BIMCO BUNKER TERMS 2018

1. Definitions

Throughout these General Terms and Conditions, except where the context otherwise requires, the following definitions shall be applied:
"Actual Readiness" means the Vessel's readiness in all respects to receive Marine Fuels at the agreed delivery location within the Delivery Period.
"Banking Day" shall mean a day on which banks are open in the places of business of the Sellers and the Buyers and, where a remittance is in US dollars, in New York or, if other than US dollars, in the country of the price currency.
"BDN" means Bunker Delivery Note or Bunker Delivery Receipt.
"Bunker Tanker" means bunker barge or tanker or tank truck supplying Marine Fuels to the Vessel.
"Buyers" means the party stated in the Confirmation Note contracting to purchase, take delivery and pay for the Marine Fuels.
"Confirmation Note" means the Sellers' written confirmation.
"Contract" means these General Terms and Conditions, as amended and supplemented by the Confirmation Note, and the Election Sheet (if applicable).
"Day/days" means a calendar day(s), unless otherwise stated.
"Delivery Period" means the Vessel's ETA/delivery window as stated in the Confirmation Note.
"Election Sheet" means an election sheet in the format provided in the Annex A (Election Sheet) to these General Terms and Conditions, as agreed between the Parties.
"General Terms and Conditions" means these standard bunker terms and conditions.
"Marine Fuels" means products as stated in the Confirmation Note.
"Parties" means the Sellers and Buyers collectively.
"Party" means Sellers or Buyers.
"Required Supply Time" means the time at which the Seller must commence delivery of the Marine Fuels pursuant to Clause 5(c), 5(d) or 5(e) (Delivery), as applicable.
"Sellers" means the Party stated in the Confirmation Note contracting to sell and arrange delivery of the Marine Fuels.
"Vessel" means the vessel nominated by the Buyers to receive Marine Fuels.

2. Specifications/Grades/Quality

(a) The Buyers shall have the sole responsibility for the nomination of the specifications and grades of Marine Fuels fit for use by the Vessel.

(b) The Sellers warrant that the Marine Fuels shall be of a homogeneous and stable nature and shall comply with the specifications and grades agreed between the parties and stated in the Confirmation Note. Unless otherwise agreed in the Confirmation Note, the Marine Fuels shall in all respects comply with the latest edition of ISO Standard 8217 as per the date of the Confirmation Note.

3. Quantities/Measurements

(a) Subject to the provisions of Subclause 6(c) (Documentation) and Clause 9 (Claims) hereunder the quantities of Marine Fuels delivered shall be measured from the official gauge or manual sounding or meter of the Bunker Tanker effecting delivery, or in case of delivery ex-wharf, of the shore-meter or the like equipment.

(b) The Sellers shall invite the Buyers or their representatives to witness the opening and closing gauge, or manual sounding or meter reading and the taking of bunker temperature of all bunker tanks on the Bunker Tanker and shall be given sufficient information and access to the official gauge or manual soundings or meter of the Bunker Tanker or shore-meter and relevant documentation to verify the volume delivered. The absence of the Buyers or their representatives shall not prejudice the validity of the measurement of the quantities of Marine Fuels delivered. In the event that local bunkering rules and regulations apply mandatorily, these shall take precedence over the provisions of Subclauses 3(a) and 3(b) (Quantities/Measurements).

(c) The Marine Fuels to be delivered under the Contract shall be measured and calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.

4. Sampling

(a) The Sellers shall invite the Buyers or their representatives to witness the sampling of Marine Fuels. During bunkering a primary sample shall be drawn at a point, to be mutually agreed between the Sellers and the Buyers or their respective representatives, closest to the Vessel's bunker manifold and otherwise in accordance with the procedures set out in IMO Resolution MEPC.182(59) Guidelines for the Sampling of Fuel Oil for Determination of Compliance with MARPOL 73/78 Annex VI or any subsequent amendments thereto. Each sample shall be thoroughly mixed and carefully divided into a minimum of five (5) identical samples and one sample of each grade of Marine Fuels shall be retained on board the Vessel for MARPOL purposes. The absence of the Buyers or their representatives shall not prejudice the validity of the samples taken. In the event that local bunkering rules and regulations apply mandatorily, these shall take precedence over the provisions of this Subclause 4(a) (Sampling).

(b) The samples referred to in Subclause 4(a) (Sampling) shall be securely sealed and provided with labels showing the Vessel's name, identity of delivery facility, product name, delivery date and place and point of sampling and seal number, authenticated with the Vessel's stamp and signed by the Sellers' representative and the Master of the Vessel or the Master’s authorized representative.

