

**SCOPE**

**1. Application of Terms and Conditions for Sale of Marine Fuel**

These General Terms and Conditions are deemed incorporated in each Sales Confirmation of a Marine Fuel Sales Agreement (the "Sales Confirmation"; each such Sales Confirmation, together with these General Terms and Conditions, an "Agreement"), which refers to the Plaza Marine, Incorporated General Terms and Conditions for Petroleum Products Sales Agreements. In the event of any discrepancy between these General Terms and Conditions and the terms of the Sales Confirmation (such other terms being included in the Sales Confirmation), the terms of the Sales Confirmation will control. References to "Party" under these General Terms and Conditions means either Plaza Marine Incorporated, as "Seller" or "Buyer" as that part is defined in the Sales Confirmation, and references to "Parties" means both Seller and Buyer. These items and conditions, including any revisions at the date of delivery contracts between the Buyer and the Seller. Each delivery shall be a separate contract of sale.

**PRICE**

**2. Price**

- (a) All prices quoted are in U.S. Dollars and are exclusive of duties, taxes, barging, trucking, tariffs, wharfage fees, toll fees, import charges of other exaction on the amount equivalent thereto, now or hereafter imposed, levied, or assessed by any governmental authority upon, measured by, incident to or as a result of any transaction in connection with the transportation, importation, production, manufacture, use or ownership of the goods or source materials herein concerned. Any such amounts shall, if collectable or payable by the Seller, be paid by the Buyer on demand in addition to the prices otherwise quoted.
- (b) The Buyer shall be liable for any expenses incurred by the Seller resulting from the Buyer's representative rejecting in part or in full any quantity ordered by Buyer.
- (c) Buyer and Seller must agree on the price before there is any obligation to see or buy the product which the seller has available. Seller reserves the right to cancel the contract or negotiate a new price if the quantity required increases or decreases more than 10%, if the quality or required specifications change, or if the Vessel's anticipated arrival date is delayed.

**SALE, DELIVERY AND MEASUREMENT**

**3. Agreement**

- (a) Unless otherwise agreed by the Seller, the Buyer shall give the Seller at least 7 days notice of the delivery required. At least 48-eight (48) hours (Sundays and holidays excepted) before Buyer requires delivery of the Product (as defined in the Agreement) under the Agreement, Buyer shall provide and offer to Seller that includes, in addition to Buyer's name and address: (i) the name and location of the vessel designated by Buyer to receive delivery of the Product ("Receiving Vessel"), (ii) the approximate time of tendering and requested method of delivery, (iii) the type, quantity and specification of the Product, and (iv) any other necessary information. Upon Seller's delivery to Buyer of Seller's written confirmation of acceptance of Buyer's offer, Seller shall sell and deliver, and Buyer shall purchase and accept delivery of the product on the terms specified in the Agreement.
- (b) Seller's acceptance of Buyer's offer to purchase the Product is conditioned upon Buyer's agreement to the express terms and conditions contained in the Agreement, including, without limitation, those contained in these General Terms and Conditions. Any proposal for additional or different terms or any other attempt by Buyer to vary in any degree any of the terms of the Agreement in Buyer's purchase order, acknowledgement, confirmation or other offer document submitted to Seller in conjunction with the Agreement is hereby objected to and rejected by Seller and Buyer's offer is deemed accepted by the Seller without any such additional or different terms. Buyer's objection to any terms and conditions of the Agreement shall be deemed to have been waived if written notice of such objection is not received by Seller within forty-eight (48) hours after the date of the Sales Confirmation, or before Seller has delivered the Product, whichever occurs first.
- (c) Wherever logical in connection with vessel operations or performance under the Agreement, the Receiving Vessel also includes the Receiving Vessel's owner(s), operator(s), captain or master, pilot(s), tankermen, other officers, and crew, line handlers and agents. If an agent purchases the Product on behalf of an undisclosed principal, as Buyer, the agent and Buyer will be jointly and severally responsible for all obligations under the Agreement, including, without limitation, payment for the Product delivered.

**4. Delivery Terms**

- (a) The Product will be delivered by Seller on an "FOB, Place of Shipment" basis (as defined in Section 2-319 of the Uniform Commercial Code, as adopted in the State of New Jersey ("UCC")) at Seller's shore terminal to Buyer's vessel, barge, truck, or other mode of transportation ("Delivery Equipment") to the Receiving Vessel. Delivery by Seller to Buyer's Delivery Equipment will be to tank trucks, barges or marine vessels owned, leased, hired or arranged for by Buyer. Delivery of the Product to the Receiving Vessel by Delivery Equipment arranged for by Seller is at Seller's option as an accommodation by Seller (Accommodation Delivery). Notwithstanding delivery of the Product "FOB, Place of Shipment," all expenses relating to the Accommodation Delivery of the Product to the Receiving Vessel will be invoiced separately and are for the account of and paid by Buyer.

- (b) The price and charges referred to in the Agreement do not include any insurance against the risk of loss or damage to (i) Seller's Product or property or (ii) to the property of Seller's supply port. It is expressly understood and agreed that Buyer will carry its' own insurance at its' own expense for the protection of Seller's Product and property and to the property of Seller's supply port. All vessels, barges, trucks, or other modes of transportation selected by the Buyer to enter Seller's property shall maintain insurance coverage with reputable insurance companies licensed to do business in the State where Seller's supply port is located at no cost to Seller with policy limits of at least \$1,000,000 per occurrence. During the term of the Agreement, Buyer shall name Seller as an additional insured on Buyer's Marine Comprehensive Liability policy, a certificate of insurance will be provided to this effect.

#### **5. Title - Risk of Loss**

- (a) All deliveries on an "FOB, Place of Shipment" basis to Buyer's vessels or tank trucks shall be deemed to be complete and title and risk of loss shall pass to Buyer when the Product passes the flange connecting Seller's delivery hose or pipe with the Receiving Vessel's intake hose connection.
- (b) All Accommodation Deliveries to Buyer by Seller are on an "FOB, Place of Shipment" basis by barge or tank truck to Buyer's Receiving Vessel and shall be deemed to be complete and title and risk of loss shall pass to Buyer when the Product passes the flange connecting Seller's delivery hose or pipe with the Delivery Equipment's intake hose connection.
- (c) Seller warrants title to the Product delivered under the Agreement, free and clear of all security interests, liens, claims, charges or encumbrances.

#### **6. Delivery Procedures**

- (a) With respect to any delivery of Product "FOB, Place of Shipment" shall be made during normal working hours on normal working days at Seller's supply port. If the Buyer requires delivery or causes delivery to be made at any other than during such periods, then the buyer shall pay to the Seller any additional expenses or costs incurred by the Seller or its supplier as a result of such delivery.
- (b) With respect to any delivery of Product "FOB, Place of Shipment," 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 when the Receiving Vessel will be ready to receive the Product purchased by the Buyer, 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 Receiving Vessel or its equipment which might delay, hinder or otherwise affect the mooring, unmooring or bunkering of the Receiving Vessel. If the Buyer fails to provide this notice and the Receiving Vessel for whatever reason is unable or refuses to accept delivery on the delivery date, or if the Buyer provided such notice but requests an extension to the delivery date of more than twenty-four (24) hours after twelve (12) noon on such date, then the Seller may, at its option, deliver the Product to the Receiving Vessel at the requested new delivery time on the best efforts basis, suspend delivery subject to the Buyer's agreement berth or shore access to the Receiving Vessel is not available or when, for any other reason, delivery of the Product would be unsafe or inadvisable. Under the foregoing circumstances, Buyer will be responsible and reimburse Seller for all costs (including, without limitation, demurrage) incurred by Seller or the carrier. Buyer will be responsible for and must make all connections and disconnections to and from the Receiving Vessel and the Delivery Equipment and shall provide a hose of reasonable size and length to do so. Should the Receiving Vessel require hoses, reduces or flanges that do not comply with the applicable standards therefor as defined by the American National Standards Institute, Buyer will be responsible and reimburse Seller for all costs, delays and demurrage that result from any delays incurred as a result thereof. Buyer will be bound by any and all terms set forth in the tariff applicable to the Delivery Equipment utilized to deliver the Produce to the extent that such tariff does not conflict with the other terms of the Agreement. Buyer must render all other necessary assistance and provide sufficient tanks and equipment to accept delivery of the Product.
- (c) With respect to any delivery of Product "FOB, Place of Shipment," the Buyer shall make all connections and disconnections between Seller's delivery hose and the Receiving Vessel's intake pipe, and shall render all necessary and reasonable assistance and provide sufficient tankage and equipment to receive all deliveries of Product supplied under the Agreement. All mooring charges and port dues, if any shall be paid by the Buyer.
- (d) With respect to any Accommodation Delivery of Product to Buyer by Seller "FOB, Place of Shipment," the Buyer, upon arrival of the Delivery Equipment, must immediately provide, in the case of delivery by vessel or barge, a berth to which the vessel or barge may safely proceed or from which it may depart, and where the vessel or barge may lie safely afloat or, if delivered by truck, shore access along side the Receiving Vessel. Seller or the carrier may postpone or cancel delivery of the Product if either should determine that clear and safe berth or shore access to the Receiving Vessel is not available or for any other reason, delivery of the Product would be unsafe or inadvisable.
- (e) With respect to any Accommodation Delivery of Product "FOB, Place of Destination," the Buyer shall make all connections and disconnections between the Delivery Equipment's delivery hose and the Receiving Vessel's intake pipe, and shall render all necessary and reasonable assistance and provide sufficient tankage and equipment to receive all deliveries of Product supplied under the Agreement. All mooring charges and port dues, if any shall be paid by the Buyer.
- (f) If a delivery permit is required from any government authority or any instrumentally thereof, or from any public or private port authority. For any delivery of Product hereunder, then the Buyer shall be responsible for obtaining it. No deliveries shall be made until such time as the Buyer has obtained all required delivery permits.
- (g) The Buyer shall reimburse the Seller for overtime and/or other additional expenses incurred due to the failure of the Buyer, its servants, or Receiving Vessel's local agents to provide the Seller with sufficient prior notice of amendments of delivery time, quantity changes or cancellations. If such failure by the Buyer to provide the Seller with sufficient prior notice of amendments of delivery time, quantity changes or cancellations occurs then the Seller may, at its option, deliver the Product to the Receiving Vessel at the requested new delivery time on the best efforts basis, suspend delivery subject to the Buyer's agreement to a new price for the Product, or cancel the delivery altogether, with or without prejudice to Seller's rights under this Agreement.

