

Brightoil Group of Companies

GENERAL TERMS AND CONDITIONS FOR SALES AND SUPPLY OF MARINE FUELS

May 2011

Preamble

The following general terms of sale and supply shall constitute the General Terms and Condition of Sale – Marine Fuels (“Terms of Sale”) of the Brightoil Petroleum Group of Companies (collectively, “Brightoil”) headquartered at No. 33/F, 118 Connaught Road West, Sheung Wan, Hong Kong, Special Administrative Region which includes, but is not limited to Brightoil Petroleum (S’pore) Pte Ltd, Brightoil Petroleum (USA), Inc. and Brightoil Petroleum Holland BV, and their respective trade names, subsidiaries, affiliates and branch offices. This list includes all subsidiaries of Brightoil who have sold, are selling or will sell marine petroleum products and services, whether or not in existence on the effective date.

Each transaction specifically negotiated between Seller and Buyer shall be evidenced by Seller’s Sales Confirmation. Unless otherwise agreed in the Sales Confirmation, these Terms of Sale, together with the Sales Confirmation shall apply to all offers, quotations, orders, agreements, services and all amendments or supplements to the contract for the sale of marine petroleum products related to this transaction, and all subsequent contracts for the sale of marine petroleum products.

Unless otherwise agreed in writing, these Terms of Sale, as amended from time to time, together with the Sales Confirmation, which supersede any earlier terms and conditions issued by Brightoil, shall override any terms and conditions stipulated, incorporated or referred to by any other party whether in its order, stamping of documentation or elsewhere.

Headings in these Terms of Sale are for identification purposes only and shall not be deemed to be part, or be taken into consideration in the interpretation or construction, of the Terms of Sale.

Unless these Terms of Sale expressly require otherwise, any words denoting the regulator/singular shall include the plural and vice-versa.

QUOTATION AND BINDING CONTRACT

- (a) The Buyer shall send a nomination order to the Seller identifying the quantity and grade of Marine Fuels required, the port of delivery, the name of the vessel, her IMO number, the identity and contact details of the Vessel's Master, Owners, Manager, Operators, Despondent Owner, and Charterers, and any other SPECIAL CONDITIONS, DIFFICULTIES, PECULIARITIES, DEFICIENCIES OR DEFECTS IN RESPECT OF AND PARTICULAR TO THE VESSEL WHICH MIGHT ADVERSELY AFFECT THE DELIVERY OF Marine Fuels to it. Unless agreed otherwise, such order should be received by Seller no later than five working days' prior to delivery requirement.
- (b) A Contract shall only be binding on the Seller upon the issuance by the Seller of a Sales Confirmation.
- (c) The Seller's offer shall be based on the applicable taxes duties, costs, charges and price level of components for Marine Fuels existing at the time of the conclusion of the agreement (the time of the Seller's confirmation). Any rates and additional tax, assessment, duty or other charge of whatever nature and however named, or any increase of components for Marine Fuels or any additional costs borne by the Seller whatsoever caused by any change in the Seller's contemplated source of supply or otherwise, coming into existence after the agreement has been concluded, shall be added to the agreed purchase price, provided that the Seller shall give the Buyer prior notice of this effect within a reasonable time after the Seller becoming aware of the relevant circumstances.
- (d) "Buyer" in the Sales Confirmation warrants as having full authority to act on behalf of the named vessel; provided, however, if the party requesting Marine Fuels is not the Owner of the Vessel, the Seller shall have the right to insist as a precondition of sale that an appropriate guarantee or collateral is provided by the Owner. The Seller shall have the right to terminate any contract with the Buyer at any time, if such payment guarantee is not received upon request thereof from the Seller to the Owner at all or at least 24 hours prior to the scheduled delivery, unless otherwise agreed.

TITLE/RISK

- (a) Risk in the Marine Fuels shall pass to the Buyer once the Marine Fuels have passed the Seller's flange connecting the Vessel's Bunker manifold with the delivery facilities provided by the Seller.
- (b) If the Seller agrees to deliver Marine Fuels to the Buyer's nominated barge, storage tank or coastal light, risk in the Marine Fuels shall pass to the Buyer as the Marine Fuels pass through the flange of the permanent hose connection of the Seller's delivery facility.

- (c) Title to the Marine Fuels shall pass to the Buyer upon payment for full value of the Marine Fuels. Until such time as payment is made, on behalf of themselves and the Vessel, the Buyer agrees that he is in possession of the Marine Fuels solely as Bailee for the Seller.
- (e) In case of breach of this clause by the Buyer, the Seller is entitled to require that the Marine Fuels are re-delivered to the Seller, at Buyer's sole cost and expense, without prejudice to all other rights or remedies available to the Seller.
- (f) If, prior to payment, the Seller's Marine Fuels are commingled with other Marine Fuels on board the Vessel, title to the Marine Fuels shall remain with the Seller corresponding to the quantity or net value of the Marine Fuels delivered.
- (g) The above in without prejudice to such other rights as the Seller may have against the Buyer or the Vessel in the Vessel in the event of non-payment.

