

General Terms and Conditions
for **Sales and Deliveries**
of **Marine Fuels** for **Bunkers**



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RYTTSA
Repsol YPF
Trading y Transporte, S.A.



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Affiliate(s)	Means, in relation to either of the parties to the Agreement, any company controlling, controlled by, or under common control with that party, whether directly or indirectly.
Agreement	These terms and conditions including any applicable special provisions.
API	Means American Petroleum Institute.
Associated company	Any company which is a subsidiary of any of the parties to the Agreement, or a company of which a party is a subsidiary, or a company which is another subsidiary of a company of which a party is a subsidiary (“subsidiary” having the meaning ascribed to it in section 736 of the Companies Act 1985 as amended).
ASTM	Means American Society for Testing and Materials.
Banking day	Means a day when the banks in the specified place are open for the transaction of normal banking business.
Business hours	Means 09:30 to 17:30 in Madrid, 09:30 to 17:30 in Buenos Aires, 09:00 to 18:00 in Rio de Janeiro and 09:00 to 18:00 in Lima (whichever is applicable).
Delivery Document	Means the document(s) that certifies the delivery of Marine Fuels on a certain date(s), specifying grade(s) and delivered amount(s). Depending on delivery location, such document may also be known as “On Board Receipt”, “Bunker Receipt”, “Delivery Note”, “Certificate of Delivered Quantity”, or other names.
ETA	Means the vessel’s Estimated Time of Arrival.
Marine Fuels	Means any commercial grades of bunker fuel oil and/or marine gas oil or their mixtures offered at the time and place of delivery by the Seller according to local specifications.
Nomination	Means the document through which the Buyer requests the Seller a specific Marine Fuels delivery for a specific vessel in a specific bunkering port/area, and with other specific conditions, such as dates and others.
RYTTSA	Means Repsol YPF Trading y Transporte, S.A.; a Spanish company with registered office in Paseo de la Castellana 278-280, 28046 Madrid, Spain.
Seller’s Suppliers	Means any corporate body or person being a direct or indirect source of supply for the Seller.
Special Provisions	Means the contract telex, facsimile, or e-mail, or other form of written agreement by which the parties may amend or supplement the general terms and conditions contained in the Agreement.

Working days

Means normal working days in the city where the Seller's office from which the sale has been agreed is located, or in the city where the delivery is to be made, whichever is applicable. A full working day means a total of 8 hours of one normal working day, or a period of 8 hours over two successive working days.

2 Applicability

- 2.1** Unless otherwise expressly agreed in writing, these General Terms and Conditions shall apply to each and every sale of Marine Fuels as defined herein by or on behalf of RYT TSA, its associated companies or Affiliates ("Seller") into which they are incorporated by reference.
- 2.2** To the extent that these General Terms and Conditions are not supplemented by Special Provisions, as defined herein, Incoterms 2000 (and subsequent revisions) shall apply as supplementary provisions. In case of conflict, ambiguity or inconsistency between the provisions of these General Terms and Conditions and Incoterms 2000 (and subsequent revisions), the provisions of these General Terms and Conditions shall prevail.
- 2.3** The Agreement, defined herein as these General Terms and Conditions together with any Special Provisions, contains the entire agreement between the Seller and the Buyer and supersedes all representations, prior agreements, oral or written, in connection with the matters which are the subject of the Agreement. The Buyer and the Seller each warrant that it has not in connection with the Agreement relied upon any representations, written or oral, made by or on behalf of the other party, but has relied exclusively on its own knowledge, judgement and expertise.
- 2.4** The Agreement shall apply from the time of the Seller's written confirmation.