(c) Two (2) samples shall be retained by the Sellers for minimum forty-five (45) days after delivery of the Marine Fuels to the Vessel or, on being requested in writing by the Buyers, for as long as the Buyers may reasonably require, and the other three (3) samples shall be retained on board the Vessel (one of which shall be for MARPOL purposes).

(d) If the quantity is delivered by more than one Bunker Tanker, the sampling procedure shall be repeated as outlined in this Clause 4 (Sampling).

5. Delivery

(a) Within the Delivery Period:

(i) the Sellers shall deliver the Marine Fuels; and

(ii) the Buyers shall take delivery of the Marine Fuels,

day and night, Sundays and holidays included, at the port or place of delivery, subject always to the custom of that port or place.
(b) The Buyers, or their agents at the port or place of delivery, shall give the Sellers or their representatives at the port or place of delivery, seventy-two (72) and forty-eight (48) hours approximate and twenty-four (24) hours definite notice of the Vessel's arrival and the location and time at which delivery of the Marine Fuels is requested. If the Sellers agree to commence the delivery of the Marine Fuels at the time specified in the Buyers' 24 hours’ notice, or the Parties agree to another time, the Sellers shall confirm this in writing to the Buyers (the "Confirmed Delivery Time").

(c) Providing that the time of Actual Readiness is within 6 hours* of the Confirmed Delivery Time, the Sellers shall commence delivery of the Marine Fuels within 6 hours* of either: (i) the Confirmed Delivery Time; or (ii) the time of Actual Readiness, whichever is later.

(d) Where the time of Actual Readiness is not within 6 hours* of the Confirmed Delivery Time, the Sellers shall commence delivery within 12 hours* of either: (i) the Confirmed Delivery Time; or (ii) the time of Actual Readiness, whichever is later.

(e) Where no Confirmed Delivery Time has been agreed, the Sellers shall commence delivery within 12 hours* of the Buyers' time of Actual Readiness.

**or such number of hours as otherwise specified in the Election Sheet.*

(f) The Sellers shall:

(i) be in possession of all permits required to comply with all relevant regulations pertaining to delivery of Marine Fuels at the port or place of delivery; and

(ii) subject to local laws, render all necessary assistance which may be reasonably required to make connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold.

(g) The Buyers shall be responsible for making all connections and disconnections between the delivery hose(s) and the Vessel's bunker manifold and to ensure that the hose(s) are properly connected to the Vessel's bunker manifold prior to the commencement of delivery.

(h) The Buyers shall ensure that the Vessel is in possession of all certificates required to comply with all relevant regulations pertaining to delivery of the Marine Fuels at the port or place of delivery and that the Master of the Vessel or the Master's authorised representative shall:

(i) advise the Sellers in writing, prior to delivery, of the maximum allowable pumping rate and pressure and agree on communication and emergency shut-down procedures;

(ii) notify the Sellers in writing prior to delivery, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Marine Fuels; and

(iii) provide a free side to receive the Marine Fuels and render all necessary assistance which may reasonably be required to moor or unmoor the Bunker Tanker, as applicable.

6. Documentation

(a) Before commencement of delivery the Sellers shall present for written acknowledgement by the Master of the Vessel or the Master's authorised representative, a bunker pre-delivery form or similar document, duly signed by the Sellers or their representative, which shall contain the quantities to be delivered and all information required in accordance with ISO 13739 or any subsequent amendments thereof, including, in particular, the values for: viscosity; density; sulphur content; flash point; and delivery temperature. In addition, and if available, similar information shall be provided for vanadium; ash content; water content; and pour point. In the event that local bunkering rules and regulations apply mandatorily, these shall take precedence over the provisions of this Subclause 6(a) (Documentation).

(b) Once the delivery is completed and quantities measured, a BDN shall be signed and stamped by the Master of the Vessel or the Master's authorised representative, and returned to the Sellers, or their representative, as acknowledgement of the actual volume and the actual delivery temperature only and a duplicate copy shall be retained by the Master of the Vessel. This receipt shall contain the following minimum information which is warranted by the Sellers: delivered quantity in volume units; density in kg/m$_3$ at 15□□C as per ISO 3675; delivery temperature; flash point; sulphur content in % m/m as per ISO 8754; and viscosity.

(c) In the event the Master of the Vessel or the Master's authorised representative is not satisfied with the sampling, quantity or any other matter concerning the Marine Fuels or their delivery, the Master or the Master's authorised representative shall on completion of delivery:

(i) make appropriate remarks in the BDN detailing the complaints and/or referring to a separate letter of protest; or

(ii) if remarks in the BDN are not permitted, issue a separate letter of protest, receipt of either of which shall be acknowledged in writing by the Sellers' representative.