DELIVERY

- (a) The Marine Fuels shall be delivered to the location as stated in the Seller's Sales Confirmation.
- (b) If delivery is to the Buyer's receiving vessel, any delivery outside the working days and hours at the port of delivery, if permitted by port regulations, may give rise to additional charges which shall be for the Buyer's account. The Seller shall not be liable for any inability to deliver on public or dock holidays.
- (c) The vessel ETA and ETD shall be stated in the Sales Confirmation. The Seller shall use its reasonable efforts, but shall be under no obligation to deliver if the Vessel arrives outside the delivery laycan. The Buyer shall bear any extra costs incurred by the Seller in delivering outside the delivery laycan.
- (d) The Buyer, or its agents at the port or place of delivery, shall give the Seller or their representative at the port or, place of delivery, not less than forty eight (48) hours' notice of expected ETA of the Vessel. If the Buyer or its agent fails to do so, the Seller shall not be liable for any resulting delay in delivery and the Buyer shall reimburse any costs incurred pay the Seller. The Buyer or its agents shall also ensure that the Vessel issues the appropriate ETA notices to the Seller 72, 48 and 24 hours prior to the arrival of the Vessel and the exact location and time at which delivery in required.
- (e) The Buyer shall be responsible for making all connections and disconnections between the

delivery hoses(s) are properly connected to the Vessel's bunker manifold and to ensure that the hoses are properly connected to the Vessel's bunker manifold prior to commencement of delivery.

- (f) The Seller shall, in its absolute discretion, have the right to suspend or withhold deliveries of Marine Fuels to the Buyer should at any time the Seller have grounds to believe or suspect that the delivery of Marine Fuel to the Buyer may give rise to an environmental, health or safety risk. All claims, losses, costs, damages and expenses which arise as a consequence of such suspension or withholding shall be for the Buyer's account.
- (g) The Buyer shall ensure and warrant that the Vessel is in possession of and has on board all certificates required to comply with all relevant regulations pertaining to receipt and delivery of the Marine Fuels at the port or place of delivery.
- (h) In the event of delivery by barge(s), the Buyer shall provide free of expense to the Seller a safe berth for the Barge(s) alongside the Vessels intake pipe / receiving line (s). Further, the Buyer shall render all necessary assistance which may reasonably may be required to moor or unmoor the barge or to connect or disconnect the delivery hoses. Unless otherwise agreed in writing, Seller undertakes to provide barge delivery only within the limits of the delivery port. All barges and trucks utilized in the delivery are independent subcontractors and are not agents of Seller. Buyer shall be bound by the terms set forth in the barge company's or common carrier's tariff, general terms and conditions, contract or carriage or similar written contracts, as the case may be.
- (i) The Vessel to moor, unmoor, hoist, lower, bunkering hoses, whenever required by the Seller free of charge and to assist the Seller in the delivery operations.
- (j) Any charges (such as barge demurrage or overtime charges) which result from Buyer's or its Agent's failure to provide sufficient information, delays caused by the vessel, loading cancellations, the vessel's non-compliance with pertinent port authority or governmental regulations, or are the result of extraordinary vessel loading limitations or specific directions or orders of the vessel Master or Pilot which are not part of this Agreement shall be chargeable to Buyer who expressly agrees to pay any such charges.
- (k) Prior to commencement of delivery, the vessel shall inform Seller about the maximum pumping rate and pressure at which the vessel can receive fuel. Buyer is responsible for ensuring that the product is delivered at a safe rate and pressure and that all equipment utilized therefor is in a safe and satisfactory condition.

(l) Seller shall make reasonable efforts to fuel the vessel as promptly after its arrival at the delivery point as circumstances permit. However, Buyer's sole remedy in the event of delay in delivery or failure of supply shall be to cancel this Agreement.

QUANTITIES / MEASUREMENTS

(a) The quantities of Marine Fuels to be delivered by the Seller are those stated in the Seller's Confirmation. Measurement of quantities actually purchased shall be based upon barge gauges in case of barge deliveries or truck rack gauges in case of tank truck deliveries or on shore tanks if no barge gauges are available or if the barge gauges are demonstrable in error (such as a deviation of over 10%). Quantities shall be adjusted for gravity and temperature in accordance with the applicable ASTM-API-IP Petroleum Measurement Table. Seller's measurements shall be final and conclusive on the parties unless Buyer had a representative witness such measurements and at the time of delivery gave Seller a written protest as to accuracy. The Seller shall record the quantity of fuel delivered on the Bunker Delivery Note.

GRADES / QUALITY

(a) The Marine Fuels to be supplied shall conform to ISO 8217 (or any subsequent amendment) or otherwise as stated in the Sales Confirmation for the relevant grade or product being delivered unless otherwise agreed between Seller and Buyer.

(b) Buyer shall be solely responsible for nominating to Seller the grade of Marine Fuels for each delivery from among the range of fuels then offered for sale by Seller. Seller warrants that the Marine Fuels supplied hereunder shall be within the industry standards for the grade nominated by Buyer and that the Marine Fuels supplied shall be of merchantable quality. Unless otherwise agreed in writing by Seller, no other specifications are warranted.

(c) Seller will deliver fuel which will meet the specifications as set forth in the Sales Confirmation. However, due to the wide variety of engine and boiler requirements about which Seller has no knowledge, as well as the possible mixtures of oil or other materials which Seller has no control over, Seller does not represent or warrant that the fuel will function without complication in the specific engine or boiler(s) of Buyer's vessel, or will be compatible with the fuel products already existing in Buyer's tanks or fuel products which are later commingled with Seller's fuel. Under such circumstance, Seller must limit its liability inasmuch as the fuel which it sells cannot reasonably be expected to reach the consuming vessel's engine without substantial change in the specifications which it had when it was in Seller's possession.

