aforesaid.

**L. EXEMPTIONS AND FORCE MAJEURE**

- L.1 Neither the Seller nor the Seller's Supplier shall be liable for any loss, claim, damage, delay or demurrage due to any delay or failure in their performance under this Agreement (a) by reason of compliance with any order or request of any government authority, or person purporting to act therefore, or (b) when supply of the Bunkers or any facility of production, manufacture, storage, transportation, distribution or delivery contemplated by the Seller or Supplier is interrupted, delayed by congestion or other event (also see Article G.3 above), or by unavailability of product and/or barge equipment or by inadequate resource for any cause whatsoever which interruption, delay, unavailability or inadequate resources is not within the immediate control of the Seller or the Supplier, including (without limitation) if such is caused wholly or partly by labor disputes, strikes, stoppages, lock-out, governmental intervention, wars, civil commotion, riot, quarantine, fire, flood, earthquake, accident, storm, swell, ice, adverse weather, pandemic or any act of God. Neither the Seller nor the Supplier shall be required to remove any such cause or replace any affected source or supply or facility if doing so shall involve additional expense or a deviation from the Seller's or the Supplier's normal practices. Neither the Seller, nor the Supplier shall be required to make any deliveries which fail in whole or in part as a result of the causes set out in this Article at any later time.
- L.2 If the Buyer exercises reasonable diligence, it shall not be liable for failure to receive any particular delivery if prevented therefrom by force majeure. The Buyer shall indemnify the Seller or the Seller's supplier for any damage caused by the Buyer, the Buyer's agents or employees in connection with deliveries hereunder.
- L.3 Declaration of Force Majeure shall be given without undue delay, and not later than 48 hours since such event(s) have come to the knowledge of the respective party declaring the same. However, under no

circumstances and for no reason whatsoever, can Force Majeure entitle the Buyer not to pay promptly any invoice towards the Seller.

- L.4 In the event that the Seller, as a result of force majeure, can only deliver a superior grade of bunkers, the Seller is entitled to offer the said grade, and the Buyer must accept delivery thereof and pay the applicable price.
- L.5 **(a)** These Terms and Conditions are subject to variation in circumstances where the physical supply of the Bunkers is being undertaken by a third party (Supplier) which insists that the Buyer is also bound by its own terms and conditions. In such circumstances, these Terms and Conditions shall be varied accordingly, and the Buyer shall be deemed to have read and accepted the terms and conditions imposed by the said third party.
- (b)** Without prejudice or limitation to the generality of the foregoing, in the event that the third-party terms include:
- i. A shorter time limit for the doing of any act, or the making of any claim, then such shorter time limit shall be incorporated into these terms and conditions.
  - ii. Any additional exclusion of liability clause, then same shall be incorporated mutatis mutandis into these terms & conditions.
  - iii. A different law and/or forum selection for disputes to be determined, then such law selection and/or forum shall be incorporated into these terms and conditions.
- (c)** It is acknowledged and agreed that the Buyer shall not have any rights against the Seller which are greater or more extensive than the rights of the Seller against the aforesaid third party.

## M. BREACH/CANCELLATION

- M.1 Without prejudice to any other remedies and rights, the Seller shall have the option to immediately cancel the Agreement in full or in part, or to store or procure the storage of the Bunkers, in whole or in part, for the account and risk of the Buyer and to charge the Buyer the expenses thereby incurred, or to hold the Buyer fully to the agreement, or take any other measures which the Seller deems appropriate, without prejudice to its rights of indemnification, without any liability on the side of the Seller, in any of (but not limited to) the following cases:
- a) when the Buyer, for whatever reason, fails to accept the Bunkers in part or in full at the place and time designated for delivery;
  - b) when the Buyer fails in part or in full to comply with its obligations to pay any amount due to the Seller and/or provide security as set out in these GTC;
  - c) when, before the date of delivery, it is apparent in the opinion of the Seller that the financial position of the Buyer entails a risk to the Seller;
  - d) when, in case of force majeure, the Seller is of the opinion that the execution of the agreement should be cancelled.
- M.2 The Seller may terminate any Agreement with the Buyer in whole or in part, in its full discretion, upon the breach of any provisions hereof by the Buyer or in the event that the Buyer fails to make or suspends payment, ceases to carry on business, makes an arrangement with its creditors or undergoes any form of bankruptcy, administration, re-organization or asset rearrangement.
- M.3 **(a)** The Seller has the option to immediately cancel the Agreement for the account and risk of the Buyer if at any time the Seller, in its sole discretion, has reasonable grounds to believe that:
1. The Vessel; or
  2. The Charterer of the Vessel; or
  3. The fully or partly Owner(s) of the Vessel; or
  4. Any officers of the Vessel; or
  5. The Operator and/or Manager of the Vessel; or