3 Title and risk

- 3.1** Delivery of the Marine Fuels shall be deemed completed and title and risk shall pass to the Buyer when the Marine Fuel passes the flange connecting the delivery facilities provided by Supplier with the receiving facilities provided by the Buyer. At that point the Seller's responsibility for the Marine Fuels shall cease, and the Buyer shall assume all risk of loss or damage including but not limited to deterioration or evaporation of the Marine Fuels delivered.
- 3.2** Any loss of or damage to the Marine Fuels during bunkering operation, or any consequences of oil pollution, or any environmental damage or contamination of the seawater, if caused by the receiving facilities and receiving vessel or its officers or crew, shall be for the account of the Buyer.
- 3.3** The Buyer shall indemnify the Seller for any claim made by the Seller's Supplier(s) against the Seller in respect of damage to any facilities at the loading port caused by the Buyer's vessel.

4 Delivery schedule

- 4.1** Vessels, including tankers, will be bunkered in turn as promptly as possible, and neither the Seller nor the Supplier shall be liable for demurrage, detention or any other or different damages due to any delay caused by weather (whether usual or unusual), or for any loss due to congestion at the terminal or to prior commitments of available barges, or when security is compromised according to the Supplier's judgment.
- 4.2** In case of failure to arrive at the contracted day, the Seller shall endeavour its best efforts to re-schedule the Buyer's vessel, but shall not be liable for any attendance delays nor for any damages resulting therefrom. In the specific case of re-schedules of vessels, delayed by weather conditions, berth congestion, draft restrictions, etc. for lifting bunkers, the Seller will use the "first in, first out" rule.
- 4.3** The Seller reserves the right to cancel any nomination without liability on the part of the Seller and without prejudice to any rights the Seller might have against the Buyer if the vessel does not arrive at delivery port or anchorage for bunker delivery within the delivery range agreed between both parties in written confirmation.

5 Delivery costs & other delivery issues

- 5.1** Delivery shall be made during normal working hours unless required at other times (including non-working days) and permitted by Port regulations, in which event the Buyer shall reimburse the Seller or its Supplier for all additional expenses incurred in connection therewith, including but not limited to overtimes and extra fees.
- 5.2** All delivery extra charges, including but not limited to truck/barge overtime and wharfage extra costs, shall be for the account of the Buyer.
- 5.3** In case that the Buyer fails to take the whole quantity nominated, the Buyer shall be liable for any cost resulting from such failure.
- 5.4** If a Government permit is required for deliveries hereunder, no deliveries shall be made until the permits have been issued to the Buyer.
- 5.5** Once the delivery has been made, the Master/Chief Engineer/Representative of the supplied vessel shall sign and seal the relevant Delivery Document. In case of any quantity claim in such delivery, the Master/Chief Engineer/Representative of the supplied vessel shall write such quantity claim in the Delivery Document. The absence of such claim shall be deemed to signify a full agreement with the delivery and therefore claims based on clean Delivery Documents will not be accepted.

6 Connections

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

7 Quantity

- 7.1** Unless otherwise agreed, the quantities of the Marine Fuels loaded shall be determined from the official gauge at the delivery barge, or at the delivery truck, or at any other delivery mean, or at Supplier's shore tank, or at oil meter at the Seller's choice; from which the delivery was made and carried out in accordance with good standard practice in use at the supply area/port at the time of delivery.
- 7.2** The Delivery Document issued at the supply area/port shall be final and binding for the purposes of the quantity stated and the obligation of the Buyer to make payment in accordance with the Agreement.
- 7.3** Nothing in this clause shall prejudice the right of either party to challenge the accuracy of the measurement taken and recorded in the Delivery Document. Furthermore, the Buyer has the right to have, at its own expense, its representative or independent inspector present during measurement, but only the Seller shall make quantity determination, and such a determination shall be conclusive. In any event, the Buyer shall sign for the measurement made; and if the Buyer is not present or represented by properly accredited agent when measurements are taken, then the Supplier's determination of quantities shall be deemed to be correct.
- 7.4** In order for the Buyer to be represented as mentioned in clause 7.3, the Buyer shall request the Seller's permission in writing at least 48 hours before the determination of quantity takes place.

8 Quality

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

- 8.3** Unless otherwise agreed, the quality of the Marine Fuels shall be stated from a composite sample taken at the loading port in accordance with clause 9.
- 8.4** The Buyer shall have the sole responsibility for any determination of compatibility of Marine

Fuels purchased from the Seller with marine fuels already on board the vessel.