7. Price

(a) The Sellers' price of the Marine Fuels is valid only if the Vessel arrives within the Delivery Period and shall be in the amount expressed per unit and in the currency stated in the Confirmation Note for each grade of Marine

Fuels delivered into the Vessel's tanks free delivered/ex-wharf as applicable and stated in the Confirmation Note. In the event the price is quoted in volume units, conversion to standard volume shall be at sixty (60) degrees Fahrenheit or at fifteen (15) degrees Celsius. If the Sellers agree to arrange delivery of the Marine Fuels outside the Delivery Period the Sellers shall be entitled to amend the price to take into account prevailing market prices.
(b) Any and all additional charges incurred by the Sellers which are for the Buyers' account shall be specified in the Sellers' quotation and in the Confirmation Note and shall include but not be limited to:

(i) wharfage charges, barging charges or other similar charges;

(ii) mooring charges or port dues; and

(iii) duties, taxes, charges or other costs in the country where delivery takes place.

8. Payment

(a) Payment for the Marine Fuels shall be made by the Buyers within thirty (30) days or, if otherwise agreed, within the number of days stated in the Confirmation Note after the completion of delivery. In the event payment has been made in advance of delivery, such payment shall be adjusted on the basis of the actual quantities of Marine Fuels delivered and additional payment and/or refund shall be made within seven (7) days after the completion of delivery.

(b) Payment shall be made in full, without set-off, counterclaim, deduction and/or discount, and free of bank charges.

(c) Payment shall be deemed to have been made on the date the payment is credited to the bank account designated by the Sellers.

(d) If payment falls due on a non-Banking Day, then payment shall be made on or before the last Banking Day before the due date.

(e) Payment for delivery under the Contract shall satisfy sums owed to the Seller in the following order: (1) interest; (2) legal and enforcement costs; and (3) invoices from oldest to newest.

(f) Any delay in payment and/ or refund shall entitle either Party to interest at the rate of four (4) per cent per month or any part thereof or as otherwise agreed as per the Confirmation Note.

(g) In the event of non-payment or non-refund, the non-defaulting Party reserves the right to pursue such legal remedies as may be available to them to recover the amount owed.

(h) Notwithstanding any agreement to the contrary, payment for any amounts due (whether yet payable or not) under the Contract (or any other contract between the Buyers and the Sellers) will become due immediately and in the event of:

(i) bankruptcy, liquidation or suspension of payment (or any of the events stated in Clause 17(a) and (b) (Termination)) or comparable situation of the Buyers; or

(ii) any other situation, which in the reasonable discretion of the Sellers is deemed to affect adversely the financial position of the Buyers, the Sellers shall have the option to:

(1) demand that the Buyers comply with their obligations under the Contract; and/or

(2) demand adequate security; and/or

(3) suspend any pending deliveries; and/or

(4) withdraw permission to consume the Marine Fuels for the propulsion of the Vessel; and/or

(5) terminate the Contract.

9. Claims

(a) Quantity

(i) Any dispute as to the quantity delivered must be noted at the time of delivery in accordance with Subclause 6(c) (Documentation), and a claim for such quantity dispute must be presented to the Sellers by the Buyers in writing within fourteen (14) days from the date of delivery (or such number of days as otherwise specified in the Election Sheet), failing either/both of which such claim shall be deemed to be waived and barred.

(ii) The Sellers shall have the right to charge the Buyers for all proven additional expenses incurred by the Sellers in connection with the Buyers' failure to take delivery of the full quantity of the Marine Fuels ordered by the Buyers (with an operational tolerance of +/- two (2) per cent).

(iii) The Buyers shall have the right to charge the Sellers for all proven additional expenses incurred by the Buyers in connection with the Sellers' failure to deliver the full quantity of the Marine Fuels agreed as per the Confirmation Note (with an operational tolerance of +/- two (2) per cent), unless the quantity is amended by the Master or the Master's authorised representative in writing.

(b) Quality/Specification

(i) Any claim as to the quality or specification of the Marine Fuels must be notified in writing promptly after the circumstances giving rise to such claim have been discovered. If the Buyers do not notify the Sellers of any such claim within thirty (30) days of the date of delivery (or such number of days as otherwise specified in the Election Sheet), such claim shall be deemed to be waived and barred.

