

Bunkers International Corp. General Terms and Conditions of Sale, effective September 1st, 2010

Effective September 1st, 2010, the following General Terms and Conditions of Sale shall constitute the General Terms and Conditions of Sale ("Conditions") of Bunkers International Corp. and its subsidiaries, affiliates, and dedicated agents (collectively, "Bunkers International Corp.") headquartered at 110 Timberlachen Circle, Suite 1012, Lake Mary, Florida, 32746, USA, which includes, but is not limited to, Bunkers International Corp. and Bunkers International Hong Kong Ltd. and their respective subsidiaries and/or affiliates and/or branch offices.

1. Definitions

- 1.1 "Seller" shall mean Bunkers International Corp., Bunkers International Hong Kong Ltd. and their respective subsidiaries and/or affiliates and/or branch offices. and its servants, agents, brokers, assigns, representatives, or affiliates wherever applicable.
- 1.2 "Buyer" shall mean the party and/or parties contracting to buy Products and/or Services as set out in the Seller's Confirmation of Contract, including its servants, agents, assigns, brokers, representatives, subsidiaries or affiliates wherever applicable, and the subject Vessel, together with her Owners, Operators, Managers, Disponent Owners, and/or Charterers.
- 1.3 "Product" or "Products" shall mean the Fuels, Oils, Lubricants, goods, items, equipment and/or materials of whatever type and description as specified in the Seller's Confirmation of Contract,
- 1.4 "Services" shall mean agency services, transportation, and/or similar attendance to the Buyer's needs which Seller provides related to Products.
- 1.5 "Contract" shall mean the agreement between Seller and Buyer, which includes these Conditions.
- 1.6 "Vessel" shall mean the vessel to which the Buyer provides Products and/or Services, directly, indirectly or through a Supplier, either as end-user or as transfer unit to a third party.
- 1.7 "Conditions" shall mean these (Seller's) General Terms and Conditions of Sale.
- 1.8 "Supplier" shall mean the party physically supplying the Products and/or Services to the Vessel, together with its servants, agents, successors, subcontractors and assigns.
- 1.9 "Delivery Date" means the date on which the Products are to be delivered to the Vessel by Seller.
- 1.10 "Supply Port" means the port at which the Products purchased by the Buyer are to be delivered to the Vessel
- 1.11 "Confirmation of Contract" means the written confirmation of the Products covered under the Contract. This document may include additional Special Terms provided by the Seller, and such terms shall be part of the Contract.
- 1.12 "Special Terms" means any form of writing provided by Seller including , without limitation, a letter, fax letter or electronic mail, which to any extent incorporates by reference or is subject to the Contract, including the Confirmation of Contract, nomination or bunker stem.

2. Validity and Scope of Terms

- 2.1 These Conditions constitute an integral part of any offer and/or Contract made for Products and/or Services provided by Seller to Buyer, and supersede any terms and conditions incorporated or referred to by the Buyer, whether in its order or elsewhere.
- 2.2 The supply by Seller of Products and/or Services and every quotation, pro-forma invoice, order confirmation, price list or other similar document is made or issued solely subject to these Conditions and no representation or warranty, collateral or otherwise shall bind Seller and no statement made by any representative by or on behalf of Seller shall vary these Conditions unless such representation, warranty or statement shall be made in writing and signed by an Officer of Seller and shall be stated to be made specifically pursuant to this clause 2.2.
- 2.3 Any variance to these Conditions shall not prejudice or limit in any way the validity of the remaining Conditions of the Contract between Seller and Buyer. Failure by either party at any time to enforce any of these Conditions shall not be considered as a waiver by such party of such provisions or in any way affect the validity of these Conditions. If any provision of the Contract (including these Conditions) is invalid, void, or unenforceable, it will not affect the validity, legality, or enforceability of any other provision of the Contract.
- 2.4 Subject to the provisions of Clauses 2.2 and 2.6, and insofar as these clauses apply, these Conditions embody all the terms and conditions and cancel in all respects any previous Conditions, agreements and/or undertakings, whether given in writing or orally.
- 2.5 No statements made outside the Contract, or in any brochures, catalogues or sales literature, as well as in any correspondence or orally during negotiations, shall vary the Contract (including these Conditions)
- 2.6 Without prejudice to the provisions of Clause 2.2 herein, Seller reserves the right to include at any time, at its sole discretion, any additional or substitute terms and Conditions.

2.7 In consideration of Seller's extending credit for sale of Products and/or Services and providing Products and/or Services to the Vessel, it is agreed that Seller is relying on the credit of the Vessel as provided under the laws of the United States of America and Seller expressly retains its right of an *in rem* maritime lien against the Vessel to secure full payment for Products and/or Services provided to the Vessel. Seller provides Products and/or Services to the Vessel with the express agreement that the provision is authorized and ratified by the Buyer, including the Owners, Operators, Managers, Disponent Owners, and/or Charterers of the vessel. Any attempt to avoid or impair Seller's lien against the Vessel shall be null, void and of no effect. No disclaimer of lien or liability, whether by stamp or other form, shall operate to alter, change or waive Seller's *in rem* maritime lien against the Vessel or the Vessel's liability for the debt resulting from the delivery of Product to it. Seller's *in rem* maritime lien shall extend to the Vessel's freight payments for that particular voyage during which the bunkers were supplied and to freights on subsequent voyages.