- (d) ALL OTHER WARRANTIES AND ALL CONDITIONS RELATING TO THE QUALITY, FITNESS FOR PURPOSE, DESCRIPTION OR OTHERWISE, WHETHER EXPRESSED OR IMPLIED BY COMMON LAW, STATUTE OR OTHERWISE, ARE HEREBY EXCLUDED.

SAMPLING

Unless otherwise stated in the Sales Confirmation, the sampling and measurement procedure as prescribed below shall apply to all Contracts:

- (a) Unless a mutually acceptable independent inspector is appointed to take samples (whose fees shall be borne equally by Seller and Buyer), Seller shall arrange for four (4) identical representative samples of not less than 400ml each for each grade of Marine Fuels to be drawn during the entire bunkering operation in the presence of the Seller and the Buyer or their respective representatives. Three of these samples are taken for quality purposes (quality samples). The fourth sample is known as the MARPOL Sample. The absence of the Buyer or its representative shall not prejudice the validity of the sample taken.
- (b) The sample shall be drawn at a point, to be mutually agreed between the Seller and the Buyer or their respective representatives, closest to the Vessel's bunker manifold.
- (c) When the Buyer or its representative or the Master of the Vessel requests that sampling is carried out in accordance with the MARPOL requirement and the Seller confirms it is safe to do so, the Seller reserves the right to appoint an independent surveyor to take such samples. The costs incurred by the Seller for his service and any consequential costs will be charged to the Buyer. In making such arrangements, no liability for delaying the Vessel will be accepted by the Seller.
- (d) The sample shall be drawn using a mutually accepted sampling device which shall be collected, secured and sealed in such manner as to prevent the sampling device and the sample being tampered with throughout the transfer period.
- (e) The Seal numbers shall be recorded into Bunker Delivery Notes and both parties agree to the fact that the samples referred to thereby are deemed valid and taken in accordance with the requirement as specified in this clause.
- (f) Two (2) samples shall be retained by the Seller for minimum of (60) days after delivery of the Marine Fuels to the Vessel or, on being requested in writing by the Buyer, for as long as the Buyer may reasonably require, and the other two (2) samples shall be retained by the Vessel. The Chief Engineer will acknowledge receipt of the samples delivered to the vessel by signing

and dating either a receipt or the sample labels.

- (g) Buyer waives any objections to the sampling procedures actually employed, unless Buyer had a representative witness sampling and at the time of delivery gave Seller a written protest about the procedures.
- (h) If the quantity is delivered by more than one Vessel, the sampling procedure shall be repeated as outlined in this clause.
- (i) Any samples drawn by the Buyer's personnel either at the time of bunkering or at any date after bunkering shall not be valid as an indicator of the quality supplied. The fact that such samples may bear the signature of personnel aboard the delivery conveyance shall have no legal significance. The Seller shall have no liability for any claims arising in circumstances where the Buyer has commingled the Marine Fuels on board the Vessel with other fuel.

PRICE

- (a) The price of the Marine Fuels shall be in the amount expressed per unit and in the currency stated in the Sales Confirmation for each grade of Marine Fuels delivered into the Vessel's tanks. Unless a delivered price is set forth in the Sales Confirmation, all prices are F.O.B. Seller's Terminal. In the event the price is quoted in volume units, conversion to standard volume shall be at 60 degrees Fahrenheit or at 15 (fifteen) degrees Celsius.
- (b) The sales price is valid only if the vessel arrives at the delivery point on the anticipated delivery date or within 72 hours of that date, unless agreed otherwise.
- (c) Buyer appoints Seller as agent to procure barge delivery and agrees to reimburse Seller according to the barge company's current tariff or rate schedule.
- (d) In addition to the price stated in the Sales Confirmation, the Buyer shall pay any all additional charges associated with the delivery, including but not limited to:
 - i. Wharfage charges, barging charges including demurrage or other similar charges,
 - ii. Mooring charges or port duties incurred by the Seller which are for the Buyer's account;
 - iii. Duties, taxes, charges, freights or other costs in the country where delivery takes place, for which the Seller is accountable at which are for the Buyer's account;
 - iv. Any overtime charges incurred of delivery takes place outside of regular working

days and hours at the relevant part of delivery, if such delivery is permitted by port regulation.

v. Barge/Vessel demurrage shall be for Buyer's account

(e) At ports where the Seller is not the direct supplier, the Seller reserves the right to invoice the Buyer for any additional charges/dues/taxes that the Supplier demands from the Seller after the Seller has issued its confirmation of the Buyer's order.

CREDIT

(a) If at any time in the opinion of the Seller, the financial condition of Buyer becomes impaired or unsatisfactory, the Seller may require that payment be secured by an appropriate standby letter of credit, parent or bank guarantee or other form of security, or that payment be made by an appropriate documentary letter of credit to be confirmed by a first class international bank acceptable to the Buyer. The format of such standby letter of credit or documentary letter of credit shall be in a format acceptable to the Buyer.

(b) If at any time the Buyer has failed to make any payment when due or exceeds any credit limit imposed by the Seller, the Seller shall, in addition to any other remedy, be entitled to suspend further deliveries under (insofar as they have not already taken place) or terminate the Contract concerned should the Buyer fail to make payment to reduce the outstanding to an amount satisfactory to the Seller or to provide any form of acceptable security acceptable to the Seller.