## **7. Delays**

The Seller shall not be liable for any demurrage or loss incurred by the Buyer due to congestion affecting the Seller's supply port or to the prior commitment of bunkering barge, or for any other reasons.

## **8. Holidays**

Where agreements with employees' organizations apply, the Seller shall not be liable for inability, as a consequence, to deliver on public, customary or dock holidays.

## **9. Rejection**

If the Receiving Vessel remains in the port where the Product is delivered, Buyer has forty-eight (48) hours after delivery of the Product to inspect and either accept or reject the Product. If Buyer (i) retains the Product for period of forty-eight (48) hours after receipt without reject it, (ii) after delivery of the Product uses or commingles it with other products, or (iii) the Receiving Vessel leaves the delivery port before the aforesaid forty-eight (48) hour period without rejecting delivery of the product, then Buyer will be deemed to have accepted delivery of the Product. If Buyer intends to reject the Product, notice must be given to Seller by telephone (followed by written confirmation, that will arrive no later than seventy-two (72) hours after discovery of the defect or nonconformity in the Product, fully specifying all claimed defects and nonconformity). Buyer may not reject shipments that involve Product shortages that are acceptable under normal commercial practice.

## **10. Installments**

Unless provided otherwise in the Sales Confirmation, each delivery of the Product is deemed to constitute a single contract. Time is of the essence under the Agreement and if Seller is authorized in the Sales Confirmation to deliver the total quantity of the Product in separate lots, amounts or installments (each an "Installment") at different times during the term of the Agreement and Buyer fails to take delivery of any such Installment, in whole or in part, at the time it is to be delivered, such default in taking delivery with respect to such Installment is deemed to impair the value of the whole Agreement and Seller may consider such default a breach of the Agreement and provide Buyer written notice thereof.

## **11. Measurement of Quantity and Quantity Claims**

- (a) The quantity of Product delivered under the Agreement shall be made by Seller using either gauging or meter readings of shore tanks, delivery vessels, barges, trucks or pipeline as applicable, based upon delivery method. All measurements and gauging under the Agreement shall be made in accordance with the latest approved methods of the American Petroleum Institute ("API") at the time such measurements are made and in accordance with the American Society for Testing and Materials ("ASTM") petroleum measurement tables. Seller's measurement of the Product delivered shall be accepted as conclusive, absent fraud or manifest error. Buyer is at liberty to be represented at the measuring of the Product delivered.
- (b) Claims with regard to the failure of Seller to deliver all or part of the agreed upon volume of the Product not rejected by Buyer must be made by Buyer to Seller or its representative at the time of delivery by noting such claims on the Bunker Certificate and formally confirming such claims to Seller within twenty-one (21) days from the date of delivery. If any claim is not made in accordance with the foregoing procedure, it will be deemed waived by Buyer. Volume determination shall be made in accordance with Section 11.(a) above and any claims based upon measurements taken by the Receiving Vessel will not be accepted.

## **12. Delivery Documentation**

Upon Seller's tender of the Product, qualified personnel of the Receiving Vessel must sign a Letter of Introduction and a Declaration of Inspection letter provided by Seller or its carrier before the Product will be delivered. Upon completion of delivery of the Product and prior to disconnecting the transfer hose, an authorized officer of the Receiving Vessel must sign and will be provided a copy of a Bunker Certificate on behalf of Buyer that shall identify, among other things, the identity and volume of the Product delivered. Except as provided in Section 11.(b), the Bunker Certificate may not be altered in any way.

## **PRODUCT QUALITY AND WARRANTIES**

### **13. Specifications**

Seller warrants that the Product delivered under the Agreement meets the specifications for the Product, which are set forth in the Sales Confirmation, subject to variance for repeatability or reproducibility, or as otherwise accepted by Buyer or its representative upon execution of the Letter of Introduction. Any conflict between the specifications set forth in the Sales Confirmation, or as may otherwise be accepted by Buyer or its representative upon execution of the Letter of Introduction and any applicable law, will be resolved in favor of the former. It being the responsibility of the Buyer to purchase any volume of the Product, which comply with the foregoing specifications.

### **14. Samples**

Seller or its authorized representative will collect four (4) samples of the Product delivered. Three (3) of such samples shall be collected for quality purposes and the fourth sample shall be referred to as the MARPOL control sample. One quality sample and the MARPOL control sample shall be given to the master of the vessel receiving the Product and the other two quality samples shall be retained by Seller. All samples shall be labeled, sealed and signed by Seller or its authorized representative.

## 15. Disclaimer

- (a) Notwithstanding anything in these Terms and Conditions to the contrary, Seller makes no representations or guarantees pertaining to product quality, composition, characteristics, environmental or human safety or hazard or health effects or like matters.
- (b) Whilst the Seller warrants that each grade of Marine Fuel supplied hereunder shall be merchantable quality, there is no implied condition or warranty that the Marine Fuel supplied hereunder shall be reasonably fit or suitable for the purpose intended by the Buyer.
- (c) All grades of product may contain petroleum industry allowed, bio-derived components.
- (d) **SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR MERCHANTABILITY, OR THAT THE PRODUCT DELIVERED UNDER THE AGREEMENT IS FIT FOR A PARTICULAR PURPOSE, EVEN IF KNOWN TO SELLER.**

## 16. Quality Claims

All claims regarding the quality of the Product delivered and not rejected by Buyer must be submitted to Seller in writing not later than twenty-one (21) days after the date of delivery and any claim that is not received by Seller within the aforesaid period will be deemed waived by Buyer. Buyer's written notice regarding a quality claim must include all necessary information for Seller to evaluate Buyer's claim, including without limitation, any and all analyses made by Buyer of the samples provided to the Receiving Vessel pursuant to Section 14. above. Resolution of all claims with regard to the quality of the Product delivered shall be based upon tests of the sample or samples retained by the Seller pursuant to Section 14. above such tests to be made as soon as practicable by an independent laboratory mutually acceptable to the Parties. If the Parties are unable to agree upon an independent laboratory to conduct the tests, Seller may select one. The non-prevailing Party in any Product quality dispute will pay the costs for the laboratory analysis of the Product samples. Any claims based on samples other than those taken by Seller pursuant to Section 14. Above will not be accepted. Buyer shall preserve and make available for inspection And testing by Seller, any parts allegedly damaged by the Product and shall make the Receiving Vessel available for inspection by Seller or its representative within a reasonable period after Seller's receipt of Buyer's notice of claim. Buyer shall also provide Seller with immediate access to the original Receiving Vessel's logs, computer records, and other pertinent communications and documents for review and copying. Seller shall not be responsible to Buyer for any claim arising from the commingling of the Product with other products or materials by the Receiving Vessel.

## TAXES

### 17. Liability, Payment and Exemption

- (a) Buyer shall be liable for any and all federal, state or local sales, use, gross receipts, consumption, environmental, spill fund, pollution, or other similar taxes (including income taxes), fees or charges that may arise from, be levied upon, or imposed with respect to the sale or delivery of the Product under the Agreement, (collectively, the "Taxes"), whether such taxes, fees or charges are in effect on the date of the Agreement, or are made effective (or are increased) after the date of the Agreement. Buyer agrees to indemnify, defend and hold Seller harmless from and against the payment of, or liability for, any and all Taxes. Such indemnification obligation shall survive termination of the Agreement. Buyer agrees to provide Seller with any exemption certificate and any other necessary information to allow Seller to make proper and timely payments and to file required returns for Taxes. Any Taxes for the account of Buyer shall be in addition to the price of the Product. Notwithstanding the fact that Taxes for which Buyer assumes responsibility may be collectible from a person other than Buyer, Buyer, upon Seller's demand, shall nonetheless be responsible and pay, or cause to be paid, such Taxes.
- (b) Notwithstanding Section 17. (a), Seller shall be liable for the payment of all taxes on Seller's income and for the privilege of doing business and exercising a franchise in the state in which the Product is delivered.