3. Terms of Offers and Contracts

3.1 Seller's estimates of costs and/or prices are to be understood as being conditional and subject to availability and alteration and shall include only such Products and/or Services as are expressly specified.

3.2 The Contract shall be deemed to have commenced effective from the time that Seller provides to the Buyer Confirmation of Contract. Any subsequent amendments to the Contract are to take effect as though they had been made at the date the Seller provided to the Buyer the Confirmation of Contract.

3.3 Except where otherwise expressly provided for in the Contract specifications, all particulars notified to Buyer (e.g. analytical data) and all documents to which access has been given regarding the characteristics of the Products at any delivery location, shall not be construed as specifications of the Products to be delivered hereunder, but only as indications of the characteristics of the Products available at that location from time to time.

3.4 Referenced commercial terms shall be deemed to have the meaning contained in the most recent edition of Incoterms.

3.5 In the case of imported goods, the Contract shall be deemed to be concluded subject to the provision that Seller is granted any export or import licenses which may be necessary. Without prejudice to clause 4.1, Buyer shall indemnify Seller for any expenses incurred in connection with the securing or delay in procuring of the aforementioned licenses.

3.6 If subsequent to the Confirmation of Contract the Buyer cancels the order for any reason whatsoever, Buyer shall pay a cancellation fee in the amount of ten percent (10%) of the total order amount, or US \$5,000.00, whichever is greater.

4. Price

4.1 The price to be paid for Products sold in each Contract shall be as stated in the Confirmation of Contract. Unless otherwise specified, all prices are in US dollars, ex-wharf, and shall represent only the purchase price of the Products. Buyer shall pay any additional expenses or costs such as but not limited to barging, surcharges, overtime, demurrage, wharfage, dockage, port/harbor fees, dues, duties, taxes, levies and other costs, including those imposed by governments and local authorities. If the price is quoted as "Delivered," the price includes transportation to the Vessel, but does not include demurrage or any other expenses or costs as indicated above.

4.2 Seller's Confirmation of Contract may include the earliest estimated time of Vessel's arrival (ETA) as advised by Buyer to Seller at the time of nomination. Unless otherwise specified in the Contract, the Vessel shall begin to take delivery of the Products and/or Services on the Delivery Date. The Contract price shall be valid only for deliveries begun on the Delivery Date. Unless otherwise noted in the Confirmation of Contract, and subordinate to the terms Seller agrees to with its Supplier, the Seller will honor the price for Product deliveries that begin within 24 hours of twelve noon on the Delivery Date.

4.3 The Buyer shall give the Seller written notice at least forty-eight (48) hours prior to the Delivery Date of the estimated time(s) on such date the Vessel will be ready to receive the Products. In such notice the Buyer shall, if necessary, advise the Seller of any special condition, peculiarity, deficiency or defect of or with respect to the Vessel or its equipment which might delay, hinder or otherwise affect the mooring, unmooring or bunkering of the Vessel. If the Buyer fails to provide this notice and the Vessel for whatever reason is unable or refuses to accept the Products on the Delivery Date, or if the Buyer provides such notice but request an extension to the Delivery Date of more than twenty-four (24) hours after twelve noon on such date, then the Seller may, at its option, deliver the Products to the Vessel at the requested new delivery time on a best efforts basis, suspend delivery subject to Seller's agreement to a new price for the Products, or cancel the delivery altogether, with or without prejudice to Seller's rights under the Contract.

4.4 All mooring and unmooring charges and port dues, if any, shall be paid by the Buyer.

4.5 If, after Seller's issuance of the Confirmation of the Contract, Buyer requests delivery to begin outside the time set forth in clause 4.2, Seller shall be entitled to amend its quoted price under the Contract. This entitlement is without prejudice to any claim Seller may have against Buyer for failing to take delivery within the time referred to in clause 4.2 above.

4.6 If price controls are imposed, Seller shall not be required to deliver if the maximum allowable price is below that set forth in the Confirmation of Contract.

4.7 Buyer shall be liable for all costs, expenses and/or charges incurred by the Seller on account of Buyer's failure, breach and/or non-compliance with its obligations under the Contract, including but not limited to all attorneys and paralegals fees, related expenses and court costs. Such attorneys and paralegals fees shall be at Seller's option either the actual fees or 15% of the amount due to Seller.

4.8 Notwithstanding anything else herein, should the Vessel not arrive at the Port specified in the Confirmation of Contract within the time range set forth in Clause 4.2, the Contract shall be null and void unless Seller elects to accept the new arrival date of the Vessel as the basis of a new contract for which a new price can be agreed upon with the Buyer.

5. Quality

5.1 Unless otherwise specified in the Contract, Products and Services shall be of the quality offered by Seller to its customers at the time and place of the delivery. **SELLER EXPRESSLY EXCLUDES FROM THE CONTRACT AND DISCLAIMS ANY IMPLIED OR EXPRESS CONDITIONS AND WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Buyer, having greater knowledge than Seller of his own requirements, shall have the sole responsibility for the prior selection of the particular grade(s) of Products and acceptance thereof.

5.2 The Buyer shall segregate Products from fuels, oils, lubricants or similar product(s) already onboard the receiving Vessel. Any consequences arising from commingling Products delivered to the Vessel with fuels, oils, lubricants or similar products already onboard shall remain the joint and several responsibilities of the receiving Vessel and the Buyer. Seller shall not be responsible for any onboard safety or storage failure that may affect the delivery of Products and shall have the right to recover from Buyer any loss, damage or expenses incurred as a result of such failures.