INDEMNITY

(a) THE BUYER SHALL INDEMNIFY, DEFEND AND HOLD THE SELLER HARMLESS FROM AND AGAINST ANY CLAIMS, DEMANDS PROCEEDINGS, DAMAGES AND LIABILITIES FOR LOSS OF, OR DAMAGE TO, PROPERTY OR FOR DEATH OF OR INJURY TO ANY PERSON AND AGAINST ALL ASSOCIATED COSTS (INCLUDING RESPONSIBLE ATTORNEY'S FEES), LOSSES AND EXPENSES ARISING OUT OF OR IN CONNECTION WITH ANY BREACH OR NON-PERFORMANCE BY THE BUYER, EXCEPT TO THE EXTENT THAT SUCH CLAIMS, LOSSES, COSTS, DAMAGES, LIABILITIES AND EXPENSES ARISE THROUGH THE NEGLIGENT ACT OR OMISSION OF THE SELLER OR THE SUPPLIER.

PAYMENT

- (a) Unless otherwise agreed between the Seller and the Buyer, all payments for the supply of Marine Fuel shall be paid no later than thirty (30) days from the date of delivery.
- (b) Delivery documents may be provided to the Buyer if requested, but payment shall not be conditional upon the Buyer's receipt of such documents.
- (c) Payment by the Buyer shall be made in US Dollars according to the Seller's invoices, and without any discount withholding, set off or allowance and shall be made by such means as agreed between the Seller and Buyer.
- (d) If payment is to be made by way of electronic wire transfer, the Buyer shall ensure that such monies are received in the Seller's designated bank account and by the payment due date as stated on the invoice.
- (e) If payment is to be made by documentary letters of credit ("LC"), such LC shall be opened and confirmed no later than five (5) days prior to the first day of the expected loading or discharge. The LC shall be opened and confirmed by a first class international bank acceptable to the Seller and in such format acceptable to the Seller. All LC costs shall be borne by the Buyer. Payment shall be made by LC through the presentation of the following documents:-
 - (i) appropriate invoice issued by the Seller;
 - (ii) certificates of quality of quantity and quality;
 - (iii) certificate of origin; and
 - (iv) Bill of Lading (save in the case of a cargo Delivered ex-Ship).

If any of the documents above are not available on the payment due date, payment shall be effected against presentation of the Seller's invoice and a Letter of Indemnity format prescribed by the Seller and acceptable to the Buyer.

- (f) If the payment due date falls on a Saturday or non-Monday public holiday in the country in which the Seller's receiving bank is registered, established or organized, then payment shall be

made on the immediate preceding day in which banks in Singapore are opened for business. If the payment due date falls on a Sunday or Monday public holiday, payment shall be made on the immediate following day in which banks in Singapore are opened for business.

- (g) If the Buyer fails to make payment in full on the payment due date, then without prejudice available to the Seller in the contract or in law, the amounts which remain unpaid shall attract late payment interest at the rate of 2% above LIBOR per annum, as quoted by Reuter's on the date in which payment is due, commencing on the payment due date until the date in which full payment is made.

SAFETY AND THE ENVIRONMENT

- (a) If any spillage occurs at any stage of the bunkering operation, the Buyer and the Seller shall jointly, and regardless as to whether the Buyer or the Seller is responsible, immediately take such actions as are reasonably necessary to effect clean up and which shall always be conducted in accordance with such local laws and regulations which may compulsorily apply. The obligation under this sub-clause is without prejudice to the claims which either Party may make against the other in the contract or in law.

- (b) If due to the:

- i. negligence or default by Buyer's Vessel or barge during the loading or discharge operations;
- ii. negligence or default of the Buyer;
- iii. lack of seaworthiness of the Vessel or barge;
- iv. equipment on board the Vessel or barge or other equipment employed by the Buyer or the vessel or barge owner or crew;

The Seller incurs any liabilities by way of costs, damages or expenses, including without limitation any oil spills the Buyer shall indemnify the Seller for all such costs, damages or expenses and take such steps as may be required by the Seller.

- (c) Where it is a compulsory requirements of the law of the port or place of delivery of the Marine Fuels that the Seller shall have in place its own spill contingency plans, the Seller shall ensure that valid oil spill contingency plans approved by the relevant authorities are in effect to the extent that is so required.
- (d) The Seller shall provide the Buyer with Material Safety Data Sheet (MSDS) appropriate to the grade of Marine Fuels delivered. The Buyer shall provide its employees, users, vessel owners and other stakeholders with health, safety and environmental information (including without limitation the MSDS) ("HSE Data"). The Buyer shall ensure that its employees comply fully with all requirements, obligation and recommendations relating to the handling and use of the Marine Fuels delivered hereunder and shall impose upon all of its customers to whom the Marine Fuels one to be supplied the same obligation to comply fully with the requirements, obligations and recommendation of HSE Data.
- (e) The Buyer shall at all times comply with any obligation, requirement or recommendations contained in any law, statute, directive or regulation of any territory, state or jurisdiction in or through which the Marine Fuels may be delivered, sold, transported or used and all government, state or local regulations at the port such as, but not limited to, those related to fire or spillage or loss of Marine Fuels. Compliance by the Buyer with the recommendations in HSE Data shall not excuse the Buyer from its obligations under this sub-clause.
- (f) The Buyer shall indemnify and keep the Seller whole against any liability, claim or proceedings whatsoever arising at of an in connection with any failure by the Buyer to comply with its obligation under this clause.
- (h) For deliveries at a port of loading or discharge, the Buyer shall be responsible for the proper use, maintenance and repairs of the equipment at the place or port of delivery. The Buyer will immediately inform the Seller and any defects, rupture, spills or other problems with or relates to the equipment which occurs during the delivery process.
- (i) For deliveries into the Buyer's receiving vessel or barge, the Buyer shall ensure that the vessel or barge is in all respects ready to receive the Marine Fuels. The Seller has the right to suspend deliveries (at the Buyer's cost and expense) until the Seller is satisfied that the Buyer's receiving vessel or barge is in all respects able to receive the Marine Fuels in a operationally safe manner.