- 8.5** There are no guarantees or warranties express or implied of merchantability fitness or suitability of the marine fuel for any particular purpose or otherwise, which extends beyond this subsection.

9 Quality samples

- 9.1** The quality of the Marine Fuels shall be tested from a composite sample taken by the Seller or the Seller's representative at the source of supply (supplying barge, supplying truck or supplying terminal), in accordance with good standard practice at the supply area at the time of delivery. The sample will be retained in three sealed numbered/identified containers (name of the vessel, delivering facility, product grade, delivery date, place of delivery, and duly signed by both parties' representatives):
- Container A: 'the official witness sample', to be kept at the supply source.

- Container B: 'the Seller's sample', to be kept at the supply source.
- Container C: 'the Buyer's sample', to be placed on board of the receiving vessel.

- 9.2** Any samples drawn from receiving vessel's tank/manifold shall not be valid as an indicator of the quality supplied.

- 9.3** In the event delivery is done by tank truck, no samples will be taken, unless requested by the Buyer in writing.

10 Quality claims

- 10.1** Any complaint of variation of quality shall be admissible only if both a) and b) are fulfilled:
- a.** a fully documented claim is presented to the Seller within 15 days after the date on which the delivery of the Marine fuel has been completed, and,
 - b.** it includes a copy of the report of analysis carried out by the inspection company on the sample kept in Container C, showing that the quality of the sample in Container C is in discordance with the agreed quality differing by a greater amount than the reproducibility and repetitivity as per applicable standards.
- 10.2** In the event that the report of analysis referred to at (b) above is not accepted by the Seller, the

sample sealed in Container A shall be referred for new analysis to a mutually acceptable independent laboratory of international reputation. Each party has the right to appoint a representative for witnessing the new analysis.

- 10.3** The results of the new analysis shall be conclusive and binding for both parties and will determine each party's liabilities in this matter.

- 10.4** In case that the results prove the product to be on specification, the cost of such analysis shall be borne by the Buyer. In case that the results prove the product to be off specification, the cost of such analysis shall be borne by the Seller.

10.5 If the Buyer fails to comply with the procedure in this clause, all claims regarding quality shall be deemed to have been waived by the Buyer and no claim may be brought in respect of them.

10.6 Nothing in this Section 10 shall relieve the Buyer of its obligation to make payments in full when due as provided herein.

11 Nomination & ETA

11.1 The Buyer shall advise the Seller, during business hours, of the vessel's nomination at least three (3) days prior to expected delivery date, unless otherwise agreed in writing.

11.2 Nomination(s) shall be given in writing and shall at least include the following:

- a.** the name of the vessel and such other information as may be required by the loading terminal operator from time to time;
- b.** bunkering port/ area;
- c.** delivery conditions;
- d.** the grades and quantities of Marine Fuels to be delivered;
- e.** the prices and payment terms;
- f.** the time frame when the vessel is expected to be ready for bunker supply (max span: 48hs.);
- g.** the ship agent at the bunkering port/ area;
- h.** the Buyer's full style and invoicing address;
- i.** such other information as the Seller may reasonably require.

11.3 The Buyer hereby declares that it is familiar with all limitations of the loading port or area and shall not nominate a vessel exceeding such limitations

and that in operational and technical aspects nominated vessels shall be in full compliance with all applicable laws, regulations and other requirements of the country of the vessel's registry and countries, port authorities and terminals at which vessel may be loading or calling.

11.4 The Buyer shall have no right to substitute the nominated vessel.

11.5 The Buyer shall arrange for the vessel/ vessel's agent to give to the Seller or the Seller's Suppliers its ETA at the loading port by telex, cable or e-mail at least 48 hours before arrival, thereafter advising any variation. Such notice to include specifically the place where and the time when delivery is required. Location changes, if any, subject to the Seller's consent.

12 Price & other charges

12.1 The applicable Price of any product supplied shall be the one agreed in the Special Provisions; and shall remain in force during the agreed time frame. In the absence of the mentioned time frame, the initial period agreed for delivery of the products shall be deemed to be the agreed time frame.