5.3 The Seller shall in no circumstance be held responsible for any consequences of the misuse or mis-application of the Products.

5.4 In order to determine the quality of the Products delivered, Seller shall be entitled to draw, or cause to be drawn, samples of each delivery from Supplier's designated facilities, and to have them sealed. Seller at the time of delivery may take from the terminal shore tank, load pipeline, delivery barge, or truck as appropriate at least three commercial samples of the Products. Buyer shall consider these samples to be the exclusive and official commercial samples and the only representative samples of the Products. The samples shall be taken from a point and in a manner chosen by Seller. In the event of a quality complaint, Buyer authorizes Seller to an independent inspector to undertake an analysis of one of the retained samples. Method ISO 4259, which covers the use of precision data in the interpretation of test results, shall be used in all cases of dispute. By request of the Buyer a fourth Marpol 73/78 Annex VI sample may be taken if physical supplier is in agreement and per their policy. The Marpol sample may only be used for purposes of confirming the sulphur content of the Products and such other matters as are specifically set forth in Marpol Annex VI, Regulation 18. In instances where MARPOL Annex VI applies to the supply affected, the sample accompanying the delivery Note pursuant to Regulation 18(6) of MARPOL Annex VI should, where reasonably practical, be drawn in accordance with Resolution MEPC.96(47).

5.5 Seller does not warrant or guarantee that any Supplier is compliant with Marpol 73/78 Annex VI, regulations 14 and 18, as they apply to marine fuel deliveries, nor will Seller be responsible for any costs, charges, or damages incurred by Buyer from lack or non-compliance of Marpol 73/78 Annex VI by either the Supplier, Buyer, or the Vessel's personnel or agents. Should the Supplier provide a certificate pursuant to Marpol Annex 73/78 Annex VI, such certificate does not constitute a general warranty of merchantability or fitness for a particular purpose of the Products.

5.5 All measurements shall be adjusted to barrels or metric tons at 60 Fahrenheit temperature. All such adjustments shall be made in accordance with the latest joint Petroleum Measurement Tables of the American Petroleum Institute ("API"), the American Society of Testing and Materials ("ASTM") and the Institute of Petroleum ("IP") designated API D-2540, ASTM D-1250 and IP 200/52, respectively, whichever is in use at the Supply Port.

5.6 If, after 21 calendar days from the date that Buyer registers a quality complaint to Seller, no agreement has been reached between the two parties, Seller reserves the right to have one of its retained samples independently analyzed and for the results to be final and binding upon both parties. Buyer agrees to pay the cost of any such analysis unless the analysis establishes that the complaint regarding the quality of the Product is correct.

5.7 Unless otherwise agreed to in writing by Seller, only samples provided by Seller to Buyer at the time of delivery shall be deemed representative of the Product delivered. For any commercial purposes the official commercial samples from the physical supplier will be used. Tests to determine quality shall be made only from Sellers' or Supplier's samples and shall be made in accordance with standard test methods specified in the official publications of either the API, ASTM, IP or specifications as agreed in written confirmation of sale on the date of the Contract. If vessel presents a sample from on-board the vessel, this sample may be received by Seller or Supplier, but this sample will not be recognized as an official retain sample of the delivery, and its tests results will not be recognized or accepted by Seller and its Suppliers as representative of the Product delivered.

5.8 In any event, the Seller's obligation under the Contract to Buyer or any third party, under any circumstance, shall not exceed the price of that portion of the Product sold hereunder on which liability is asserted, and shall not include any consequential or indirect damages, including, without limitation, demurrage claims, loss of opportunity, loss of profit, or damage to the Vessel or for any other damage. Should the Buyer remove from the Vessel the Products without the prior consent of the Seller, all such costs incurred in doing so shall be for Buyer's account.

6. Quantity

6.1 All quantities referred to in the Confirmation of Contract are approximate with a margin of ten percent (10%) either more or less at Seller's option.

- 6.2 Except where government regulations or local authorities determine otherwise, the quantity of Products shall be determined from the official gauge/sounding of the delivering barge, road wagon, or rail tank car, delivery note for drum deliveries, or by gauging in Supplier's shore tank or by Supplier's flow meter, at Seller's election. Adjustment in volume owing to difference in temperature shall be made in accordance with API/ASTM-IP petroleum measurement standards for generalized Products (table 6B, 24B, or 54B depending on port location). In the measurement of marine fuel, Seller shall make allowances for water and non-petroleum sediment in excess of one percent (1%), or any other percentage mutually agreed to in writing between Buyer and Seller. Buyer may be present or represented by a properly accredited agent when such measurements are taken, however, Seller's determination of quantities shall be deemed to be correct and conclusive.