(ii) In the event a claim is raised pursuant to Subclause 9(b)(i) (Claims), the Parties hereto shall have the quality of the Marine Fuels analysed by a mutually agreed, qualified and independent laboratory. The Buyers may request a full analysis of the parameters of the Marine Fuels in accordance with the specification set out in the Confirmation Note and ISO 4259. The Sellers shall provide the laboratory with one of the samples retained by them as per Subclause 4(c) (Sampling) and the test methods used by the laboratory shall be in accordance with those set out in ISO 8217. Unless otherwise agreed, the cost of the analysis shall be for the account of the Party whose claim/case is found unproven by the analysis.

(c) Delay

In the event of any delay resulting from:
(i) the Buyers' failure to give proper notices and/or the Vessel's failure to be in Actual Readiness within six (6) hours (or such number of hours as otherwise specified in the Election Sheet) of the Confirmed Delivery Time and/or the Vessel failing to receive Marine Fuels at the pumping rate and pressure referred to in Subclause 5(h)(i) (Delivery); or
(ii) the Sellers' failure to deliver the Marine Fuels in accordance with the minimum hourly pumping rate and pressure referred to in the Confirmation Note; or

(iii) the Seller's failure to commence delivery of the Marine Fuels within the Required Supply Time, then the Party suffering such delay shall be entitled to compensation from the other Party for any loss suffered as a result of that delay.

(d) Time Bar

In each and every case any and all claims, except those under Subclauses 9(a)(i) and 9(b)(i) (Claims), by the Buyers shall be time barred unless arbitration proceedings have been commenced in accordance with Clause 24 (BIMCO Standard Dispute Resolution Clause 2018) hereof within twelve (12) months of the date of delivery of the Marine Fuels or the day that delivery should have commenced as per the Confirmation Note.

10. Risk/Title

(a)* Risk and title in the Marine Fuels shall pass to the Buyers once the Marine Fuels have passed the Sellers' flange connected to the Vessel's bunker manifold.

(b)* Risk in the Marine Fuels shall pass to the Buyers once the Marine Fuels have passed the Sellers' flange connected to the Vessel's bunker manifold. Title to the Marine Fuels shall pass to the Buyers upon payment of all sums due to the Sellers under the Contract. Until such time as payment is made, on behalf of themselves and the Vessel, the Buyers agree that they are in possession of the Marine Fuels solely as bailee for the Sellers. If, prior to payment, the Sellers' Marine Fuels are commingled with other marine fuels on board the Vessel, title to the Marine Fuels shall remain with the Sellers corresponding to the quantity of the Marine Fuels delivered. The above is without prejudice to such other rights as the Sellers may have under the laws of the governing jurisdiction against the Buyers or the Vessel in the event of non-payment. *Subclauses (a) and (b) are alternatives. Indicate agreed alternative in the Election Sheet. If neither Subclause (a) or (b) is stated, then Subclause (b) shall apply.

(c) The Buyers have the Sellers' permission to consume the Marine Fuels for propulsion of the Vessel.

11. Compliance with Laws and Regulations

The Parties will not do or permit to be done anything which might cause any breach or infringement of the laws and regulations of the Flag State of the Vessel or the country of incorporation of the Sellers, or of the places where the Vessel or the Sellers trade or take Marine Fuels under the Contract.

12. Sanctions Compliance Clause

(a) "Sanctions Laws" means any sanction, prohibition or restriction imposed by the United Nations, the European Union, the United Kingdom or the United States of America, including but not limited to the US Department of the Treasury Office of Foreign Asset Control ("OFAC") including the OFAC Specially Designated Nationals or Blocked Persons List (SDN) and the US Department of State.

(b) The Buyers and the Sellers each warrant that at the date of entering into the Contract and continuing until delivery of the Marine Fuels and payment by the Buyers to the Sellers in full:

(i) neither Party is subject to any of the Sanctions Laws referred to in Subclause 12(a) (Sanctions Compliance Clause) which prohibit or render unlawful any performance under the Contract;

(ii) the Sellers are selling and the Buyers are purchasing the Marine Fuels as principals and not as agent, trustee or nominee of any person with whom transactions are prohibited or restricted under Subclause 12(a) (Sanctions Compliance Clause);

(iii) the Buyers further warrant that the Vessel is not a designated vessel and is not and will not be chartered to any entity or transport any cargo contrary to the restrictions or prohibitions in Subclause 12(a) (Sanctions Compliance Clause) above; and

(iv) the Sellers further warrant that the Marine Fuels are not of an origin or have been exported as a product from a place that is subject to any of the Sanctions Laws referred to in Subclause 12(a) (Sanctions Compliance Clause) above.