12.2 The Seller reserves the right to modify the Price if the vessel arrives 48 hours after expiration of the agreed time frame.

12.3 The Buyer shall be liable for all costs, expenses and/ or charges incurred by the Seller or Sup-

plier on account of the Buyer's failure, breach and/or non-compliance with its obligations under any agreed Nomination.

- 12.4** All applicable taxes, duties, fees and other costs including, without limitation, those imposed by

government and authorities, and bargaining and other delivery charges, shall be for the Buyer's account and shall be included in the Seller's invoice to the Buyer.

13 Payment

- 13.1** Unless otherwise agreed, payment shall be made against presentation of the invoice (telex invoice being acceptable) before or on the due date.

- 13.2** Payment shall be made in full by the Buyer on the payment due date without discount or deduction for whatever reason including bank transfer fees, withholding, set-off or counterclaim of any kind whatsoever, or in the event of any dispute between the parties to the Agreement.

- 13.3** Payment shall be made in U.S. dollars or any other convertible currency agreed in the Seller's written confirmation (at the Seller's option) by telegraphic transfer.

- 13.4** In the event that the due date for payment falls on a Saturday or a non-banking day other than Monday, payment will be made on the previous banking day and in the event that the due date for payment falls on a Sunday or a non-banking Monday, payment will be made on the following banking day (the bank holidays and banking days will be those applicable to the banking system of the currency in which the payment is to be effected).

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

13.5.1 all charges in respect of the letter of credit shall be for the account of the Buyer.

13.5.2 If the Buyer does not provide or provides an unacceptable letter of credit or stand-by letter of credit on or before close of normal banking business on the fifth working day prior

to the first day of the agreed delivery date, the Seller may terminate the Agreement immediately without prejudice to any rights or remedies of the Seller.

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

13.5.4 Any delay, costs and damages whatsoever arising from the failure of the Buyer to open the letter of credit or stand-by letter of credit as provided for in the Agreement shall be for the Buyer's account.

- 13.6** Unless otherwise agreed, the Seller's invoice shall be prepared based on the quantities stated in the Delivery Document.

- 13.7** Payment(s) shall be made to the Seller's bank, account name and account number as notified by the Seller to the Buyer in writing ("the payment account").

- 13.8** Without limitation to any of the Seller's legal rights, if the Buyer fails to pay in full any invoiced amount on the due date, the Seller shall have the right to require the payment by the Buyer of interest on any unpaid amount from the due date (shown in the final invoice) until the Seller receives cleared funds in the full amount outstanding into the Seller's payment account:

a. at the one month U.S. dollars Interbank offered rate (LIBOR) offered to Bank of America at 11.00 hours London time on the

due date (which is shown on the invoice) plus 4 per cent;

- b. at the one month EURIBOR (EURIBOR1MD) offered at 11:00 a.m. (CET) on the due date (which is shown on the invoice), plus 4 per cent; whichever is applicable.

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

14 Cancellation and breach

If at any time the Buyer cancels a request for Marine Fuels or the vessel fails to take delivery of part or all of the requested Marine Fuels, the Seller is entitled to pursue a claim against both the Buyer and the vessel for all loss and damage thereby incurred. The Seller may treat

any other breach by the Buyer of any express term of the Agreement as a breach of a condition and it may at its sole discretion thereupon accept the breach, treat the Agreement as repudiated and seek such remedies as it considers appropriate.

15 Liens

Where Marine Fuels are supplied to a vessel, in addition to any other security, the Agreement is entered into and Marine Fuels are supplied upon the faith and credit of the Vessel. It is agreed and acknowledged that a lien over the Vessel is thereby created for the price of the Marine Fuels supplied and that the Seller, in agreeing to deliver Marine Fuels to the Vessel, does so relying upon the faith and credit of the Vessel. The Buyer if not the owner of

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

16 Assignment

16.1 Neither party shall assign all or part of its rights and obligations under the Agreement without the written consent of the other party save that the Seller shall be free to assign its rights and obligations under the Agreement to any of its associated companies or Affiliates.