7. Deliveries and Risk

- 7.1 Any supply date within the Contract is not guaranteed, and time shall not be of the essence in respect thereof. Seller shall not be liable for demurrage or for any losses due to congestion, due to any prior commitment or unavailability of transportation, or otherwise.
- 7.2 If, as a result of any events, matters or things referred to in clause 15 or any other foreseeable or unforeseeable event, including contractual changes relating to the supply of crude oil and/or petroleum products from which the Products of the type to be sold hereunder are derived, supplies of the Products are curtailed, or are available to the Seller only under conditions which, in Seller's sole judgment are deemed unacceptable, the Seller at its sole option may cancel the Contract or may allocate, on any fair and reasonable basis according to its own discretion, its available supplies of Products to meet its own requirements and those of its subsidiaries and affiliated companies and Seller's other customers. Seller shall not be required to obtain supplies from some other source or supply or to purchase Products to replace the supplies so curtailed, or to make up the deliveries omitted during the period of disruption, nor will the term of the Contract in any event be extended.
- 7.3 If Buyer or the Vessel causes delays at Seller's Supplier's delivery facilities in the receiving of Products, Buyer shall reimburse Seller for any and all related damages
- 7.4 Seller shall not be required to deliver Products into any Vessel's tanks which are not normally used for such Product, or to any Vessel that Seller's Supplier deems unsafe for the delivery of the Products. Seller and Supplier shall not be liable for any damages or costs due to the failure of the Buyer to provide a Vessel that meets the requirements for safe delivery of the Products.
- 7.5 If any government or local port license or permit is required for deliveries hereunder, each party must comply as applicable with regard to the procurement of any applicable license or permit. In case of Buyer's failure to comply, Seller shall not be required to deliver, and will be entitled to recover all incurred costs and consequences related thereto from Buyer, including those which this Contract specifies.
- 7.6 Delivery shall be made either from a shore terminal or by barge or by any other accredited method of delivery, where such deliveries are available from time to time. In the case of more than one method of delivery being available, Seller shall at its sole discretion select one.
- 7.7 If the Vessel requires delivery by barge, then Seller may furnish this service within normal harbor limits at the supply port when and where Seller or its Supplier has the necessary barging facilities available to effect delivery. Buyer shall pay all barging charges at the rates established by the Seller from time to time plus transportation taxes, if any. If steam is required to effect delivery, the Vessel shall provide such steam free-of-charge. If tug pumping is required, then the Buyer shall pay all tug-pumping charges.
- 7.8 Buyer shall provide, free of cost, a clear, safe berth, position or anchorage alongside the Vessel receiving lines. Seller shall be under no obligation to make deliveries when, in its sole opinion, a clear and safe berth, position or anchorage is not available. Buyer shall indemnify Seller and Supplier against all claims and expenses for any loss, damage, demurrage or delay caused to Seller's and Supplier's delivery equipment, irrespective of whether the circumstance causing the loss, damage, demurrage or delay was within the control of the Buyer or his representative.
- 7.9 The Buyer shall make all connections and disconnections between pipelines or delivery hoses and Vessel's intake lines, and shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly all deliveries hereunder. In no case shall the Seller be liable for any damage or delay resulting from causes beyond its control or avoidable by care on the part of the Buyer or the Vessel.
- 7.10 Delivery shall be deemed to have been completed and risk transferred as the Product passes the flange connecting the pipelines or delivery hoses with the intake lines of the Vessel, at which point Seller's responsibility shall cease. Products supplied by other methods shall be considered to be delivered when passing the Vessel's rail. Buyer assumes all risks, including loss, damage, deterioration, depreciation, evaporation and shrinkage as to the Products so delivered.
- 7.11 Upon completion of the delivery to the Vessel, the master or authorized representative or Buyer shall confirm the delivery by signing a receipt provided by Seller or Supplier. Seller shall not be deemed to have any constructive knowledge of the authority or lack of authority of any purported local representative of Buyer or of the Vessel and shall be under no duty to verify authority of such purported representative.
- 7.12 If Buyer fails to take delivery of Products or any part thereof within a reasonable time from the agreed supply time, Seller shall be entitled, at Buyer's risk and expense, either to transport the Products back to storage or to sell in a downgraded form at a market price, without prejudice to Seller's other rights under this Contract for damages. Seller shall, at its sole discretion, determine what constitutes a reasonable time to terminate the delivery.