- (j) If the delivery point is a marine terminal, failure of the vessel to comply with the terminal's regulations or applicable local environmental laws, or the breakdown of the vessel's safety or environmental systems, shall entitle the Seller to order the vessel to vacate the berth, with all time and expenses to be for Buyer's account.
- (k) The Buyer warrants that the receiving vessel or barge is in compliance with all governmental trading and pollution regulation. The Vessel will not be moored at a wharf or alongside other marine loading facilities of the Seller or Supplier unless free of all conditions, deficiencies or defects which might impose hazards in connection with the mooring, unmooring or bunkering of the vessel.
- (l) The Buyer hereby represents that it will procure that their Vessel or barge enforce an appropriate drug and alcohol policy on board their vessels, whereby the Vessels personnel must not be intoxicated at any time on board. The Buyer represents and agrees that the selling, possession, distribution use or being under the influence of any controlled substance or dangerous drugs other than those medically prescribed is prohibited.

QUANTITY CLAIMS

- (a) Should the Seller deliver less than the agreed volume as specified in the Sales Confirmation, the Buyer may lodge with the Seller a claim for the shortfall quantity. For the purposes of this section, an independent surveyor's measurement of the quantity delivered shall be final and binding on the Parties, save for manifest error or fraud. All quantity claims shall be barred and absolutely waived unless:-
 - (i) the Master clauses the Bunker Delivery Note disputing the quantity measured as delivered and providing the Buyer the actual quantity delivered;
 - (ii) the Master issues a letter of protest and handed the same over to the Seller or its representative on the day of the delivery; and
 - (iii) the Buyer formally notifies its claim in writing to the Seller with evidence of such shortfall fraud within 14 calendar days of the Bunker Delivery Note.
- (b) The Buyer shall be charged for all proven additional expenses incurred by the Seller in connection with the Buyer's failure to take delivery of the full quantity of the Marine Fuels ordered by the Buyer

- (c) If the Buyer submits a claim against the Seller with respect to the quantity of the Marine Fuels supplied, the Seller shall be entitled and the Buyer shall allow, or where the Buyers has chartered a Vessel, authorization from the Vessel to allow the Seller or its authorized agents to board the Vessel to investigate the Vessels records and to make copies of documents which the Seller may consider necessary for its investigations. Failure to allow boarding and / or to produce copies of documents shall constitute and waiver of the Buyer's claim.

QUALITY CLAIMS

- (a) Any claim as to the quality of Marine Fuels must be notified in writing to the Seller with all supporting evidence as soon as possible and in any event, within 30 calendar days of the date of delivery failing which it shall be waived and absolutely barred.
- (b) In the event of a quality claim, the parties shall know the quality of the Marine Fuels analyzed by a mutually agreed, qualified and independent laboratory. In the event that the Seller proposes an independent inspector and the Buyer takes no action to either accept this proposal or to suggest an alternative inspector, then the Seller's choice of inspector shall be binding and any task performed by such inspector's lab shall be similarly binding, regardless of whether or not the Buyer choose to send a representative to such testing. Any cost associated with the Buyer appointing a representative to witness the sample seal breaking and/or analysis shall be the sole responsibility of the Buyer.
- (c) The Seller shall provide the laboratory with one of the samples retained in accordance with this Section. The analysis shall be established by tests in accordance with ISO 8217 and ISO 4259 or subsequent amendments if non-ISO grades have been agreed. Test will be made in accordance with standards corresponding to the aforementioned ISO standards. The expenses of the analysis shall be borne by the Buyer if the Marine Fuel is determined as falling within the contractual specifications and the Seller if the Marine Fuel is found to be outside of the contractual specifications.
- (d) The Buyer's submission of a quality claim does not relieve it of its obligation to pay the Contract price in full without set-off, deduction or counterclaim as per the invoice issued by the sells pursuant to clauses (price) and (payment).
- (e) If the Buyer submits a claim against the Seller with respect to the quality of the Marine Fuels supplied, the Seller shall be entitled and the Buyer shall allow, or where the Buyers has chartered a Vessel, authorization from the Vessel to allow the Seller or its authorized agents to board the Vessel to investigate the Vessels records and to make copies of documents which the Seller may consider necessary for its investigations. Failure to allow boarding and / or to

produce copies of documents shall constitute and waiver of the Buyer's claim.

- (f) It is the duty of the Buyer to take all reasonable steps to eliminate or minimize any damage, cost or expenses associated with the delivery of any off-specification or suspected off-specification Marine Fuel.
- (g) The liability of the Seller for any loss, damage, claim or other expenditure arising out of or in connection with the failure by the Seller to perform its obligation under the Contract shall exclude any indirect, consequential, punitive or special damages or any claim under tort.