16.2 If such written consent is given the assignee of the Buyer shall fully comply with the terms of payment contained in clause 13 herein or any

other payment provision substituted for clause 13 with the consent of the Seller.

16.3 The assigning party shall nevertheless remain jointly and severally liable with the assignee for the proper performance of all its obligations under the Agreement, including all payment obligations.

16.4 Any assignment not made in accordance with the terms of this clause 16 shall be void.

All taxes, duties and all other charges on the vessel shall be the responsibility of the Buyer, save as provided for elsewhere in the Agreement. The Buyer shall also be responsible for the payment of any taxes,

duties, imposts, and fees of any description on the Marine Fuels after the Marine Fuels pass the flange connection of the loading vessel's delivery hose at the bunkering port/area.

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

18.2 If the Seller has any reason whatsoever to doubt the continuing ability of the Buyer to perform its obligations hereunder, the Seller may suspend deliveries until the Buyer has either agreed to make payment in advance for future deliveries or has provided such other security as the Seller, in its absolute discretion may require or, alternatively, the Seller may terminate the Agreement by written notice without prejudice to any right of action or claim accrued to the benefit of the Seller at the date of termination.

18.3 If the Buyer should fail to pay in whole or in part the invoiced amount on the due date, the Seller may, on written notice to the Buyer, immediately suspend all or any supplies of Marine Fuels until the Buyer has paid all of the amount owing, or

may, at the Seller's option, on written notice to the Buyer immediately terminate the Agreement without prejudice to any right of action or claim accrued at the date of termination.

18.4 If the Buyer should fail to take delivery of the Marine Fuels at the date specified under the Agreement (events of force majeure excepted), where a minimum quantity of Marine Fuels is to be taken by the Buyer within specified periods, the Seller may, on written notice to the Buyer, suspend all or any supplies of Marine Fuels until the Buyer has paid all of the amount owing, or may, at the Seller's option, on written notice to the Buyer immediately terminate the Agreement without prejudice to any right of action or claim accrued at the date of termination.

18.5 According to clause 13.5.2, the Seller may terminate the Agreement if the Buyer does not provide or provides an unacceptable letter of credit or stand-by letter of credit on time.

18.6 Written notice of termination provided for under this clause 18 shall be effective at the time it is despatched to the Buyer, in accordance with clause 25.

19 Force majeure

19.1 No failure or delay by either party to the Agreement in fulfilling any of the obligations contained in the Agreement shall give rise to any claim by one party against the other, except in relation to obligations to make payments under the Agreement, if such failure or delay arises out of force majeure, which for the purposes of the Agreement shall be any occurrence or circumstance reasonably beyond the control of that party. Examples of force majeure are, but are not limited to: acts of God, war, whether declared or undeclared, civil disorder, riot, strike, lockout, sabotage, embargo, storm, earthquake, perils of the sea, accident of navigation, fire, breakdown or interruption of the functioning of installations production plant or machinery or other facilities of the Seller or of the means of transportation of the Marine Fuels, non availability of feedstock, stoppage or restraint to labour in or about the plant of the Seller or its Supplier, governmental laws, regulations or directions or acts of any officer, department agency, committee or similar bodies. For the purposes of this clause 19, the terms “Seller” and “party” where applied to the Seller shall include the Seller’s relevant Suppliers and Affiliates and subsidiaries. The Seller shall not be required to make up deliveries omitted on account of the occurrence of incidents of force majeure. Notwithstanding this clause 19, the Buyer shall not be relieved of any

obligation to make payment for all amounts due on Marine Fuels sold to the Buyer under the Agreement. Each party shall promptly notify the other upon occurrence of any occurrences or circumstances excusing or likely to excuse that party’s non-performance or delay under this clause 19.