## PAYMENTS

### 18. Payments Terms

- (a) Buyer shall pay Seller for the Product delivered at the price and in accordance with the instructions set forth in the Sales Confirmation. In the absence of such payment instructions in the Sales Confirmation, Buyer shall pay Seller for the Product delivered under the Agreement without discount, offset or deduction shall be made in U.S. Dollars within thirty (30) days after the date of delivery, notwithstanding any disputes or claims, and Buyer's payment shall be made by electronic wire transfer of immediately available Federal funds, by Automated Clearing House (ACH) transfer, to Seller's designated bank account as indicated on Seller's invoice to Buyer, unless alternative means of payment is mutually agreed upon between Seller and Buyer. . Payment shall be due and shall be made by means of telegraphic transfer quoting the Seller's invoice number and the Buyer's name to the bank stated on Seller's invoice for the account of Plaza Marine on or before the due date set forth in the Seller's invoice.
- (b) The Seller's invoice (which may be sent by fax, telex or telegraph) shall be based on telegraphic, telex or other advise of the quantity delivered and of other charges if incurred, and payment made pursuant to 18. (a) above shall be subject to such subsequent adjustment as may be necessary on receipt by the Seller of further details or as may be agreed by the parties to be necessary after detailed checking of the invoice.
- (c) Late payments shall accrue interest from the due date until receipt of payment at a rate equal to the lesser of The Buyer shall pay interest from the due date of any invoice to the payment thereof at (i) the higher of the rate of one and one-half percent (1and 1/2%) per month, or (ii) the maximum amount by law. Buyer agrees to pay all of Seller's costs (including attorney's fees and courts costs) of collecting past due payments and late payment charges.

- (d) If payment falls on a non-business day, then payment shall be made on or before the nearest business day to the due date. If the next preceding and next succeeding business days are equally near the due date, then payment shall be made on or before the next preceding business day.
- (e) Without prejudice to any other rights of Seller, Seller may apply and offset, in satisfaction of any obligation owing under the Agreement by Buyer, any sums that may then be, or thereafter become, due and owing from Seller to Buyer under any other agreement between the Parties.
- (f) If payment has been made by Buyer in advance of delivery of Product, the payment amount shall be adjusted based upon actual delivered volumes of the Product identified on the Bunker Certificate. Any additional payment due from or credit to Buyer shall be made within thirty (30) days of the date of delivery of the Product.

#### 19. Financial Responsibility and Credit

- (a) Sale of the Product by Seller under the Agreement is made on the creditworthiness of Buyer, its agent, and the Receiving Vessel. From time to time, Seller will establish and may, in its sole discretion, notify Buyer of any credit dollar amount (the "Credit Limit") applicable to Buyer. The Credit Limit may be in such amount (including no amount) as Seller at its sole option may elect. Seller may change the Credit Limit at any time and provide prompt notice to thereof to Buyer.
- (b) The Seller will have and may assert any and all maritime liens available to it against the Receiving Vessel, wherever found, for the full amount of the delivered price of the Product supplied to such Receiving Vessel by the Seller, plus accrued interest and collection costs and other obligations incurred by the Buyer hereunder.
- (c) If the Buyer in any way breaches the Agreement, defaults in the payment of any indebtedness to the Seller (whether arising out of the Agreement or otherwise) or becomes bankrupt or insolvent, or if the Seller at any time considers the financial condition of the Buyer to be unsatisfactory, the Seller may, in addition to any other rights and remedies it may have, cancel or suspend deliveries hereunder until such time as the Buyer remedies such breach or default and/or provides suitable additional security and or guarantee acceptable to the Seller.
- (d) The Buyer is presumed to have this authority to encumber the Receiving Vessel pursuant to 46 U.S.C. 971 through 976 and the General Maritime Law. In all sales, and in addition to any other rights, which it may have, Seller holds the Receiving Vessel responsible for satisfaction of the purchase price. Any notice to the contrary, in order to be effective, must be expressed in writing, served upon and agreed to by the Seller a minimum of forty-eight (48) hours before the fuel, service or product is delivered to the Receiving Vessel.
- (e) In all sales, the Receiving Vessel is deemed to be responsible for satisfaction of the purchase price. The Seller does not waive but rather expressly reserves, all rights afforded pursuant to U.S.C. 971 through 976 and the General Maritime Law. Any stamp, letter, telex, document or agreement, whether written or oral, which purports to be such a waiver, shall not be valid.
- (f) Notice in writing, via fax, telex, registered airmail or cable to Seller:   
 Plaza Marine, Incorporated  
 370 W. Pleasantview Avenue, #341  
 Hackensack, NJ 07601
- (g) If at any time Buyer's Outstanding Indebtedness (as defined below) exceeds the Credit Limit then in effect for Buyer, Buyer must reduce the Outstanding Indebtedness due Seller to an amount that is less than the Credit Limit then in effect for Buyer by taking any one of the following actions:
  - (i) Pay Seller all or a portion of the Outstanding Indebtedness such that the remaining balance of the Outstanding Indebtedness is less than the Credit Limit, or
  - (ii) Provide Seller a letter of credit in a form and substance and from a first-class bank reasonably acceptable to Seller, pursuant to which Seller shall be permitted to draw down an amount that is not less than the amount by which the Outstanding Indebtedness exceeds the Credit Limit.
- (h) For the purposes of this Section 19, "Outstanding Indebtedness" means, as of any day during the term of the Agreement, all amounts due or which will become due to Seller under all Agreements between Seller and Buyer, including, without limitation, the Agreement, where delivery of, but no payment for, the Product has been made.
- (i) If Buyer fails to: (i) pay Seller for any amount when due (whether or not such failure has subsequently been cured), or (ii) otherwise comply with the terms of the Agreement, then in addition to ceasing to deliver Product under the Agreement, and regardless of any payment terms then in effect for Buyer, Seller may declare all the Outstanding Indebtedness to be immediately due and payable and terminate the Agreement.
- (j) If Seller determines that the financial condition of Buyer has become impaired or unsatisfactory, Seller at its sole option may require Buyer to provide Seller adequate assurances of performance. Seller's requirement for adequate assurances may include modification of the credit terms of the Agreement, in which case Seller may require buyer to: (i) prepay by wire transfer the full estimated invoice amount under the Agreement at least one (1) business day prior to the Product delivery date, (ii) post at least two (2) business days prior to the Product delivery date and irrevocable, standby letter of credit, in form and substance reasonably acceptable to Seller, issued or confirmed by a first class bank reasonably acceptable to Seller in an amount sufficient to cover the full estimated invoice amount under the Agreement or (iii) deliver to Seller at least two (2) business days prior to the Product delivery date a parent company guaranty in form and substance reasonably acceptable to Seller for the prompt payment, when due, of any and all present or future indebtedness of Buyer as a result of any sale of the Product under the Agreement. Any such modification of the credit terms shall be effective immediately upon Seller's written notice thereof to Buyer. The exercise by Seller of any right under this Section 19. (j) is without prejudice to any claim for damages, or any other right Seller may have at law or equity.

## **DAMAGES**

### **20. Liquidated Damages**

In the event Buyer defaults in its obligation to take delivery of the Product under the Agreement, in whole or in part, Seller, in lieu of seeking other damages or remedies under the Agreement or at law or equity, may require Buyer to pay liquidated damages in full and final settlement of all Seller's claims against Buyer arising from Buyer's breach of the Agreement in the amount equal to the greater of \$5,000.00 or ten-percent (10%) of the total dollar amount of the volume of the Product to be delivered under the Agreement. Upon Buyer's payment of such liquidated damages to Seller, Buyer shall have no further obligation to Seller and Seller agrees to release Buyer with regard to such claims. Both parties acknowledge that it would be impracticable or difficult to determine the actual amount of damages that could arise out of Buyer's breach of the Agreement and that the liquidated damages are a reasonable estimate of what such damages could be and are not a penalty.

## **FORCE MAJURE**

### **21. Force Majeure**

- (a) Neither the Buyer nor the Seller nor its Supplier shall be responsible for damages caused by delays, 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 noncompliance is due to or results from causes beyond the reasonable control of the affected party, including, without limitation, acts of God, fires, floods perils of the sea, war (declared or undeclared), embargoes, accidents, strikes, labor disputes, failure or shortage of vessel or barge service normally available to the Seller or its Supplier, to breakdown of or damage to, or shortage in facilities used for production, refining or transportation of Product, acts in compliance with requests of any governmental authority or person purporting to act therefor, or any other similar causes. The expression "or any other similar causes" is deemed to include, without limitation, the failure, cessation, termination or curtailment of any of the existing or contemplated sources of Product of Seller. Neither Party shall be required to settle any labor dispute against its will. Seller shall not be required to make up any delivery, and Buyer shall not be liable to accept any deliveries of the Product excused due to any event of *force majeure*. Notwithstanding the provisions of this Article, the Buyer shall not be relieved of any obligation to make payments for all sums due hereunder.
- (b) The excuse for performance provided to either party under this Section 15 is in addition to and not in lieu of the excuse for performance that may be provided to either Party under Section 2-615 of the UCC.