- 7.13 Delivery may be made during normal working hours. Unless otherwise agreed, deliveries outside normal working hours shall be subject to additional costs which Buyer shall pay to Seller as part of the cost of the Products and/or Services.
- 7.14 Seller may elect to discontinue operations at any delivery location for any reason without obligation to the Buyer.
- 7.15 Products and Services delivered under a Contract shall be made not only on the account of Buyer, but also on account of the Vessel, its owners, managers, operators, charterers, and agents. The Buyer warrants that the Vessel's owner has given the Buyer express authority to purchase the Products and to incur *in rem* maritime liens in rem in favor of the Seller for the price of the Products. Buyer agrees to undertake prior to provision of Products to the Vessel to inform the Vessel's owners, managers, operators, charterers, and agents of the Contract. Seller expressly relies on the Vessel owner's, manager's, operator's, charterer's, and agents' acceptance of the Contract, as a condition of providing Products to the Vessel. If prior to providing Product to the Vessel, Buyer or any other entity notifies Seller of objection to any term of the Contract, including, but not limited to any lack of authority or objection to binding the Vessel with an *in rem* maritime lien to secure Seller's extension of credit to the Vessel, Buyer agrees that Seller may immediately and without notice cancel the Contract. Any such notice of objection may only be communicated to Seller in writing, received by Seller at its designated office set out in paragraph 19.1 of this Contract between 10:00 a.m. and 4:00 p.m. on a business day at Lake Mary, Florida and that receipt acknowledged by Seller in writing. Any notice not so provided to Seller shall be ineffective. Buyer, on its own behalf and as express agent on behalf of the Vessel's owners, managers, operators, charterers, and agents, further warrants that the Seller may assert and enforce a maritime lien *in rem* or *quasi in rem*, or maritime claim against the Vessel or any sister or associated Vessel for the amount of the Products and Services provided, plus, without limitation, contractual interest pursuant to this Contract and any other expenses, including attorney's fees, related to enforcement of the maritime lien or claim. The Buyer expressly warrants that Buyer has the authority of the Vessel's owners, managers, operators, charterers, and agents to pledge the Vessel's credit as aforesaid. Buyer agrees that the Buyer, and the Vessel's owners, managers, operators, charterers, and agents are jointly and severally responsible for each amount owed to the Seller under Contract. In the event that Seller asserts and enforces such maritime lien *in rem* or maritime claim, Buyer, for itself and on behalf of the Vessel's owners, managers, operators or agents, agrees that they will assert no counterclaims against Seller in such proceedings and that they will not demand or require the provision of counter-security.
- 7.16 Buyer acknowledges that Seller has relied on vessel ownership listings provided in Lloyd's MIU "Seasearcher" database (www.seasearcher.com) owned and operated by Informa plc and/or any other available resource to establish/confirm the same. If Buyer is listed or otherwise indicated as the registered, beneficial, or group fleet owner of any vessel listed in Lloyds Seasearcher or other sources, Buyer warrants and agrees that all other vessels listed in the same registered or beneficial ownership shall be construed as and are true sisterships in the same registered or beneficial ownership as the Vessel.
- 7.17 All sales and supply of Product made under these Conditions are made to the registered and beneficial owners of the Vessel, in addition to any other parties that may be listed as Buyer in these terms or in the Confirmation of Contract. Any Product and/or Service ordered by an agent, management company, charterer, broker or any other party are ordered on behalf of the registered and beneficial owners and the registered and beneficial owners are liable as principals for the payment for the Products and/or Services.

8. Claims

- 8.1 Any claims made by Buyer regarding shortages in quantity must be made in writing to Seller at the time and place of delivery. Seller has the option to leave delivery equipment connected to the Vessel at Buyer's expense until a quantity dispute has been resolved to Seller's satisfaction.
- 8.2 Any claims made by Buyer with regard to quality must be made in writing to Seller immediately upon detection of the alleged defect, and in any event no later than within seven (7) calendar days from provision of the Product and/or Service to the Vessel. The foregoing preliminary notice shall be followed by a formal written notice of claim, within thirty (30) calendar days from receipt of the product, to Seller containing all details necessary to allow evaluation of the claim. Notice must be made to the designated office of Seller as set out in this Contract.
- 8.3 Any other claims, other than for quantity or quality, must be submitted in writing by the Buyer to the Seller to the designated office of Seller as set out in this Contract within fourteen (14) days of the date that the claim arose.
- 8.4 In any event, should Buyer fail to comply with any time for notification or claim to the Seller as set out in this Contract, any such claim by the Buyer shall be deemed to be waived, void and absolutely time-barred. The Buyer's submission of any claim or notice hereunder does not relieve Buyer of the responsibility to make payment in full for the Products supplied by the Seller. Buyer agrees to make full payment for the :Product and/or Service regardless of whether Buyer has or has made any claim related to the Product and/or Service or related to any other claim by Buyer against Seller.

9. Payment

- 9.1 Irrevocable payment shall be made by Buyer in full, as directed by Seller, within the time specified in the Contract. Timely payment is of the essence. Seller shall be absolutely entitled to the payment in full without discount, reductions, counterclaim or set off (whether legal or equitable) and free of bank charges, which shall be made to Seller's bank account. Should the due