19.2 If by any reason or cause reasonably beyond the control of the Seller, including but not limited to the reasons set out in clause 19.1, in the Seller’s reasonable opinion there is a curtailment or shortage or interference of the Seller’s sources or anticipated sources of supply, or transportation of any grade of Marine Fuels from whatever country such that the Seller is unable to meet its own planned requirements, or anticipates that it will be unable to meet its own planned requirements, and those of its associated companies and Affiliates and its requirements for sales to customers, including the Buyer, the Seller may allocate on a fair and reasonable basis according to its own discretion, its available supply of the grades of Marine Fuels among its own requirements, those of its subsidiaries and affiliated companies and its requirements for sales to customers including the Buyer. In no circumstances shall the Seller be required to increase its Suppliers of Marine Fuels under the Agreement by purchases or otherwise of Marine Fuels from other Suppliers.

20 Liability and indemnity

20.1 The Seller shall not be liable in contract or in tort or otherwise for any special, consequential or indirect loss or damage of any kind arising out of or in any way connected with the performance or failure to perform any part or parts of the Agreement, including but not limited to the negligent act or omission on the part of the Seller or its Affiliates and/or agents and/or servants of the Seller or its Affiliates, and nor shall the Seller be liable for any prospective or speculative profits.

20.2 No claim by the Buyer in respect of the quality of Marine Fuels delivered, quantity of Marine Fuels delivered, or any other reason, may exceed the Agreement price except as provided for in clause 20.3 below. The Agreement price shall be the price that should have been applied according to the Agreement terms if a Delivery Document had been issued on the agreed delivery range.

20.3 Where the loading port is not operated by the Seller or an associated company of the Seller, any claims in respect of shortage of quantity or variation of quality of the Marine Fuels shall be recoverable only in accordance with the usual terms applicable for the purchase of Marine Fuels at the loading port and the Buyer shall not be entitled to recover any costs, losses or damages incurred arising out of any shortage in quantity or variation of quality of the Marine Fuels from the Seller unless the Seller is able to recover and does recover such shortage or compensation or variation of quality from its Supplier or other relevant third party, and then only to the extent of such recovery. The Seller shall use all reasonable efforts to recover from its Supplier or other relevant third

party any such costs, losses or damages for which the Buyer has submitted a claim in accordance with the provisions of this clause.

20.4 The provisions of this clause 20 shall continue to apply notwithstanding the termination or expiry of the Agreement for any reason whatsoever.

20.5 The Buyer shall hold harmless and indemnify the Seller and/or its Supplier against all damages, costs and liabilities arising from or in consequence of any acts or omissions of the Buyer or its servants, the vessel's officers or crew; or occurring during or in connection with the delivery of Marine Fuels under the Agreement.

21 Arbitration

All disputes or differences whatsoever between the parties arising after the date of the Agreement arising out of or in connection with the subject matter of the Agreement, the construction or effect of the Agreement, or any rights, duties and liabilities of the parties under the Agreement, shall be referred to and finally resolved by Arbitration in London (England) in accordance with the Arbitration Act 1996 (or any subsequent amendment thereto), before a tribunal of three members of the LMAA and/or Chartered Institute of Arbitrators consisting of one arbitrator to be appointed by the Seller, one by the Buyer, and one by the two arbitrators already appointed.

Either party may call for Arbitration by service of written notice in accordance with clause 25, specifying the name and address of the arbitrator appointed and a brief description of the dispute(s) or difference(s) to be the subject of the Arbitration. If the other party does not within 14 days serve notice of appointment of an arbitrator to arbitrate the dispute(s) or difference(s), then the first moving party shall have the right without further notice to appoint a second arbitrator, who shall have precisely the same force and effect as if a second arbitrator had been appointed by the other party. In the

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

Until such time as the arbitrators finally close the hearing(s) either party shall have the right by written notice served on the arbitrators and on the other party, in accordance with clause 25, to specify further dispute(s) or difference(s) under the Agreement for hearing and determination.

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

The place of Arbitration shall be London. The language of the Arbitration shall be English.