Other Claims: Notice of other claims, excluding quantity and quality claims shall be provided in writing to Seller no later than fifteen (15) days after the date of delivery.

LIMITATION OF LIABILITY

A. Claims related to delivery: In no event shall Seller be liable for demurrage; vessel detention costs; direct or indirect damages or costs attributable to delay; consequential damages, such as lost freight, extra daily hire rate, berth cancellation costs or increased fuel costs in other ports; direct or indirect costs or damages attributable to delivery of less than the ordered quantity; or for any loss which may arise owing to congestion or adverse conditions affecting Seller's delivery facility, the unavailability of barges or trucks, independent acts of the barging or trucking companies involved, or for any reason beyond Seller's control.

B. Claims related to fuel quality: Seller's liability for delivery of fuel with non-conforming specification shall be limited to the costs incurred to remove the fuel from the vessel and to replace it to the extent such fuel was delivered under this Agreement.

C. Seller shall not be liable for any loss of profit, or anticipated profit, loss of time or hire, overhead expenses, demurrage or loss of schedule, cost of substitute vessel(s), loss related to loss of operational use of vessel, physical loss or damage (in whole or in party) of or to vessel or cargo, or for any loss of contract(s) of affreightment to the extent that the foregoing of any of them are consequential, indirect or special losses or special damages nor without prejudice to the foregoing for any other consequential, indirect special losses or special damages, arising out of or in any way connected to this Agreement.

Without prejudice to the above provisions, the Seller's maximum aggregate liability to the Buyer under or in connection with any delivery howsoever arising, shall not exceed in aggregate the price payable by the Buyer for such delivery. The Seller shall not be responsible in any circumstances for any claim arising from any request to commingle Marine Fuels delivered by the Seller with other fuel.

LIENS

This Agreement is entered into and the product is supplied upon the faith and credit of the vessel. When product is supplied to the vessel, in addition to any other security furnished by Buyer, Buyer and Seller agree and acknowledge that a maritime lien over the vessel, its appurtenances and accessories is thereby created in favor of Seller for all sums owed Seller under this Agreement and that Seller in agreeing to deliver product to the vessel, does so relying upon the faith and credit of the vessel. Buyer, if not the owner of the vessel, hereby expressly warrants that it has the authority of the owner to pledge the vessel's credit and that it has or will give notice of the provisions of this clause to the owner. 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 written notice conforming to all requirements of the applicable maritime law is duly received by Seller PRIOR to Seller sending the Sales Confirmation to Buyer.

SEVERABILITY

If any part of the Contract is deemed invalid, illegal, unenforceable, or contrary to law or public policy, all other conditions and provisions hereof shall remain in full force as if the invalid portion had never been part of the original Contract. If as a result any of the rights or obligations of a party are materially affected, then the parties shall meet and negotiate in good faith in order to arrive at an amendment of the provision of a contract so affected, in such manner as will most closely and accurately reflect the intents and proposal of the contract.

AMENDMENTS AND VARIATIONS

No term of the Contract may be amended or modified orally and any amendment or modification shall be effective unless it is in writing. The Seller may amend the terms of sale from time to time without advance notice to the Buyer. Any such amendment shall be effective and apply with respect to all Contracts to which a written confirmation is sent by the Seller after the effective date of the amendments.

TERMINATION

Without prejudice to any other rights and remedies, the Seller may by notice to the Buyer terminate the Contract with immediate effect if:

- (a) The Buyer is in breach of any of its obligations under these terms of Sale or the Contract and fails to remedy such breach within fourteen (14) days after written notice of the existence of such breach;

- (b) An application is being made or any proceeding are being commenced, or any order or judgment is being given by any court, for the liquidation winding up, bankruptcy, insolvency, dissolution and administration or re-organization or similar of the Buyer;
- (c) Any suspension of payment, cessation to carry on business or compounding or making any special arrangement with its creditors by the Buyer;
- (d) Any act is being done or event is occurring which, under the applicable law, has a substantially similar effect to any of those acts or events.
- (e) The Seller has reason to anticipate any of the events described in sub-paragraph (b) to (d)

On termination of any Contract, all sums owed to the Seller shall become immediately due and payable.

Without prejudice to any other rights or remedies, the Seller may in its absolute discretion suspend deliveries, vary the stipulated method of payment or forthwith terminate the Contract with immediate effect if the Buyer is in breach of any of its obligation under the Contract including the obligation to make payment within the time stipulated in the Contract.

FORCE MAJEURE

- (a) In addition to any other excuse provided or implied by law, no failure or omission by either party to carry out or observe any of the provision of the Contract shall give rise to any claim against that party, or be deemed to be a breach of contract, if the same shall arise out of force majeure, which is defined as any cause not reasonably within the control of that party and / or which cannot be avoided or guarded against by the exercise of due diligence, whether or not foreseen, including (without limitation) such causes as labor disputes, strikes or other differences with workmen or unions, governmental intervention, or the party's response to the sentence of any government instrumentality or person purporting to act for it, acts of administrative authorities decisions of the courts, embargo, requisition, mobilization, quarantine, blockade, riot, wars, military operations, national emergency, terrorism actions, civil commotion, hijacking, fire, explosion mechanical breakdown, flood accident, storm or any act of God, any failure or cessation of supplies of Marine Fuels from any of the Seller's actual or potential sources of supply (whether in fact sources of supply for the purpose of any contract or not), any disruption to supply due to causes related to the transportation of the Marine Fuel (including disruptions caused by mechanical failure of vessels, rail truck or cars) provided that such, failure or cessation is related to a circumstance which is outside the control of the Seller, shall be considered as an event of force majeure for the purpose of the Contract.