## **LIMITATION OF LIABILITY, ACTIONS AND ATTORNEY FEES**

### **22. Limitation of Liability**

**IN NO EVENT SHALL EITHER PART BE LIABLE TO THE OTHER PARTY FOR, AND EACH OF THE PARTIES WAIVES ITS RIGHT TO SEEK, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND. BUYER'S EXCLUSIVE REMEDY FOR ANY AND ALL LOSSES OR DAMAGES RESULTING FROM THE SALE OF THE PRODUCT DELIVERED UNDER THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY ALLEGATION OF BREACH OF WARRANTY OR BREACH OF CONTRACT OR NEGLIGENCE OR STRICT LIABILITY, IF SUCH TORT ACTIONS ARE PERMITTED UNDER APPLICABLE LAW, SHALL BE LIMITED TO THE REPLACEMENT OF THE PRODUCT, FOR WHICH A CLAIM IS SUBMITTED. IF SELLER FAILS TO DELIVER THE PRODUCT, BUYER'S EXCLUSIVE REMEDY FOR ANY AND ALL LOSSES OR DAMAGES UNDER THE AGREEMENT SHALL BE LIMITED TO PAYMENT OF THE POSITIVE DIFFERENCE, IF ANY, BETWEEN (I) THE MARKET VALUE OF THE PRODUCT WHEN IT WAS TO BE DELIVERED, AS REASONABLY DETERMINED BY SELLER, AND (II) THE PRICE SET FORTH IN THE AGREEMENT.**

### **23. Commencement of Action**

**A PARTY MUST COMMENCE ANY ACTION FOR BREACH OF THE AGREEMENT BY THE OTHER PART WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.**

### **24. Attorney's Fees**

If any action, at law, in equity or in admiralty, is brought by the Seller, either under the provisions of these Terms and Conditions of Sale or to enforce the Buyer's contractual obligation arising from the transaction referenced hereby, the Seller should it prevail in such action, shall be entitled to recover its reasonable attorney's fees from the Buyer in the principle action or in a related action brought specifically for the purpose in addition to any other relief to which the Seller may be entitled.

## **NOTICES**

### **25. Notices**

All notices and communications under the Agreement must be in writing, must be made to the addresses, whether physical or electronic, as specified in writing by each Party to the other from time to time, and will be deemed given to a Party, (i) if delivered by hand or sent by overnight carrier, on the day of receipt by the receiving Party, (ii) if sent by registered or certified mail return receipt requested, on the date of receipt, or (iii) if transmitted by electronic mail or facsimile, at the time of confirmation of transmission.

## **DEMURRAGE**

### **26. Demurrage**

Seller shall be responsible for all reasonable demurrage costs incurred by Buyer or the Receiving Vessel proximately caused by Seller or the Delivery Equipment with respect to the delivery of the Product under the Agreement. Buyer shall be responsible for all reasonable demurrage costs incurred by Seller or the Delivery Equipment proximately caused by Buyer or the Receiving Vessel with respect to the receipt of the Product under the Agreement.

## **GOVERNING LAW**

### **27. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to choice of laws of that State that would require the laws of another jurisdiction to govern, exempt (i) with regard to and to the extent that the Parties acknowledge and agree that Seller shall have a valid maritime lien, superior in priority to other liens, mortgages, or encumbrances against the Receiving Vessel, and (ii) as to other matters, if any, under the Agreement that involve vessels, harbors, seamen, or maritime affairs or commerce generally, which matters shall be governed by the General Maritime Law of the United States of America, or the law of the United States of America, or the law of the State of New Jersey where the General Maritime Law is silent or inapplicable.

## **ASSIGNMENT AND NO WAIVER**

### **28. Assignment and No waiver**

- (a) Neither Party may assign its rights or delegate its performance under the Agreement with the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed. Any assignment made without obtaining such prior approval shall be void and of no effect. The other Party's consent shall not be required for the assigning Party to transfer its interest in the Agreement to a parent or affiliate by assignment, merger, or otherwise. Upon any transfer and assumption of the Agreement by either Party, the transferring or assigning Party shall not be relieved of or discharged from any obligations under the Agreement unless the assignee or transferee (i) has assumed in writing all of the obligations of the transferring Party and (ii) provides the consenting Party evidence of financial responsibility at least equal to that of the transferring Party.
- (b) No waiver by either Party of any provision of the Agreement shall be binding unless made expressly and expressly confirmed in writing. Further, any such waiver shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

## **INDEMNIFICATION**

### **29. Indemnification**

Each Party (the "Indemnitor") agrees to indemnify, defend and hold harmless the other Party (the Indemnitee") from and against any penalties, fines, liabilities, claims, expenses (including attorney's fees and costs of defense), losses and damages (i) caused by the negligence or willful misconduct of the Indemnitor, its offices, employees, agents, representatives or subcontractors, including without limitation, those of the Receiving Vessel and the Delivery Equipment, in the course of its performance of the Agreement and (ii) failure of the Indemnitor, its offices, employees, agents, representatives or subcontractors to comply with all applicable laws, ordinances, rules and regulations of any government or agency having jurisdiction, except to the extent caused by the negligence, willful misconduct or omission of the Indemnitee its offices, employees, agents, representatives or subcontractors. In addition to the other obligations that a Party may assume under the terms of the Agreement, each Party shall obtain insurance covering its indemnity hereunder to the extent permitted by law.

### **30. Pollution Prevention and Responsibility**

In the event that any petroleum product is spilled or otherwise escapes during the loading or discharging of any Receiving Vessel in the performance of this Agreement, the Buyer shall take such measures as are necessary to protect against or mitigate any resulting pollution damage or as required by any governmental authorities. In the event such incident is the result of any defect in the Receiving Vessel or its equipment or any fault or act of neglect of the master, crew, agent or representative, the party owning or chartering the Receiving Vessel agrees to cause the Receiving Vessel to assume any and all responsibility for penalties, cleanup expenses, and cost that may be incurred as a result of such incident. The party owning, chartering or hiring the responsible party to reimburse, indemnify and defend the non-responsible party from any and all claims, losses, liabilities, damages, suits, penalties or expenses of any nature arising out of such incident.

### **31. Tortuous Acts**

Buyer agrees to indemnify and hold harmless the Seller from any claims resulting from petroleum spills, environmental damages, accidents or any other tortuous behavior resulting from the actions or failure to act of Buyer or any of Buyer's employees or agents. Buyer agrees to obtain an endorsement of its liability insurance policies to add Seller as additional insured and to give Seller written evidence of such policy endorsements.

### 32. Vessel Seaworthiness

Buyer represents that that the Receiving Vessel is seaworthy, safe and in good condition and is capable of receiving the Product without leakage or spillage. Should the Receiving Vessel fail to comply with the foregoing representation, Seller may suspend the delivery of the Product until such time as Seller has received evidence satisfactory, in its sole discretion, that the Receiving Vessel adequately complies with these representations. If the Receiving Vessel is unable to comply with such requirements, Buyer shall be deemed in breach of the Agreement and Seller may declare a default thereunder and terminate the Agreement.

### CONFIDENTIALITY

#### 33. Confidential Information

- (a) The Parties hereby agree that at all times during the term of the Agreement, to hold in the strictest confidence, and to not disclose confidential information as defined herein to anyone without express written authorization of the Parties.
- (b) Confidential information shall mean any trade secrets or the Parties private information, including but not limited to, knowledge of the Parties business operations, business records, manufacturing techniques, processes, formulas, customer lists, inventions, experimental developments, research projects, operational methods, cost, pricing, financial data, business plans and proposals, data and information the Parties receive in confidence from any other party, or any secret or confidential matters of the Parties. The Parties shall not use any confidential information to its own benefit or to the detriment of the other during the term of this Agreement. The Parties state and certify that this Agreement does not and will not breach any agreement that either Party has to anyone concerning confidential information belonging to others.
- (c) The Parties hereby agree that the terms of the Agreement and the samples taken by Seller pursuant to Section 14. above and any related tests of such samples are deemed propriety to Seller and shall not be disclosed to any third party by Buyer, its agents, employees or representatives unless agreed to in writing by seller, or as required by applicable law, regulations, rule or order of any competent court or governmental authority having jurisdiction.

### MISCELLANEOUS

#### 34. Miscellaneous

- (a) **Severability** - If any provision of the Agreement is determined to be invalid, void or unenforceable by any court having valid jurisdiction, such determination shall not render invalid, void, or render unenforceable any other provision, agreement or covenant of the Agreement.
- (b) **Waiver** - No waiver of or failure to enforce any breach of or performance required by the Agreement shall be deemed to constitute a waiver of any other or subsequent breach or required performance under the Agreement.
- (c) **Amendment** - No amendment or modification of any of the terms of the Agreement shall be enforceable unless reduced to writing and executed by both Parties.
- (d) **Compliance with Law** - Each Party shall undertake such action as may be necessary to assure that it and all its employees, agents and independent contractors comply with all applicable laws, ordinances, rules and regulations and by any government entity or agency having jurisdiction with regard to such Party's performance under the Agreement.
- (e) **Entire Agreement** - The Agreement constitutes the entire Agreement between the Parties regarding the subject matter thereof and supersedes and renders void any and all prior representations, statements, and proposals by or discussions, negotiations and agreements whether written or oral, between the Parties with respect to the subject matter of the Agreement.