22 Applicable law

- 22.1** The laws of England shall govern the construction, validity and performance of the Agreement to the exclusion of any other law which may be imputed in accordance with choice of law rules applicable in any jurisdiction.
- 22.2** The United Nations Convention on Contracts for the International Sale of Goods of Vienna dated 11th of April 1980, shall not apply to the Agreement.
- 22.3** Each party to the Agreement warrants that it has entered the Agreement in its commercial capacity and that it is in this respect subject to civil and commercial law. Each party hereby irrevocably and unconditionally waives any rights of sovereign immunity (whether related to service of process, attachment prior to the execution, or attachment in aid of execution) which it may have or which it may subsequently acquire in respect of its status or any of its assets.

23 Other claims

- 23.1** Notices of all other claims specifically excluding any and all claims related to or associated with those relating to matters of quantity or quality shall only be considered admissible if a fully documented claim is presented to the Seller within 15 days after the date on which the delivery of the Marine fuel has been completed.
- 23.2** It is the duty of the Buyer to take all reasonable actions, including retention and burning of fuel in accordance with the Seller's instructions, to eliminate or minimize any costs associated with an off-specification or suspected off-specification supply. The Seller's obligation hereunder shall not exceed direct expenses incurred for removal and replacement of fuel and shall not include any consequential or indirect damages, including without limitation, demurrage and any actual or prospective loss of profits. If the Buyer removes such fuel without the consent of the Seller, then all such removal and related costs shall be for the Buyer's account.
- 23.3** The Seller shall not be liable for any claim arising in circumstances where there is or has been commingling of fuel delivered by the Seller with other fuel aboard the Vessel or the Buyer's delivery vessel.

24 Time limitation

In addition to the specific provisions and time limits established in the Agreement, all other disputes or differences whatsoever which at any time arise after the date of the Agreement between the parties to the Agreement touching or concerning the Agreement or its effect or as to the rights, duties and liabilities of the parties hereto or either of them under or by virtue of the Agreement or otherwise or as to any other matter in any way connec-

ted with or arising out of or in relation to the subject matter of the Agreement shall be commenced in accordance with the arbitration provisions of clause 21 within either one year of the date of the Agreement or one year of the date of the event giving rise to the cause of action, failing which such dispute or difference shall be deemed to have been waived and shall be time barred and no claim whatsoever may be brought in respect thereof.

All notices and other communications given under the Agreement shall be in writing and unless otherwise specified in the Agreement shall be deemed to have been given and delivered when despatched, provided the notice is despatched within business hours, by telex, cable or telefax to the Seller at its address at either:

Repsol YPF Trading y Transporte, S.A.

Paseo de la Castellana, 278, 2nd Floor
28046 Madrid
SPAIN
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or,

Repsol YPF Trading y Transporte S.A.

Avda. Roque Saenz Peña 777
C1035 AAC Buenos Aires
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Telephone: +54 (11) 4329 2000
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Telex: 25912 ypfsc ar

(whichever is applicable) and to the Buyer at its address specified in the Agreement.

Any change of address, telephone, telex or fax details must be notified to the other party in writing, at least 14 working days prior to the change taking effect.

26 Rights, powers and remedies

26.1 No failure or delay on the part of the Seller or the Buyer in exercising any right, power or remedy under the Agreement and no course of dealing between the Seller and the Buyer shall operate as a waiver by the Seller or the Buyer of any such right, power or remedy, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy under the Agreement.

26.2 The remedies in the Agreement provided to the Seller or the Buyer are cumulative and not

exclusive of any legal rights or remedies which the Seller may otherwise have.

26.3 Except as required by the Agreement, no notice or demand upon the Seller or the Buyer in any case shall entitle the Seller or the Buyer to any other or future notice or demand in similar or other circumstances or constitute a waiver of the right of the Seller or the Buyer to take any other or future action in any such circumstances without notice or demand.

27 Amendments and waivers

27.1 Any amendment or waiver of any provision of the Agreement shall not be effective unless it is made by the express written agreement of both parties.

27.2 Any waiver of any breach of any provision of the Agreement by either party shall not be considered to be a waiver of any subsequent or conti-

ning breach of that provision unless expressly agreed otherwise by the parties in writing.