- (b) If by reason of any of the causes referred to in sub-clause(a) above, either the availability from any of the Seller's sources of supply of Marine Fuels is delayed, hindered, interfered with, curtailed or prevented, then the Seller shall be at liberty to withhold, reduce or suspend deliveries under any contract to such extent as the Seller may in its absolute discretion think fit (including the right to allocate amongst its Buyers' such amounts of Marine Fuels as the Seller in its absolute discretion deems fit) and the Seller shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers. Any additional quantities which the Seller does acquire from other suppliers or from alternative sources may be used by the Seller at its complete discretion and need not to be taken into account by the Seller to which it is to withhold, reduce or suspend deliveries under any contract. The Buyer shall be free to purchase from other suppliers any deficiencies of deliveries of Marine fuels caused by the operation of this clause but the Seller shall not be responsible for any additional cost hereby incurred by the Buyer.
- (c) The obligations of the party affected by force majeure shall be suspended during the period of continuance of such cause.
- (d) Such termination shall be without prejudice to any right, obligation or liability which has occurred prior to the effective date of such termination. Shipments of Marine Fuels, or any portion thereof the delivery or acceptance of which has been prevented by any of the causes referred to in sub-section (a), shall be deducted from the amount required to be delivered and received hereunder unless otherwise agreed. Performance under any contract shall resume to the extent possible by the end or amelioration of the causes referred to in sub-section (a).

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 (THIS SECTION IS NOT APPLICABLE FOR UNITED STATES SALES)

- (a) It is intended that the undertakings and obligation of the Buyer are taken by the Seller for its own benefit and also for the benefit of its affiliates and suppliers and subject to the provisions of sub-section (c), are intended to be enforceable such parties by virtue of The Contracts (Rights of Third Parties) Act 1999.
- (b) Except as provided in sub-section (a), no term of or condition contained in the Contract shall be enforceable, by virtue of the Contracts (Rights of Third Parties) act 1999, by any person who is not a party to that Contract.
- (c) Notwithstanding sub-section (a) above, the Contract may be varied or terminated by the parties to such Contract without notice to or the consent of any third party.

COMPLIANCE WITH LAWS

Notwithstanding anything to the contrary herein, nothing in this Contract is intended, nor should it be interpreted or construed, to induce or require either party to act in any manner (including failing to take any actions in connection with the sale and purchase of Marine Fuels) which is inconsistent with, penalized or prohibited under any applicable laws, regulations, rules or requirements which apply to each of the Parties including those applicable laws which relate to anti-money laundering, foreign trade controls, export controls, embargoes or international boycotts of any type.

ASSIGNMENT

- (a) The Buyer shall not assign any right or benefit or delegate any obligation arising under or in connection with any Contract without the prior written consent of the Seller, which consent shall not be unreasonably withheld.
- (b) The Seller may at any time assign any of its right or delegate any of its obligation under or in connection with any Contract.

NO PARTNERSHIP

Nothing in the contract and no action taken by the parties shall constitute a partnership, association, joint venture or other co-operative entity between the parties.

NOTICES

- (a) Except where expressly stated otherwise, a notice, demand, request, statement, or other communication under or in connection with a Contract shall only be effective if it is in writing and sent by post (by airmail where airmail is possible), courier, email or fax transmission to the address or numbers specified from time to time by the party to whom the notice is addressed.
- (b) Any notice of breach sent by email must be followed a fax or a letter.
- (c) Any notice given under or in connection with the Contract, shall be deemed to have been given on the day on which such notice ought to have been delivered in due course of postal, fax, or email communication.
- (d) No notice given under or in connection with the Contract may be withdrawn or revoked except by notice given in accordance with this section.
- (e) Where the Contract is made by an agent acting for the Buyer then notice may be given either to the agent or to the Buyer at the option of the Seller.

CONFIDENTIALITY

(a) Each party shall:

- i) not disclose any such confidential information to any person other than any of its directors or employees is required to have knowledge and possession of such information in order to discharge his/her duties;
- ii) not use any such confidential information other than for the purpose of satisfying its obligations under any Contract; or
- iii) Provided that any person to whom any such confidential information is disclosed by it complies with the restrictions contained in this Clause as if such person were a party to any Contract.

(b) Notwithstanding the other provisions of this section/clause, either party may disclose any such confidential information:

- i) if and to the extent required by law or for the purpose of any judicial proceedings;
- ii) to a supplier;
- iii) to its affiliates, professional advisers, auditors and partners;
- iv) if and to the extent the information has come into the public domain through no fault of that party; or
- v) if and to the extent the other party has given prior written consent to the disclosure, such consent not to be unreasonably withheld.

Any information to be disclosed pursuant to sub-section (i) shall be disclosed only after notice to the other party.

(c) The restriction contained in this Clause shall continue to apply after the termination of any Contract without limit of time.