**SCOPE**

**1. Application of Terms and Conditions for Sale of Marine Fuel**

These General Terms and Conditions are deemed incorporated in each Sales Confirmation of a Marine Fuel Sales Agreement (the "Sales Confirmation"; each such Sales Confirmation, together with these General Terms and Conditions, an "Agreement"), which refers to the Plaza Marine, Incorporated General Terms and Conditions for Petroleum Products Sales Agreements. In the event of any discrepancy between these General Terms and Conditions and the terms of the Sales Confirmation (such other terms being included in the Sales Confirmation), the terms of the Sales Confirmation will control. References to "Party" under these General Terms and Conditions means either Plaza Marine Incorporated, as "Seller" or "Buyer" as that part is defined in the Sales Confirmation, and references to "Parties" means both Seller and Buyer. These items and conditions, including any revisions at the date of delivery contracts between the Buyer and the Seller. Each delivery shall be a separate contract of sale.

**PRICE**

**2. Price**

- (a) All prices quoted are in U.S. Dollars and are exclusive of duties, taxes, barging, trucking, tariffs, wharfage fees, toll fees, import charges of other exaction on the amount equivalent thereto, now or hereafter imposed, levied, or assessed by any governmental authority upon, measured by, incident to or as a result of any transaction in connection with the transportation, importation, production, manufacture, use or ownership of the goods or source materials herein concerned. Any such amounts shall, if collectable or payable by the Seller, be paid by the Buyer on demand in addition to the prices otherwise quoted.
- (b) The Buyer shall be liable for any expenses incurred by the Seller resulting from the Buyer's representative rejecting in part or in full any quantity ordered by Buyer.
- (c) Buyer and Seller must agree on the price before there is any obligation to see or buy the product which the seller has available. Seller reserves the right to cancel the contract or negotiate a new price if the quantity required increases or decreases more than 10%, if the quality or required specifications change, or if the Vessel's anticipated arrival date is delayed.

**SALE, DELIVERY AND MEASUREMENT**

**3. Agreement**

- (a) Unless otherwise agreed by the Seller, the Buyer shall give the Seller at least 7 days notice of the delivery required. At least 48-eight (48) hours (Sundays and holidays excepted) before Buyer requires delivery of the Product (as defined in the Agreement) under the Agreement, Buyer shall provide and offer to Seller that includes, in addition to Buyer's name and address: (i) the name and location of the vessel designated by Buyer to receive delivery of the Product ("Receiving Vessel"), (ii) the approximate time of tendering and requested method of delivery, (iii) the type, quantity and specification of the Product, and (iv) any other necessary information. Upon Seller's delivery to Buyer of Seller's written confirmation of acceptance of Buyer's offer, Seller shall sell and deliver, and Buyer shall purchase and accept delivery of the product on the terms specified in the Agreement.
- (b) Seller's acceptance of Buyer's offer to purchase the Product is conditioned upon Buyer's agreement to the express terms and conditions contained in the Agreement, including, without limitation, those contained in these General Terms and Conditions. Any proposal for additional or different terms or any other attempt by Buyer to vary in any degree any of the terms of the Agreement in Buyer's purchase order, acknowledgement, confirmation or other offer document submitted to Seller in conjunction with the Agreement is hereby objected to and rejected by Seller and Buyer's offer is deemed accepted by the Seller without any such additional or different terms. Buyer's objection to any terms and conditions of the Agreement shall be deemed to have been waived if written notice of such objection is not received by Seller within forty-eight (48) hours after the date of the Sales Confirmation, or before Seller has delivered the Product, whichever occurs first.
- (c) Wherever logical in connection with vessel operations or performance under the Agreement, the Receiving Vessel also includes the Receiving Vessel's owner(s), operator(s), captain or master, pilot(s), tankermen, other officers, and crew, line handlers and agents. If an agent purchases the Product on behalf of an undisclosed principal, as Buyer, the agent and Buyer will be jointly and severally responsible for all obligations under the Agreement, including, without limitation, payment for the Product delivered.

**4. Delivery Terms**

- (a) The Product will be delivered by Seller on an "FOB, Place of Shipment" basis (as defined in Section 2-319 of the Uniform Commercial Code, as adopted in the State of New Jersey ("UCC")) at Seller's shore terminal to Buyer's vessel, barge, truck, or other mode of transportation ("Delivery Equipment") to the Receiving Vessel. Delivery by Seller to Buyer's Delivery Equipment will be to tank trucks, barges or marine vessels owned, leased, hired or arranged for by Buyer. Delivery of the Product to the Receiving Vessel by Delivery Equipment arranged for by Seller is at Seller's option as an accommodation by Seller (Accommodation Delivery). Notwithstanding delivery of the Product "FOB, Place of Shipment," all expenses relating to the Accommodation Delivery of the Product to the Receiving Vessel will be invoiced separately and are for the account of and paid by Buyer.

- (b) The price and charges referred to in the Agreement do not include any insurance against the risk of loss or damage to (i) Seller's Product or property or (ii) to the property of Seller's supply port. It is expressly understood and agreed that Buyer will carry its' own insurance at its' own expense for the protection of Seller's Product and property and to the property of Seller's supply port. All vessels, barges, trucks, or other modes of transportation selected by the Buyer to enter Seller's property shall maintain insurance coverage with reputable insurance companies licensed to do business in the State where Seller's supply port is located at no cost to Seller with policy limits of at least \$1,000,000 per occurrence. During the term of the Agreement, Buyer shall name Seller as an additional insured on Buyer's Marine Comprehensive Liability policy, a certificate of insurance will be provided to this effect.

#### **5. Title - Risk of Loss**

- (a) All deliveries on an "FOB, Place of Shipment" basis to Buyer's vessels or tank trucks shall be deemed to be complete and title and risk of loss shall pass to Buyer when the Product passes the flange connecting Seller's delivery hose or pipe with the Receiving Vessel's intake hose connection.
- (b) All Accommodation Deliveries to Buyer by Seller are on an "FOB, Place of Shipment" basis by barge or tank truck to Buyer's Receiving Vessel and shall be deemed to be complete and title and risk of loss shall pass to Buyer when the Product passes the flange connecting Seller's delivery hose or pipe with the Delivery Equipment's intake hose connection.
- (c) Seller warrants title to the Product delivered under the Agreement, free and clear of all security interests, liens, claims, charges or encumbrances.

#### **6. Delivery Procedures**

- (a) With respect to any delivery of Product "FOB, Place of Shipment" shall be made during normal working hours on normal working days at Seller's supply port. If the Buyer requires delivery or causes delivery to be made at any other than during such periods, then the buyer shall pay to the Seller any additional expenses or costs incurred by the Seller or its supplier as a result of such delivery.
- (b) With respect to any delivery of Product "FOB, Place of Shipment," 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 when the Receiving Vessel will be ready to receive the Product purchased by the Buyer, 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 Receiving Vessel or its equipment which might delay, hinder or otherwise affect the mooring, unmooring or bunkering of the Receiving Vessel. If the Buyer fails to provide this notice and the Receiving Vessel for whatever reason is unable or refuses to accept delivery on the delivery date, or if the Buyer provided such notice but requests an extension to the delivery date of more than twenty-four (24) hours after twelve (12) noon on such date, then the Seller may, at its option, deliver the Product to the Receiving Vessel at the requested new delivery time on the best efforts basis, suspend delivery subject to the Buyer's agreement berth or shore access to the Receiving Vessel is not available or when, for any other reason, delivery of the Product would be unsafe or inadvisable. Under the foregoing circumstances, Buyer will be responsible and reimburse Seller for all costs (including, without limitation, demurrage) incurred by Seller or the carrier. Buyer will be responsible for and must make all connections and disconnections to and from the Receiving Vessel and the Delivery Equipment and shall provide a hose of reasonable size and length to do so. Should the Receiving Vessel require hoses, reduces or flanges that do not comply with the applicable standards therefor as defined by the American National Standards Institute, Buyer will be responsible and reimburse Seller for all costs, delays and demurrage that result from any delays incurred as a result thereof. Buyer will be bound by any and all terms set forth in the tariff applicable to the Delivery Equipment utilized to deliver the Produce to the extent that such tariff does not conflict with the other terms of the Agreement. Buyer must render all other necessary assistance and provide sufficient tanks and equipment to accept delivery of the Product.
- (c) With respect to any delivery of Product "FOB, Place of Shipment," the Buyer shall make all connections and disconnections between Seller's delivery hose and the Receiving Vessel's intake pipe, and shall render all necessary and reasonable assistance and provide sufficient tankage and equipment to receive all deliveries of Product supplied under the Agreement. All mooring charges and port dues, if any shall be paid by the Buyer.
- (d) With respect to any Accommodation Delivery of Product to Buyer by Seller "FOB, Place of Shipment," the Buyer, upon arrival of the Delivery Equipment, must immediately provide, in the case of delivery by vessel or barge, a berth to which the vessel or barge may safely proceed or from which it may depart, and where the vessel or barge may lie safely afloat or, if delivered by truck, shore access along side the Receiving Vessel. Seller or the carrier may postpone or cancel delivery of the Product if either should determine that clear and safe berth or shore access to the Receiving Vessel is not available or for any other reason, delivery of the Product would be unsafe or inadvisable.
- (e) With respect to any Accommodation Delivery of Product "FOB, Place of Destination," the Buyer shall make all connections and disconnections between the Delivery Equipment's delivery hose and the Receiving Vessel's intake pipe, and shall render all necessary and reasonable assistance and provide sufficient tankage and equipment to receive all deliveries of Product supplied under the Agreement. All mooring charges and port dues, if any shall be paid by the Buyer.
- (f) If a delivery permit is required from any government authority or any instrumentally thereof, or from any public or private port authority. For any delivery of Product hereunder, then the Buyer shall be responsible for obtaining it. No deliveries shall be made until such time as the Buyer has obtained all required delivery permits.
- (g) The Buyer shall reimburse the Seller for overtime and/or other additional expenses incurred due to the failure of the Buyer, its servants, or Receiving Vessel's local agents to provide the Seller with sufficient prior notice of amendments of delivery time, quantity changes or cancellations. If such failure by the Buyer to provide the Seller with sufficient prior notice of amendments of delivery time, quantity changes or cancellations occurs then the Seller may, at its option, deliver the Product to the Receiving Vessel at the requested new delivery time on the best efforts basis, suspend delivery subject to the Buyer's agreement to a new price for the Product, or cancel the delivery altogether, with or without prejudice to Seller's rights under this Agreement.