- date for payment fall on a Saturday, Sunday or Public Holiday, Buyer will make payment to Seller so that Seller receives payment by the last working day before the date that payment is due.
- 9.2 Buyer shall not be entitled, without Seller's consent in writing, to offset any amounts for claims against Seller, whether or not these claims are connected, and whether or not they arise out of the Contract, No payment shall be complete until Seller confirms receipt of that payment into Seller's designated account.
- 9.3 Unless otherwise agreed, payment shall be on a cash in advance or irrevocable letter of credit basis. All letters of credit or other forms of guarantee procured by the Buyer in favor of the Seller shall be in a form and substance acceptable to the Seller and issued only by a bank or other third party acceptable to the Seller. Seller has the right to withdraw any credit terms offered, verbally or written, without prejudice, at any time before or after delivery, and demand immediate settlement of any and all invoices outstanding. Buyer also grants Seller a security interest under Florida or other applicable law applying Uniform Commercial Code Article 9, against and for all receivables or payables of Buyer, in order to secure payment to Seller. Buyer grants Seller a limited power of attorney sufficient for Seller to execute on behalf of Buyer and file any "UCC-1" or similar statements to perfect such security interest. Such security interest shall be in addition to and not in lieu of any other security in Seller's favor, to secure each payment to Seller due under the Contract.
- 9.4 Unless otherwise agreed, payment shall be made in U.S. dollars by means of telegraphic transfer for deposit to the Seller's account as specified in the Confirmation of Contract or Special Terms. The telegraphic transfer shall quote Seller's invoice or order number, Buyer's name, the Vessel supplied, and Seller's account number to which the funds shall be deposited. In the event that payment is subject to restraint for any reason, Buyer immediately shall inform Seller of that restraint, and Buyer shall continue to remain liable for payment to Seller made by means which are not restrained. Any restraint on receipt or transmission of payment shall be ground for Seller's immediate termination of the Contract.
- 9.5 Payment shall not be conditional upon Buyer's receipt of delivery documents.
- 9.6 Overdue payments shall be subject to an interest charge of 2.0% per month (24% annually), or the maximum rate allowed by law, running from the due date of payment.
- 9.7 Seller may apply all payments which Seller received by or on behalf of Buyer, in whatever way that Seller solely determines and without effect to any designation of the Buyer, including, but not limited to first, (a) interest and other amounts due under the Contract; (b) finance charges incurred as a result of Buyer's late payment (if any); (c) the principal sum in respect of Products/Services. Buyer's designation of payments to satisfy any particular charge or invoice shall be void and of no effect.
- 9.8 Should Products and/or Services be ordered by a broker or agent, then such broker or agent as well as Buyer shall be bound and be liable for all obligations as fully and completely as if it were itself a Buyer, whether such principal be disclosed or undisclosed and whether or not such broker or agent purports to contract as brokers or agents only, but in all such cases the said broker or agent shall not have any rights against Seller.
- 9.9 If Buyer is in default of any part of any payment, or if its financial conditions or that of a subsidiary, parent, associate or affiliate, in Seller's sole opinion becomes impaired, or if proceedings in bankruptcy or insolvency are instituted by and/or against Buyer, its subsidiary, parent, associate, related or affiliate company of the Buyer, or in the case of liquidation or dissolution of Buyer, or of a subsidiary, parent, associate, related or affiliate company of the Buyer, or any other reason at the Seller's sole discretion, any and all postponed or deferred payments including interest thereon, shall become immediately due and payable and Seller reserves the right to offset the same against any debts due to Buyer or its parent or its subsidiary companies, affiliates, associated or related companies. When these or other reasonable grounds for insecurity arise with respect to the performance of Buyer, as solely determined by Seller, Seller also may in writing demand that the Buyer provide Seller with adequate assurance of due performance and until Seller receives such assurance may suspend any performance for which Seller has not already received the agreed return. Buyer agrees that Seller's demand in such circumstances is commercially reasonable. Exercise of any such rights shall be without prejudice to Seller's right to recover damages or losses sustained and resulting from any default by Buyer, and Seller shall have the right to suspend/and to cancel deliveries hereunder.
- 9.10 Buyer within one business day of Seller's request shall provide Buyer with information that the Seller requests concerning the situation of Buyer's operations and finances, including, but not limited to the location of Buyer's vessels, including the Vessel. This obligation shall extend until Buyer fully pays Seller as the Contract provides.
- 9.11 The Buyer will pay the Seller the amount of all excise, gross receipts, import, motor fuel, superfund and spill taxes, and any and all other federal, state, and local taxes (collectively, "Taxes and Assessments") or the foreign equivalent as determined by the sole, absolute and unfettered discretion of Seller of such Taxes and Assessments, however designated, other than taxes on income, paid or incurred by Seller directly or indirectly with respect to the Products and/or on the value thereof insofar as the same are not expressly included in the price quoted. Any additional Taxes and Assessments incurred by Seller arising from the sale of Product to the Buyer and imposed by any governmental and/or regulatory authority as a result of an audit, whether domestic and/or international, shall be borne solely by Buyer.
- 9.12 The Buyer will present the Seller with any required documentation, including but not limited to registrations, exemptions, certifications, claims, refunds, declarations or otherwise, in an acceptable form and format, and on or before whatever due date the Seller shall require, to satisfy the Seller's concerns in connection with any of the above taxes or assessments. Further, the Buyer shall indemnify and hold the Seller harmless for any damages, claims, liability or expense the Seller might incur due to the Buyer's failure to comply with this requirement.

10. Delivery Orders

- 10.1 The Seller shall be at liberty to make arrangements with other companies ("Suppliers") to supply the whole or any part of the Products and/or Services sold in each transaction. Delivery of Product by Supplier on behalf of Seller in no way alters or invalidates these Conditions or in any way affects Seller's rights to proceed against the Vessel on Seller's maritime lien or claim.
- 10.2 Buyer shall give Seller directly, or through Buyer's agent, at least 72 hours notice (Saturday, Sunday and local holidays excluded) of Vessel's readiness to receive delivery of Products and/or Services and exact quantity required to enable Seller to make necessary arrangements for the delivery.
- 10.3 Buyer shall give Seller final notice of requirement directly or through Buyer's agent at least 48 hours (Saturday, Sunday and local holidays excluded) before loading Products fuels into barge or other means of transportation.