6. Any other person or entity in any way related to the Agreement or delivery; is/are Iranian national(s) and/or related in any way to Iran or to Iranian nationals, and/or listed on the US OFAC Specially Designated Nationals List, and/or covered by any US, UN- and/or EU sanctions, and/or covered by any sanctions of any other jurisdiction and/or administration.

**(b)** Under no circumstances can the Seller be held liable for any losses, delays, claims or damages of whatever kind and nature suffered by the Buyer due to a cancellation under this Article.

**(c)** The Buyer must inform the Seller immediately once it becomes aware of or has reasons to believe that any of the above items are true and apply or might apply. Should the Buyer breach its obligation to inform the Seller, the Buyer shall fully indemnify and keep the Seller harmless for any damage or loss caused by such breach, including consequential or liquidated damages.

M.4 The Buyer acknowledges that any agreements with the Seller and any actions related to such agreements as well as any interaction with third parties related to such agreements are covered by certain anticorruption laws and regulations which can include any anticorruption law, including but not limited to the U.S. Foreign Corrupt Practices Act ("FCPA"), and the UK Bribery Act. Therefore, the Buyer declares to comply with all applicable anticorruption laws and regulations and agrees that it has not, and will not, offer, promise, pay, or authorize the payment of any money or anything of value, or take any action in furtherance of such a payment, whether by direct or indirect means, to any public official or private individual to influence the decision of such person in the performance of his duties to a government or to his company. Any breach of this clause will void the related Agreement and in the sole discretion of the Buyer any other Agreement between the parties, making any claims for payment, delivery or any other obligation of the Seller under this Agreement void. The Buyer is liable for all and any costs or losses incurred by the Seller due to such breach and/or an Agreement becoming void therefore.

## **N. SPILLAGE, ENVIRONMENTAL PROTECTION**

N.1 If a spill occurs while the Bunkers are being delivered, the Buyer shall promptly take such action as is necessary to remove the spilled Bunkers and mitigate the effects of such spill. Without prejudice to the generality of the foregoing the Seller is hereby authorized by the Buyer in the absolute discretion of the Seller, but at the expense of the Buyer, to take such measures and incur such expenses (whether by employing its own resources or by contraction with others) as are necessary in the judgment of the Seller to remove the spilled Bunkers and mitigate the effects of such spill. The Buyer shall cooperate and render such assistance as is required by the Seller in the course of the action involved. All expenses, claims, costs, losses, damages, liability and penalties arising from spills shall be borne by the party that caused the spill through a negligent act or omission. If both parties have acted negligently, all expenses, claims, losses, damages, liability and penalties, shall be divided between the parties in accordance with the respective degree of negligence. The burden of proof to show the Seller's negligence shall lie with the Buyer. The Buyer shall give the Seller all documents and other information concerning any spillage or any program for the prevention thereof that is required by the Seller, or is required by law or regulation applicable at the time and place of delivery.

## **O. DELAYS AND CANCELLATIONS**

O.1 Notwithstanding anything else 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 agrees that Seller has the sole discretion to cancel or to adjust prices in the event the Vessel is suffering a delay exceeding 24 hours from the (last) nomination date.

O.2 If the Buyer for whatever reason (including circumstances entirely outside Buyer's control) cancels the Agreement, where Order Confirmation has been sent by the Seller, the Buyer shall be liable for any and all losses suffered and for any and all liabilities incurred by the Seller and/or the Supplier as a result of such cancellation, including, but not limited to, barge costs, re-storing of the Bunkers, and hedging costs, and also in the Seller's sole option any difference between the contract price of the undelivered product and the amount received by the Seller upon resale to another party or, if another buyer cannot be found, any

market diminution in the value of the product as reasonably determined from available market indexes. These losses and liabilities shall be indemnified by a minimum amount of USD 5,000 by way of agreed minimum liquidated damages.