## **7. Delays**

The Seller shall not be liable for any demurrage or loss incurred by the Buyer due to congestion affecting the Seller's supply port or to the prior commitment of bunkering barge, or for any other reasons.

## **8. Holidays**

Where agreements with employees' organizations apply, the Seller shall not be liable for inability, as a consequence, to deliver on public, customary or dock holidays.

## **9. Rejection**

If the Receiving Vessel remains in the port where the Product is delivered, Buyer has forty-eight (48) hours after delivery of the Product to inspect and either accept or reject the Product. If Buyer (i) retains the Product for period of forty-eight (48) hours after receipt without reject it, (ii) after delivery of the Product uses or commingles it with other products, or (iii) the Receiving Vessel leaves the delivery port before the aforesaid forty-eight (48) hour period without rejecting delivery of the product, then Buyer will be deemed to have accepted delivery of the Product. If Buyer intends to reject the Product, notice must be given to Seller by telephone (followed by written confirmation, that will arrive no later than seventy-two (72) hours after discovery of the defect or nonconformity in the Product, fully specifying all claimed defects and nonconformity). Buyer may not reject shipments that involve Product shortages that are acceptable under normal commercial practice.

## **10. Installments**

Unless provided otherwise in the Sales Confirmation, each delivery of the Product is deemed to constitute a single contract. Time is of the essence under the Agreement and if Seller is authorized in the Sales Confirmation to deliver the total quantity of the Product in separate lots, amounts or installments (each an "Installment") at different times during the term of the Agreement and Buyer fails to take delivery of any such Installment, in whole or in part, at the time it is to be delivered, such default in taking delivery with respect to such Installment is deemed to impair the value of the whole Agreement and Seller may consider such default a breach of the Agreement and provide Buyer written notice thereof.

## **11. Measurement of Quantity and Quantity Claims**

- (a) The quantity of Product delivered under the Agreement shall be made by Seller using either gauging or meter readings of shore tanks, delivery vessels, barges, trucks or pipeline as applicable, based upon delivery method. All measurements and gauging under the Agreement shall be made in accordance with the latest approved methods of the American Petroleum Institute ("API") at the time such measurements are made and in accordance with the American Society for Testing and Materials ("ASTM") petroleum measurement tables. Seller's measurement of the Product delivered shall be accepted as conclusive, absent fraud or manifest error. Buyer is at liberty to be represented at the measuring of the Product delivered.
- (b) Claims with regard to the failure of Seller to deliver all or part of the agreed upon volume of the Product not rejected by Buyer must be made by Buyer to Seller or its representative at the time of delivery by noting such claims on the Bunker Certificate and formally confirming such claims to Seller within twenty-one (21) days from the date of delivery. If any claim is not made in accordance with the foregoing procedure, it will be deemed waived by Buyer. Volume determination shall be made in accordance with Section 11.(a) above and any claims based upon measurements taken by the Receiving Vessel will not be accepted.

## **12. Delivery Documentation**

Upon Seller's tender of the Product, qualified personnel of the Receiving Vessel must sign a Letter of Introduction and a Declaration of Inspection letter provided by Seller or its carrier before the Product will be delivered. Upon completion of delivery of the Product and prior to disconnecting the transfer hose, an authorized officer of the Receiving Vessel must sign and will be provided a copy of a Bunker Certificate on behalf of Buyer that shall identify, among other things, the identity and volume of the Product delivered. Except as provided in Section 11.(b), the Bunker Certificate may not be altered in any way.

## **PRODUCT QUALITY AND WARRANTIES**

### **13. Specifications**

Seller warrants that the Product delivered under the Agreement meets the specifications for the Product, which are set forth in the Sales Confirmation, subject to variance for repeatability or reproducibility, or as otherwise accepted by Buyer or its representative upon execution of the Letter of Introduction. Any conflict between the specifications set forth in the Sales Confirmation, or as may otherwise be accepted by Buyer or its representative upon execution of the Letter of Introduction and any applicable law, will be resolved in favor of the former. It being the responsibility of the Buyer to purchase any volume of the Product, which comply with the foregoing specifications.

### **14. Samples**

Seller or its authorized representative will collect four (4) samples of the Product delivered. Three (3) of such samples shall be collected for quality purposes and the fourth sample shall be referred to as the MARPOL control sample. One quality sample and the MARPOL control sample shall be given to the master of the vessel receiving the Product and the other two quality samples shall be retained by Seller. All samples shall be labeled, sealed and signed by Seller or its authorized representative.

## 15. Disclaimer

- (a) Notwithstanding anything in these Terms and Conditions to the contrary, Seller makes no representations or guarantees pertaining to product quality, composition, characteristics, environmental or human safety or hazard or health effects or like matters.
- (b) Whilst the Seller warrants that each grade of Marine Fuel supplied hereunder shall be merchantable quality, there is no implied condition or warranty that the Marine Fuel supplied hereunder shall be reasonably fit or suitable for the purpose intended by the Buyer.
- (c) All grades of product may contain petroleum industry allowed, bio-derived components.
- (d) **SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR MERCHANTABILITY, OR THAT THE PRODUCT DELIVERED UNDER THE AGREEMENT IS FIT FOR A PARTICULAR PURPOSE, EVEN IF KNOWN TO SELLER.**

## 16. Quality Claims

All claims regarding the quality of the Product delivered and not rejected by Buyer must be submitted to Seller in writing not later than twenty-one (21) days after the date of delivery and any claim that is not received by Seller within the aforesaid period will be deemed waived by Buyer. Buyer's written notice regarding a quality claim must include all necessary information for Seller to evaluate Buyer's claim, including without limitation, any and all analyses made by Buyer of the samples provided to the Receiving Vessel pursuant to Section 14. above. Resolution of all claims with regard to the quality of the Product delivered shall be based upon tests of the sample or samples retained by the Seller pursuant to Section 14. above such tests to be made as soon as practicable by an independent laboratory mutually acceptable to the Parties. If the Parties are unable to agree upon an independent laboratory to conduct the tests, Seller may select one. The non-prevailing Party in any Product quality dispute will pay the costs for the laboratory analysis of the Product samples. Any claims based on samples other than those taken by Seller pursuant to Section 14. Above will not be accepted. Buyer shall preserve and make available for inspection And testing by Seller, any parts allegedly damaged by the Product and shall make the Receiving Vessel available for inspection by Seller or its representative within a reasonable period after Seller's receipt of Buyer's notice of claim. Buyer shall also provide Seller with immediate access to the original Receiving Vessel's logs, computer records, and other pertinent communications and documents for review and copying. Seller shall not be responsible to Buyer for any claim arising from the commingling of the Product with other products or materials by the Receiving Vessel.

## TAXES

### 17. Liability, Payment and Exemption

- (a) Buyer shall be liable for any and all federal, state or local sales, use, gross receipts, consumption, environmental, spill fund, pollution, or other similar taxes (including income taxes), fees or charges that may arise from, be levied upon, or imposed with respect to the sale or delivery of the Product under the Agreement, (collectively, the "Taxes"), whether such taxes, fees or charges are in effect on the date of the Agreement, or are made effective (or are increased) after the date of the Agreement. Buyer agrees to indemnify, defend and hold Seller harmless from and against the payment of, or liability for, any and all Taxes. Such indemnification obligation shall survive termination of the Agreement. Buyer agrees to provide Seller with any exemption certificate and any other necessary information to allow Seller to make proper and timely payments and to file required returns for Taxes. Any Taxes for the account of Buyer shall be in addition to the price of the Product. Notwithstanding the fact that Taxes for which Buyer assumes responsibility may be collectible from a person other than Buyer, Buyer, upon Seller's demand, shall nonetheless be responsible and pay, or cause to be paid, such Taxes.
- (b) Notwithstanding Section 17. (a), Seller shall be liable for the payment of all taxes on Seller's income and for the privilege of doing business and exercising a franchise in the state in which the Product is delivered.