ANTI-MONEY LAUNDERING

(a) Each party warrants and undertakes to the other that in connection with the sale and purchase of Marine Fuels under the Contract they will each respectively comply with all applicable laws, regulations, rules and requirements which apply in the country in which each Party is registered, incorporated or organized.

(b) Each party may terminate the contract forthwith upon written notice to the other at any time, if in their reasonable judgment the other is in breach of any of the representations, warranties or undertaking in this subsection.

AGENTS

If a contract is made by an agent acting for and on behalf of the Buyer, whether such agency is disclosed or undisclosed, then such agent shall be liable (as well as the Buyer) not only as agent but also as principal for the performance of all of the obligations of the Buyer.

LAW AND JURISDICTION

- (a) This Contract shall be governed by and construed in accordance with English law; except that if the delivery is made by Brightoil Petroleum (USA), Inc., regardless of where the fuel is delivered to the vessel, Federal Maritime Law of the United States of America shall be paramount in governing the rights and duties of the parties hereto. To the extent Federal Maritime Law does not preempt or is not applicable to the subject matter, this Agreement shall otherwise be governed and construed in accordance with the laws of the State of Texas without reference to its choice of law rules.
- (b) Except for disputes relating to sales of Marine Fuels by Brightoil Petroleum (USA), Inc., any dispute arising under, out of, or in connection with this Contract including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The Tribunal shall consist of three (3) arbitrators, one each to be appointed by the Parties and the third arbitrator by agreement between the 2 arbitrators so appointed, failing agreement which shall be appointed by the Chairman of the SIAC. The language of the arbitration shall be English. For sales by Brightoil Petroleum (USA), Inc., any dispute arising out of or related to the sale of Marine Fuels under this Agreement shall be referred to a sole arbitrator in Houston, Texas under the then current rules of the Houston Maritime Arbitration Association
- (c) The United Nation Convention on Contracts for the International Sale of Goods (Vienna Sales connection) signed in Vienna on 11 April 1980 shall not apply to and shall be expressly excluded from the contract and these Terms of Sale.

REGULATION

- (a) It is understood by the parties that they are entering into a contract in reliance upon the laws, rules, regulations, decrees, agreements, concession and arrangements ("Regulations") in effect on the date of the contract with governments or public authorities affecting the Marine Fuels sold under the Contract including, but not limited to, those relating to the production, acquisition, gathering, manufacturing, transportation, storage, trading or delivery thereof,

insofar as such Regulation affect the Seller.

DUTY, TAX RESTRICTIONS

To the extent that Marine Fuel is sold or to be sold to the Buyer on a duty or tax exempt basis, the Buyer shall comply with all local requirements and shall execute all such documents necessary to permit the sale on such basis, including any declarations on use of the Marine Fuel. To the extent that a claim is made by any authorities against the Seller or the supplier on the basis that such Marine Fuel was liable for duty or taxes and such claim arose partly or wholly due to the action, omission or fault of the Buyer (including any use of Marine Fuel in domestic waters), then the Buyer shall indemnify the Seller or Supplier against any claims, losses, costs (including costs as between attorney or solicitor and (limit), damages, liabilities, fines, penalties and expenses' attributable to such action, omission or fault of the Buyer.

DEFINITIONS

- “Affiliate(s)” means any legal entity which controls is controlled by, or its under common control with, another legal entity, and “control” means legal or beneficial ownership of 50% or more of the shares in a legal entity entitled to appoint directors or the possession, directly or indirectly, of the parties to direct or control the direction of the management and policies of such entity.
- “Supplier” means a person requested by the Seller to deliver the Marine Fuels to the Buyer.
- “Vessel” means the vessel, ship, barge or off-shore unit that physically received the marine fuels, either as an end-user or as a transfer unit to a third party.
- “Seller” means Brightoil Group; any office, branch office, affiliate or associate of the Brightoil Group and which contract to sell and deliver or to sell and among for the delivery of Marine Fuels.
- “Buyer” means the vessel supplied and jointly and severally her Master, Owners, managers, operators, despondent owners, Charterers and any person(s) who contract (s) to purchase, take delivery of and pay for the Marine Fuels.
- “Bunker Tanker” means bunker barge or tanker or tank truck supplying Marine Fuels to the Vessel.
- “Marine Fuels” means such hydrocarbons derived from crude oil, delivered or to be delivered to the vessel for consumption by the Seller to the Buyer, the particular specifications

of which shall be detailed in the Sales Confirmation.

“Owner” means the registered owner or bare boat charterer of the vessel.

“Delivery Window” means the date range designated on the Sales Confirmation which shall begin on the ETA and end on the ETD. The Delivery Window shall not exceed seven (7) days.

“Contract” means collectively the Sales Confirmation and the Terms of Sale.

“Confirmation” means confirmation by email, fax, or other writing from the Seller to the Buyer of back each sale of Marine Fuels.

“Bunker Delivery Note” (or “BDN”) means the document drafted by the Seller and signed and stamped after completion of delivery by the Master of the vessel or his representative. The BDN shall be taken by the Seller or its representative who shall hand over one copy to the Buyer, one copy to the Master of the Vessel receiving delivery of Marine Fuels and one copy to the Master of the ship / barge or to the driver of the truck / railcar delivering marine fuels as acknowledgement of the delivery of Marine Fuels.

“Sales Confirmation” shall mean the written confirmation issued by the Seller to the Buyer specifying the terms applying to the sale Marine Fuel to the Buyer (whether by telex, facsimile or electronic message).