11. The Vessel and The Environment

- 11.1 It shall be the sole responsibility of Buyer to comply, and advise its personnel, agents and/or customers to comply, both during and after delivery, with all health and safety requirements and all environmental regulations and legislation, both national and international, applicable to the Products supplied. Seller accepts no responsibility for any consequences arising from failure to comply with such health and safety requirements or environmental regulations and legislation. Buyer acknowledges familiarity with the hazards inherent in the nature of any Products, and shall protect, indemnify and hold Seller and Supplier harmless against any claims or liability incurred as a result of any allegation of a failure to comply with the relevant health and safety requirements or environmental regulations and legislation, regardless of whether that allegation resulted from or related to, or is claimed to have resulted from or relate to, the Seller's or Supplier's own negligence.
- 11.2 Without prejudice to clause 7.9, in the event of any leakage, spillage, overflow of Product causing or likely to cause pollution occurring at any stage, Buyer shall, regardless as to whether Buyer or Seller is responsible, immediately take such action as is necessary to remove the Product and mitigate the effects of such leakage, spillage or overflow. Failing such prompt action, the Buyer (who hereby warrants that they have been authorized by the Vessel's owners) authorizes Seller to take whatever measures Seller deems fit to affect cleanup at the Buyer's expense and on the Buyer's behalf, and the Buyer shall cooperate fully with the Seller and lend all assistance required in the cleanup operation. The Buyer shall indemnify and hold Seller and/or Supplier harmless against any claims or liability, expenses, damages, costs, fines and penalties arising out of or in connection with any leakage, spillage or overflow regardless of whether such claims, liability, expenses, damages, costs, fines and penalties has or is claimed to have resulted from or be related to the Seller's or Supplier's own negligence. The Buyer shall also give, or cause to be given to the Seller all such documents and other information concerning any leakage, spillage or overflow, or any such program for the prevention thereof, or which are requested by the Seller or required by law or regulation applicable at the time and place where delivery of the Products to the Vessel takes place.
- 11.3 Buyer warrants that the Vessel at all material times will be in compliance with all national and international regulations. Buyer also warrants that the Vessel, her main engine, her auxiliary engines and all other parts, equipment and machinery are being operated in accordance with the manufacturer's specifications.

12. Assignments

- 12.1 Seller may assign/transfer any/all of its rights and obligations under the Contract. Buyer shall not assign/transfer any/all of its rights under the Contract without written consent of the Seller.

13. Indemnity

- 13.1 Without prejudice to any term of this Contract, the Buyer shall defend, indemnify and hold Seller and Supplier harmless with respect to any and all claims, liability, expenses, damages, costs, fines, penalties, expenses or damage whatsoever that the Seller and Supplier may suffer or incur by reason of, or in any way connected with, the Buyer's purchase of, receipt, use, storage, handling or transportation of the Products and/or Services, regardless of whether such claims, liability, expenses, damages, costs, fines, penalties expenses or damage has or is claimed to have resulted from or be related to the Seller's or Supplier's own negligence..

14. Liability and Consequential Damages

- 14.1 The Seller and/or Supplier shall not be liable for any special, indirect, consequential, punitive or exemplary damage of any kind, including, but not limited to, loss of prospective profits, loss of use, anticipated cost savings, contracts or financial or economic loss, claims in tort, including negligence of the Seller and/or Supplier, its agents, servants or subcontractors, arising out of, or in connection with the performance or non-performance under the Contract or in any way related to the Products and/or Services. In any event, the liability of the Seller and/or Supplier shall be limited to the price of the Products.

15. Force Majeure

15.1 Neither Buyer nor Seller shall be responsible for damages caused by delays or failure to perform, in whole or in part, any obligation hereunder (other than the payment of money), or noncompliance with any of the terms hereof when such delay, failure or non-compliance is due to or results from causes beyond the reasonable control of the affected party, including, without limitation, acts of God, acts of piracy, fires, flood, adverse weather, perils of the sea, war (declared or undeclared), terrorist actions (threatened or actual), embargoes, accidents, strikes, labor disputes, failure of or shortage of vessels or barge services normally available to Seller, breakdown of, damage to or shortage in facilities used for production, refining or transportation of Products, acts in compliance with requests of any government authority or person purporting to act on behalf thereof, or any similar causes of Force Majeure. The Buyer shall be liable for demurrage at rates established by the Seller and for losses incurred by the Seller as a result of any delay caused directly or indirectly by the Buyer or the Vessel in the use of delivery or barging facilities or in vacating a berth. Notwithstanding the provisions of this clause, the Buyer shall not be relieved of any obligation to make payments for all sums due hereunder.

16. Breach

16.1 Seller may terminate the Contract in whole or in part, at its own discretion, upon the breach of any provision hereof by Buyer.
16.2 Seller reserves the right to recover from Buyer all damages (including, but not limited to, loss of profit), costs, expenses, interest, court costs, and attorney's fees resulting from any breach of the Contract.

17. Agents

If the Contract is concluded between the Seller and an agent acting for or on behalf of a principal (whether disclosed or undisclosed), as Buyer(s), then such agent shall be jointly and severally liable with the Buyer(s), as a principal and not as an agent, for the due and proper performance of the Contract and the prompt and punctual payment of all amounts due hereunder.

18. Title

18.1 The products shall remain the Seller's property until Buyer has paid for them in full. Until that time, Buyer shall hold them as bailee, store them in such a way that they can be identified as Seller's property, and keep them separate from Buyer's own property and the property of any other person. Although the Products remain the Seller's property until paid for, they shall be at Buyer's risk from the time of delivery and Buyer shall insure them against loss or damage accordingly. In the event of such loss or damage, Buyer shall hold the proceeds of such insurance on behalf of the Seller as trustee of Seller.
18.2 Buyer's rights to possession of the Products shall cease if: (a) Buyer has not paid for the Products in full by the expiration of any credit period allowed by the Contract; or (b) Buyer is declared bankrupt or makes any proposal to his creditors for a reorganization or other voluntary arrangement; or (c) a receiver, liquidator or administrator is appointed in respect of Buyer's business.
18.3 Upon cessation of Buyer's right to possession of the Products in accordance with clause 17.2, the Buyer shall, at his own expense, make the Products available to the Seller and allow Seller to repossess them.
18.4 Buyer hereby grants Seller and/or Seller's agents an irrevocable license to enter any premises or board any Vessel where the Products are stored in order to repossess them at any time.