## PAYMENTS

### 18. Payments Terms

- (a) Buyer shall pay Seller for the Product delivered at the price and in accordance with the instructions set forth in the Sales Confirmation. In the absence of such payment instructions in the Sales Confirmation, Buyer shall pay Seller for the Product delivered under the Agreement without discount, offset or deduction shall be made in U.S. Dollars within thirty (30) days after the date of delivery, notwithstanding any disputes or claims, and Buyer's payment shall be made by electronic wire transfer of immediately available Federal funds, by Automated Clearing House (ACH) transfer, to Seller's designated bank account as indicated on Seller's invoice to Buyer, unless alternative means of payment is mutually agreed upon between Seller and Buyer. . Payment shall be due and shall be made by means of telegraphic transfer quoting the Seller's invoice number and the Buyer's name to the bank stated on Seller's invoice for the account of Plaza Marine on or before the due date set forth in the Seller's invoice.
- (b) The Seller's invoice (which may be sent by fax, telex or telegraph) shall be based on telegraphic, telex or other advise of the quantity delivered and of other charges if incurred, and payment made pursuant to 18. (a) above shall be subject to such subsequent adjustment as may be necessary on receipt by the Seller of further details or as may be agreed by the parties to be necessary after detailed checking of the invoice.
- (c) Late payments shall accrue interest from the due date until receipt of payment at a rate equal to the lesser of The Buyer shall pay interest from the due date of any invoice to the payment thereof at (i) the higher of the rate of one and one-half percent (1and 1/2%) per month, or (ii) the maximum amount by law. Buyer agrees to pay all of Seller's costs (including attorney's fees and courts costs) of collecting past due payments and late payment charges.

- (d) If payment falls on a non-business day, then payment shall be made on or before the nearest business day to the due date. If the next preceding and next succeeding business days are equally near the due date, then payment shall be made on or before the next preceding business day.
- (e) Without prejudice to any other rights of Seller, Seller may apply and offset, in satisfaction of any obligation owing under the Agreement by Buyer, any sums that may then be, or thereafter become, due and owing from Seller to Buyer under any other agreement between the Parties.
- (f) If payment has been made by Buyer in advance of delivery of Product, the payment amount shall be adjusted based upon actual delivered volumes of the Product identified on the Bunker Certificate. Any additional payment due from or credit to Buyer shall be made within thirty (30) days of the date of delivery of the Product.

#### 19. Financial Responsibility and Credit

- (a) Sale of the Product by Seller under the Agreement is made on the creditworthiness of Buyer, its agent, and the Receiving Vessel. From time to time, Seller will establish and may, in its sole discretion, notify Buyer of any credit dollar amount (the "Credit Limit") applicable to Buyer. The Credit Limit may be in such amount (including no amount) as Seller at its sole option may elect. Seller may change the Credit Limit at any time and provide prompt notice to thereof to Buyer.
- (b) The Seller will have and may assert any and all maritime liens available to it against the Receiving Vessel, wherever found, for the full amount of the delivered price of the Product supplied to such Receiving Vessel by the Seller, plus accrued interest and collection costs and other obligations incurred by the Buyer hereunder.
- (c) If the Buyer in any way breaches the Agreement, defaults in the payment of any indebtedness to the Seller (whether arising out of the Agreement or otherwise) or becomes bankrupt or insolvent, or if the Seller at any time considers the financial condition of the Buyer to be unsatisfactory, the Seller may, in addition to any other rights and remedies it may have, cancel or suspend deliveries hereunder until such time as the Buyer remedies such breach or default and/or provides suitable additional security and or guarantee acceptable to the Seller.
- (d) The Buyer is presumed to have this authority to encumber the Receiving Vessel pursuant to 46 U.S.C. 971 through 976 and the General Maritime Law. In all sales, and in addition to any other rights, which it may have, Seller holds the Receiving Vessel responsible for satisfaction of the purchase price. Any notice to the contrary, in order to be effective, must be expressed in writing, served upon and agreed to by the Seller a minimum of forty-eight (48) hours before the fuel, service or product is delivered to the Receiving Vessel.
- (e) In all sales, the Receiving Vessel is deemed to be responsible for satisfaction of the purchase price. The Seller does not waive but rather expressly reserves, all rights afforded pursuant to U.S.C. 971 through 976 and the General Maritime Law. Any stamp, letter, telex, document or agreement, whether written or oral, which purports to be such a waiver, shall not be valid.
- (f) Notice in writing, via fax, telex, registered airmail or cable to Seller:   
 Plaza Marine, Incorporated  
 370 W. Pleasantview Avenue, #341  
 Hackensack, NJ 07601
- (g) If at any time Buyer's Outstanding Indebtedness (as defined below) exceeds the Credit Limit then in effect for Buyer, Buyer must reduce the Outstanding Indebtedness due Seller to an amount that is less than the Credit Limit then in effect for Buyer by taking any one of the following actions:
  - (i) Pay Seller all or a portion of the Outstanding Indebtedness such that the remaining balance of the Outstanding Indebtedness is less than the Credit Limit, or
  - (ii) Provide Seller a letter of credit in a form and substance and from a first-class bank reasonably acceptable to Seller, pursuant to which Seller shall be permitted to draw down an amount that is not less than the amount by which the Outstanding Indebtedness exceeds the Credit Limit.
- (h) For the purposes of this Section 19, "Outstanding Indebtedness" means, as of any day during the term of the Agreement, all amounts due or which will become due to Seller under all Agreements between Seller and Buyer, including, without limitation, the Agreement, where delivery of, but no payment for, the Product has been made.
- (i) If Buyer fails to: (i) pay Seller for any amount when due (whether or not such failure has subsequently been cured), or (ii) otherwise comply with the terms of the Agreement, then in addition to ceasing to deliver Product under the Agreement, and regardless of any payment terms then in effect for Buyer, Seller may declare all the Outstanding Indebtedness to be immediately due and payable and terminate the Agreement.
- (j) If Seller determines that the financial condition of Buyer has become impaired or unsatisfactory, Seller at its sole option may require Buyer to provide Seller adequate assurances of performance. Seller's requirement for adequate assurances may include modification of the credit terms of the Agreement, in which case Seller may require buyer to: (i) prepay by wire transfer the full estimated invoice amount under the Agreement at least one (1) business day prior to the Product delivery date, (ii) post at least two (2) business days prior to the Product delivery date and irrevocable, standby letter of credit, in form and substance reasonably acceptable to Seller, issued or confirmed by a first class bank reasonably acceptable to Seller in an amount sufficient to cover the full estimated invoice amount under the Agreement or (iii) deliver to Seller at least two (2) business days prior to the Product delivery date a parent company guaranty in form and substance reasonably acceptable to Seller for the prompt payment, when due, of any and all present or future indebtedness of Buyer as a result of any sale of the Product under the Agreement. Any such modification of the credit terms shall be effective immediately upon Seller's written notice thereof to Buyer. The exercise by Seller of any right under this Section 19. (j) is without prejudice to any claim for damages, or any other right Seller may have at law or equity.

## **DAMAGES**

### **20. Liquidated Damages**

In the event Buyer defaults in its obligation to take delivery of the Product under the Agreement, in whole or in part, Seller, in lieu of seeking other damages or remedies under the Agreement or at law or equity, may require Buyer to pay liquidated damages in full and final settlement of all Seller's claims against Buyer arising from Buyer's breach of the Agreement in the amount equal to the greater of \$5,000.00 or ten-percent (10%) of the total dollar amount of the volume of the Product to be delivered under the Agreement. Upon Buyer's payment of such liquidated damages to Seller, Buyer shall have no further obligation to Seller and Seller agrees to release Buyer with regard to such claims. Both parties acknowledge that it would be impracticable or difficult to determine the actual amount of damages that could arise out of Buyer's breach of the Agreement and that the liquidated damages are a reasonable estimate of what such damages could be and are not a penalty.

## **FORCE MAJURE**

### **21. Force Majeure**

- (a) Neither the Buyer nor the Seller nor its Supplier shall be responsible for damages caused by delays, 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 noncompliance is due to or results from causes beyond the reasonable control of the affected party, including, without limitation, acts of God, fires, floods perils of the sea, war (declared or undeclared), embargoes, accidents, strikes, labor disputes, failure or shortage of vessel or barge service normally available to the Seller or its Supplier, to breakdown of or damage to, or shortage in facilities used for production, refining or transportation of Product, acts in compliance with requests of any governmental authority or person purporting to act therefor, or any other similar causes. The expression "or any other similar causes" is deemed to include, without limitation, the failure, cessation, termination or curtailment of any of the existing or contemplated sources of Product of Seller. Neither Party shall be required to settle any labor dispute against its will. Seller shall not be required to make up any delivery, and Buyer shall not be liable to accept any deliveries of the Product excused due to any event of *force majeure*. Notwithstanding the provisions of this Article, the Buyer shall not be relieved of any obligation to make payments for all sums due hereunder.
- (b) The excuse for performance provided to either party under this Section 15 is in addition to and not in lieu of the excuse for performance that may be provided to either Party under Section 2-615 of the UCC.