## **P. CONFIDENTIALITY**

- P.1 Neither Party shall disclose to third parties any confidential information relating to pre-contractual discussions and/or these terms and conditions, except with the prior written consent of the other Party, which shall not be unreasonably withheld, or to the extent required by law, or by a request of a government or its agency thereof.
- P.2 The Parties shall take reasonable precautions to ensure that no unauthorized disclosure of confidential information takes place.
- P.3 If a Party is uncertain as to whether information is confidential, the Sellers or the Buyers (as the case may be) shall consult with the other Party.
- P.4 Should either Party be required by law to disclose confidential information, the disclosing Party will, where permitted, notify the other Party and shall disclose only the minimum confidential information required to satisfy legal requirements.
- P.5 Information is not confidential for the purposes of this Clause if it was in the possession of the Party prior to receipt from the other Party; becomes publicly available other than as a result of a breach of the Agreement by one of the Parties; or is lawfully received from a third party.
- P.6 This Clause shall survive the termination of the Contract.

## **Q. LAW AND JURISDICTION**

- Q.1 This Agreement shall be governed and construed in accordance with English law. The 1980 United Nations Convention on Contracts for the International Sale of Goods shall not apply. Except for circumstances referred to in Clause Q.5 below all disputes arising out of or are in any way connected with this Agreement or any agreement relating hereto (including also disputes based on non-contractual grounds such as tort), shall be finally settled by arbitration in London, England in accordance with the Arbitration Act 1996 (or any subsequent amendment).
- Q.2 Any dispute shall be referred to a tribunal of three arbitrators consisting of one arbitrator to be appointed by the Seller, one by the Buyer, and one by the two arbitrators already appointed. Each member of the tribunal shall be a full member of The London Maritime Arbitrators Association (the "LMAA"). Either party may call for Arbitration by service of written notice, 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 its own arbitrator as sole arbitrator and shall subsequently advise the other party accordingly. The award of the sole arbitrator shall be binding on both parties as if he had been appointed by agreement. Provided each party appointed their own arbitrator then these two arbitrators shall jointly appoint the third arbitrator. In the event that the two 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. Any disputes to be referred to Arbitration are to be determined in accordance with the current LMAA terms unless the parties agree otherwise.
- Q.3 Nothing herein shall prevent the parties from agreeing in writing to vary these provisions so as to provide for the appointment of a sole arbitrator.
- Q.4 In cases where neither the claim nor any counterclaim exceeds the amount of USD 100,000 (or such other sum as the parties may agree) the Arbitration shall be conducted in accordance with the LMAA Small Claims Procedure applicable at the time when the arbitration proceedings are commenced.

- Q.5 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.
- Q.6 Without prejudice to any other Clause herein any disputes and/or claims arising in connection with these conditions and/or any Agreement governed by them, any dispute and/or claim arisen in connection with a Vessel detained by Seller at any port, place or anchorage within the United States shall be submitted to the United States District Court for the Southern District of New York.
- Q.7 If any procedure of any nature whatsoever is instituted under Clause Q.5 above, in connection with any controversy arising out of this Agreement or to interpret or enforce any rights under this Agreement, the prevailing party shall have the right to recover from the losing party its reasonable costs and attorneys' fees incurred in such proceeding.

## **R. NOTICES**

Any Party giving notice under the Agreement shall ensure that it is effectively given and such notice shall be treated as received during the recipients' office hours. If such notice is sent outside the recipients' office hours it shall be treated as received during the recipients' next working day.

## **S. VALIDITY**

- S.1 These terms and conditions shall be valid and binding for all offers, quotations, prices and deliveries made by the ENLG SWISS SA, (with the exception of offers, quotations & prices related to Bunker deliveries in Greece), as of May 1<sup>st</sup> 2021, or at any later date.
- S.2 If any provision of these terms and conditions is or becomes or is held to be illegal, invalid or unenforceable in any respect under any law or jurisdiction, the provision shall be deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if such amendment is not possible, the provision shall be deemed to be deleted to the extent of such illegality, invalidity or unenforceability and the remaining provisions shall continue in full force and effect and shall not in any way be affected or impaired thereby.
- S.3 Any terms implied into these terms and conditions by any applicable statute or law are hereby excluded to the extent that such exclusion can legally be made. Nothing in this Clause shall limit or exclude any liability for fraud by any Party to the Agreement.
- S.4 These terms and conditions are available at the website [www.enlgswiss.com](http://www.enlgswiss.com) on which site as well the Sellers may notify amendments, alterations, changes or verifications to same. Such amendments, alterations, changes or verifications are deemed to be a part of the entire terms once same have been advised on the website.