19. Notice

19.1 Notice to Seller must be sent by certified mail or confirmed facsimile to the following address:

Bunkers International Corp.
110 Timberlachen Circle, Suite 1012
Lake Mary, FL 32746
United States
Phone: 1-407-328-7757
Fax: 1-407-328-0045

20. Governing Law, Venue and Jurisdiction

20.1 The Contract shall be governed by the laws of the United States of America and the State of Florida, without reference to any conflict of laws or choice of law rules which could otherwise result in the application of the laws of another jurisdiction. Buyer and Seller specifically exclude the application to any aspect of this Contract of the United Nations Convention for the International Sale of Goods, as applied under any nation's or jurisdiction's law or otherwise. The laws of the United States shall apply with respect to the existence of an *in rem* maritime lien under United States law, regardless of the country in which this Contract is deemed made, the Product and/or Service is provided or Seller takes legal action. Seller shall be entitled to assert its *in rem* maritime lien, attachment or other rights in any jurisdiction. Any disputes concerning quality or quantity shall only be resolved in the United States District Court for the Middle District of Florida, Tampa Division, or the Circuit Court of Hillsborough County, Florida, at the sole option of the Seller. Disputes over payment and collection may be resolved, at

Seller's sole option, in the United States District Court for the Middle District of Florida, Tampa Division, or the Circuit Court of Hillsborough County, Florida or in the courts of any other jurisdiction. Buyer hereby irrevocably submits to the jurisdiction of any such court, and irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum or its foreign equivalent to the maintenance of any action in any such court. Buyer waives any right to a trial by jury in any legal proceeding arising from or related to the Contract or the Products, the Confirmation of Contract, or these General Terms and Conditions of Sale. Buyer agrees and confirms that Buyer has no agent appointed for the service of process, in the State of New York, in any State adjacent to the state of New York, or in the State of Florida, and Buyer revokes all such prior appointments. In the event that Seller determines to serve Buyer with any court process or arbitral demand, such service may be completed by facsimile, email or courier delivery directly to Buyer, with all such process and accompanying papers in the English language without any requirement for officialization. Buyer further agrees that any and all proceedings brought by Buyer against Seller to secure jurisdiction or prejudgment security, such as those which may otherwise be brought pursuant to Supplemental Rule B of the United States Federal Rules of Civil Procedure, may be brought (but only if otherwise permitted by such rules or applicable law) only and exclusively in the United States District Court for the Middle District of Florida, Tampa Division. In the event that Seller brings proceedings against Buyer pursuant to Supplemental Rule B, Buyer expressly waives any defense that Buyer is present in an adjacent jurisdiction convenient to Seller.

20.2 Seller may also elect, and upon Seller's election Buyer agrees to binding and final arbitration at Lake Mary, Florida conducted according to the Rules of Arbitration of the International Chamber of Commerce in force at the time of Seller's demand for arbitration, or if such rules are not in force, according to arbitration rules which Seller selects. In any event, all claims by Buyer against Seller, including, counterclaims, must be arbitrated exclusively at Lake Mary, Florida conducted according to the Rules of Arbitration of the International Chamber of Commerce in force at the time of Buyer's demand for arbitration. Buyer expressly waives any and all right to bring any claim against Seller in any other forum, and expressly waives any right to require counter-security of Seller in response to any claim, counterclaim or otherwise whether brought in court or by way of demand for arbitration.

21. Waiver of Immunities

21.1 Buyer expressly and irrevocably waives and agrees not to assert such a defense in an action or proceeding, which may be commenced or asserted against the Buyer or Buyer's revenues and/or assets in connection with a Contract to the fullest extent permitted by applicable law, with respect to Buyer and Buyer's revenues and/or assets (irrespective of their use or intended use), all immunity on the grounds of sovereign immunity or other similar grounds, where Buyer is a State or Government owned or controlled entity, whether in whole or in part or otherwise, which status would otherwise entitle the Buyer to assert or allege the defense of sovereign immunity in any claim against it from:

- (a) Suit;
- (b) Jurisdiction of any court;
- (c) Relief by way of injunction, order for specific performance or for recovery of property;
- (d) Attachment of Buyer's assets (whether before or after judgment); and
- (e) Execution or enforcement of any judgment to which Buyer or Buyer's revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any proceedings.

22. Miscellaneous

To the extent that the Contract terms are at variance with the Special Terms, the latter shall govern. The Contract may not be modified, discharged or terminated except by an instrument in writing signed by each of the parties hereof. Waivers of performance by one party of any of the obligations of the other party under the Contract, or of default by such party of any of its obligations hereunder, shall not operate as a waiver of performance of any obligation of such party or a future waiver of the same obligation, or a waiver of any future default. The terms and conditions of the Contract shall extend to, be binding upon, and inure to the benefit of, the heirs, successors, administrators, legal representatives, and permitted assigns of the respective parties hereto. The descriptive headings contained herein are for convenience only and shall not control or affect the meaning or construction of any provision of the Contract. The Contract constitutes the entire understanding and agreement between the parties hereto and supersedes all prior oral or written agreements, representations and/or warranties.