## **LIMITATION OF LIABILITY, ACTIONS AND ATTORNEY FEES**

### **22. Limitation of Liability**

**IN NO EVENT SHALL EITHER PART BE LIABLE TO THE OTHER PARTY FOR, AND EACH OF THE PARTIES WAIVES ITS RIGHT TO SEEK, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND. BUYER'S EXCLUSIVE REMEDY FOR ANY AND ALL LOSSES OR DAMAGES RESULTING FROM THE SALE OF THE PRODUCT DELIVERED UNDER THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY ALLEGATION OF BREACH OF WARRANTY OR BREACH OF CONTRACT OR NEGLIGENCE OR STRICT LIABILITY, IF SUCH TORT ACTIONS ARE PERMITTED UNDER APPLICABLE LAW, SHALL BE LIMITED TO THE REPLACEMENT OF THE PRODUCT, FOR WHICH A CLAIM IS SUBMITTED. IF SELLER FAILS TO DELIVER THE PRODUCT, BUYER'S EXCLUSIVE REMEDY FOR ANY AND ALL LOSSES OR DAMAGES UNDER THE AGREEMENT SHALL BE LIMITED TO PAYMENT OF THE POSITIVE DIFFERENCE, IF ANY, BETWEEN (I) THE MARKET VALUE OF THE PRODUCT WHEN IT WAS TO BE DELIVERED, AS REASONABLY DETERMINED BY SELLER, AND (II) THE PRICE SET FORTH IN THE AGREEMENT.**

### **23. Commencement of Action**

**A PARTY MUST COMMENCE ANY ACTION FOR BREACH OF THE AGREEMENT BY THE OTHER PART WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.**

### **24. Attorney's Fees**

If any action, at law, in equity or in admiralty, is brought by the Seller, either under the provisions of these Terms and Conditions of Sale or to enforce the Buyer's contractual obligation arising from the transaction referenced hereby, the Seller should it prevail in such action, shall be entitled to recover its reasonable attorney's fees from the Buyer in the principle action or in a related action brought specifically for the purpose in addition to any other relief to which the Seller may be entitled.

## **NOTICES**

### **25. Notices**

All notices and communications under the Agreement must be in writing, must be made to the addresses, whether physical or electronic, as specified in writing by each Party to the other from time to time, and will be deemed given to a Party, (i) if delivered by hand or sent by overnight carrier, on the day of receipt by the receiving Party, (ii) if sent by registered or certified mail return receipt requested, on the date of receipt, or (iii) if transmitted by electronic mail or facsimile, at the time of confirmation of transmission.

## **DEMURRAGE**

### **26. Demurrage**

Seller shall be responsible for all reasonable demurrage costs incurred by Buyer or the Receiving Vessel proximately caused by Seller or the Delivery Equipment with respect to the delivery of the Product under the Agreement. Buyer shall be responsible for all reasonable demurrage costs incurred by Seller or the Delivery Equipment proximately caused by Buyer or the Receiving Vessel with respect to the receipt of the Product under the Agreement.

## **GOVERNING LAW**

### **27. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to choice of laws of that State that would require the laws of another jurisdiction to govern, exempt (i) with regard to and to the extent that the Parties acknowledge and agree that Seller shall have a valid maritime lien, superior in priority to other liens, mortgages, or encumbrances against the Receiving Vessel, and (ii) as to other matters, if any, under the Agreement that involve vessels, harbors, seamen, or maritime affairs or commerce generally, which matters shall be governed by the General Maritime Law of the United States of America, or the law of the United States of America, or the law of the State of New Jersey where the General Maritime Law is silent or inapplicable.

## **ASSIGNMENT AND NO WAIVER**

### **28. Assignment and No waiver**

- (a) Neither Party may assign its rights or delegate its performance under the Agreement with the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed. Any assignment made without obtaining such prior approval shall be void and of no effect. The other Party's consent shall not be required for the assigning Party to transfer its interest in the Agreement to a parent or affiliate by assignment, merger, or otherwise. Upon any transfer and assumption of the Agreement by either Party, the transferring or assigning Party shall not be relieved of or discharged from any obligations under the Agreement unless the assignee or transferee (i) has assumed in writing all of the obligations of the transferring Party and (ii) provides the consenting Party evidence of financial responsibility at least equal to that of the transferring Party.
- (b) No waiver by either Party of any provision of the Agreement shall be binding unless made expressly and expressly confirmed in writing. Further, any such waiver shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

## **INDEMNIFICATION**

### **29. Indemnification**

Each Party (the "Indemnitor") agrees to indemnify, defend and hold harmless the other Party (the Indemnitee") from and against any penalties, fines, liabilities, claims, expenses (including attorney's fees and costs of defense), losses and damages (i) caused by the negligence or willful misconduct of the Indemnitor, its offices, employees, agents, representatives or subcontractors, including without limitation, those of the Receiving Vessel and the Delivery Equipment, in the course of its performance of the Agreement and (ii) failure of the Indemnitor, its offices, employees, agents, representatives or subcontractors to comply with all applicable laws, ordinances, rules and regulations of any government or agency having jurisdiction, except to the extent caused by the negligence, willful misconduct or omission of the Indemnitee its offices, employees, agents, representatives or subcontractors. In addition to the other obligations that a Party may assume under the terms of the Agreement, each Party shall obtain insurance covering its indemnity hereunder to the extent permitted by law.

### **30. Pollution Prevention and Responsibility**

In the event that any petroleum product is spilled or otherwise escapes during the loading or discharging of any Receiving Vessel in the performance of this Agreement, the Buyer shall take such measures as are necessary to protect against or mitigate any resulting pollution damage or as required by any governmental authorities. In the event such incident is the result of any defect in the Receiving Vessel or its equipment or any fault or act of neglect of the master, crew, agent or representative, the party owning or chartering the Receiving Vessel agrees to cause the Receiving Vessel to assume any and all responsibility for penalties, cleanup expenses, and cost that may be incurred as a result of such incident. The party owning, chartering or hiring the responsible party to reimburse, indemnify and defend the non-responsible party from any and all claims, losses, liabilities, damages, suits, penalties or expenses of any nature arising out of such incident.

### **31. Tortuous Acts**

Buyer agrees to indemnify and hold harmless the Seller from any claims resulting from petroleum spills, environmental damages, accidents or any other tortuous behavior resulting from the actions or failure to act of Buyer or any of Buyer's employees or agents. Buyer agrees to obtain an endorsement of its liability insurance policies to add Seller as additional insured and to give Seller written evidence of such policy endorsements.

### 32. Vessel Seaworthiness

Buyer represents that that the Receiving Vessel is seaworthy, safe and in good condition and is capable of receiving the Product without leakage or spillage. Should the Receiving Vessel fail to comply with the foregoing representation, Seller may suspend the delivery of the Product until such time as Seller has received evidence satisfactory, in its sole discretion, that the Receiving Vessel adequately complies with these representations. If the Receiving Vessel is unable to comply with such requirements, Buyer shall be deemed in breach of the Agreement and Seller may declare a default thereunder and terminate the Agreement.

### CONFIDENTIALITY

#### 33. Confidential Information

- (a) The Parties hereby agree that at all times during the term of the Agreement, to hold in the strictest confidence, and to not disclose confidential information as defined herein to anyone without express written authorization of the Parties.
- (b) Confidential information shall mean any trade secrets or the Parties private information, including but not limited to, knowledge of the Parties business operations, business records, manufacturing techniques, processes, formulas, customer lists, inventions, experimental developments, research projects, operational methods, cost, pricing, financial data, business plans and proposals, data and information the Parties receive in confidence from any other party, or any secret or confidential matters of the Parties. The Parties shall not use any confidential information to its own benefit or to the detriment of the other during the term of this Agreement. The Parties state and certify that this Agreement does not and will not breach any agreement that either Party has to anyone concerning confidential information belonging to others.
- (c) The Parties hereby agree that the terms of the Agreement and the samples taken by Seller pursuant to Section 14. above and any related tests of such samples are deemed propriety to Seller and shall not be disclosed to any third party by Buyer, its agents, employees or representatives unless agreed to in writing by seller, or as required by applicable law, regulations, rule or order of any competent court or governmental authority having jurisdiction.

### MISCELLANEOUS

#### 34. Miscellaneous

- (a) **Severability** - If any provision of the Agreement is determined to be invalid, void or unenforceable by any court having valid jurisdiction, such determination shall not render invalid, void, or render unenforceable any other provision, agreement or covenant of the Agreement.
- (b) **Waiver** - No waiver of or failure to enforce any breach of or performance required by the Agreement shall be deemed to constitute a waiver of any other or subsequent breach or required performance under the Agreement.
- (c) **Amendment** - No amendment or modification of any of the terms of the Agreement shall be enforceable unless reduced to writing and executed by both Parties.
- (d) **Compliance with Law** - Each Party shall undertake such action as may be necessary to assure that it and all its employees, agents and independent contractors comply with all applicable laws, ordinances, rules and regulations and by any government entity or agency having jurisdiction with regard to such Party's performance under the Agreement.
- (e) **Entire Agreement** - The Agreement constitutes the entire Agreement between the Parties regarding the subject matter thereof and supersedes and renders void any and all prior representations, statements, and proposals by or discussions, negotiations and agreements whether written or oral, between the Parties with respect to the subject matter of the Agreement.