27.3 No waiver by either party of any breach of any provision of the Agreement shall release, discharge or prejudice the right of the waiving party to require strict performance by the other party of any other of the provisions of the Agreement.

27.4 Failure by either party to take action against the other party in case of any breach of any provision of the Agreement shall not be considered

to be a waiver by either party of their right to take action for any subsequent breach of that or any other provision of the Agreement.

28 Severability

The invalidity, illegality or unenforceability of any one or more of the provisions of the Agreement shall in no

way affect or impair the validity and enforceability of the other provisions of the Agreement.

29 Headings

All clauses, articles and section headings used in the Agreement are for convenience only and shall not affect

the construction or interpretation of any of the terms and/or conditions of the Agreement.

30 Telephone recording

The Buyer acknowledges and consents that the Seller may electronically record telephone conversations between the Seller and the Buyer or any of the Buyer's agents, officials or servants. In case of disagreements, misunderstandings or any other problem, the electronic record may be used for the purposes of resolving such matters.

31 Conflict

In the event that there is a conflict or inconsistency between the Special Provisions and the General Terms and Conditions contained in the Agreement, the Special

Provisions shall prevail over the General Terms and Conditions of the Agreement.

32 Change in regulations

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

sations, and the material effect of such changed or new regulations is

- a.** not covered by any other provision of the Agreement; and
- b.** has or will have a material adverse economic effect on the Seller,

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

33 Health, safety and environment

- 33.1** The Buyer shall provide all relevant third parties, including but not limited to, its employees, tankship crew, contractors, with a material safety data sheet and any other relevant information relating to the danger to health and environment of the Marine Fuels. The Buyer shall be responsible for ensuring that all relevant obligations, recommendations, international regulations directives, conventions, or guidelines are complied with.
- 33.2** The Buyer shall not be entitled to an indemnity from the Seller for any liability, claim or proceeding whatsoever for loss, damage or personal injury resulting from any hazards inherent in the nature of the Marine Fuels delivered under the Agreement.

33.3 If an escape, spillage or discharge of Marine Fuels (hereinafter referred to as “spill”) occurs while the delivery is being made, the Buyer will promptly take such action as is reasonably necessary to remove the Marine Fuels and mitigate the effects of such spill. However, whatever may have been the cause of such a spill, the Seller (which for the purposes of this clause includes its Suppliers) is hereby authorised, at its option, upon notice to the Buyer or the Buyer’s operator of, or agent for, the receiving vessel, to take such measures, either itself or in cooperation with the Buyer and incur such expenses (whether by employing its own resources or by contracting with others) as it considers reasonably necessary to remove the Marine Fuels and mitigate the effects of such spill.

33.4 If the Seller has exercised its option to remove the Marine Fuels to mitigate the effects of such spill (mentioned in 33.3), the Buyer agrees to co-operate and render such assistance as is required by the Seller in the course of such action, and to bear the costs and expenses thereof (including those of the Seller or its Suppliers) except to the extent that the negligence of the Seller or its Suppliers can be shown to have caused the spill.

33.5 The Buyer also agrees to indemnify the Seller against all claims for collision damage or other damages, costs, fines and penalties arising from any such spills mentioned in this clause 33 except to the extent that the negligence of the Seller contributed thereto.

33.6 If both parties have acted negligently, any expenses, disbursements and/or costs in respect of actions to remove the effects of such spills mentioned in this clause 33 shall be divided between the parties in accordance with the respective degree of negligence and culpability.

33.7 The Buyer also agrees to give, or cause to be given to the Seller, all such documents and other information concerning any spill, or any programme for the prevention thereof, which are requested by the Seller, or required by law or regulation applicable at the time and place where the Seller delivers products under this contract to the Buyer.

34 Third party rights

No term of the Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person, company or other legal entity which is not a party to the Agreement against one of

the parties to the Agreement. The parties may rescind or vary the Agreement in whole or in part, subject to the provisions of clause 16, without the consent of any third party.



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