(c) If at any time during the performance of the Contract either Party becomes aware that the other Party is in breach of warranty as aforesaid, the Party not in breach shall comply with the laws and regulations of any Government to which that Party or the Vessel is subject and follow any orders or directions which may be given by any regulatory or administrative body, acting with powers to compel compliance. In the absence of any such orders, directions, laws or regulations, the Party not in breach may terminate the Contract forthwith.

(d) Notwithstanding anything to the contrary in this Clause, Buyers and Sellers shall not be required to do anything which constitutes a violation of the laws and regulations of any State to which either of them is subject.

(e) The Buyers and the Sellers shall be liable to indemnify the other Party against any and all claims, including return of any payment, losses, damage, costs and fines whatsoever suffered by the other Party resulting from any breach of warranty as aforesaid and in accordance with the Contract.

13. Anti-Corruption Clause

(a) The Parties agree that in connection with the performance of any Contract they shall each:

(i) comply at all times with all applicable anti-corruption legislation and have procedures in place that are, to the best of its knowledge and belief, designed to prevent the commission of any offence under such legislation by any member of its organisation or by any person providing services for it or on its behalf; and

(ii) make and keep books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions in connection with any Contract.

(b) If a demand for payment, goods or any other thing of value ("Demand") is made to either Party by any official, any contractor or sub-contractor engaged by or acting on behalf of either Party or any other person not employed by either Party and it appears that meeting such Demand would breach any applicable anti-corruption legislation, then the Party receiving the Demand shall notify the other Party as soon as practicable and the Parties shall cooperate in taking reasonable steps to resist the Demand.

(c) If either Party fails to comply with any applicable anti-corruption legislation it shall defend and indemnify the other Party against any fine, penalty, liability, loss or damage and for any related costs (including, without limitation, court costs and legal fees) arising from such breach.

(d) Without prejudice to any of its other rights under any Contract, either party may terminate a Contract without incurring any liability to the other Party if:

(i) at any time the other Party or any member of its organisation has committed a breach of any applicable anti-corruption legislation in connection with any Contract; and

(ii) such breach causes the non-breaching Party to be in breach of any applicable anti-corruption legislation.

Any such right to terminate must be exercised without undue delay.
(e) Each Party represents and warrants that in connection with the negotiation of any Contract neither it nor any member of its organisation has committed any breach of applicable anti-corruption legislation. Breach of this Subclause 13(e) (Anti-Corruption Clause) shall entitle the other Party to terminate a Contract without incurring any liability to the other.

14. Indemnity

(a) Without prejudice to any other claims arising hereunder or in connection herewith and notwithstanding the provisions of Subclause 9(d) (Claims), if loss is suffered or a liability is incurred by either Party hereto as a direct result of compliance with directions given by the other Party, during or for the purposes of the Parties' obligations hereunder, then the injured party is to be indemnified by the other in respect of such loss or liability; unless such loss or liability arises due to a negligent act or omission by the Party incurring the loss or liability.

(b) Where claims arise under Subclause 9(c) (Claims) and Subclause 14(a) (Indemnity), compensation payable in accordance with Subclause 9(c) (Claims) shall be taken into account in assessing sums payable under Subclause 14(a) (Indemnity).

15. Liability

(a) Neither the Buyers nor the Sellers shall be liable to the other Party for:

(i) any loss of profit, loss of production whatsoever and whether arising directly or indirectly from the performance or non-performance of the Contract, and whether or not the same is due to negligence or any other fault on the part of either Party, their servants or agents, and

(ii) any indirect or consequential loss arising out of or in connection with the performance or non-performance of the Contract, whether or not the same is due to any breach of contract, negligence or any other fault on the part of either Party, their servants or agents.

(b) Notwithstanding any other provision in these General Terms and Conditions, the liability of either Party, whatsoever or howsoever caused, shall (exclusive of interest and legal and enforcement costs) not exceed the invoice value of the Marine Fuels or USD 500,000, whichever is the higher figure, unless otherwise agreed in the Election Sheet.

16. Force Majeure

Neither Party shall be liable for any loss, damage or delay due to any of the following force majeure events and/or conditions at the port of delivery which could not reasonably be foreseen at the time of entering into the Contract or guarded against to the extent the Party invoking force majeure is prevented or hindered from performing any or all of their obligations under the Contract, provided they have made all reasonable efforts to avoid, minimize or prevent the effect of such events and/or conditions:
(a) acts of God;

(b) any Government requisition, control, intervention, requirement or interference;

(c) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;

(d) riots, civil commotion, blockades or embargoes;

(e) epidemics;

(f) earthquakes, landslides, floods or other extraordinary weather conditions;

(g) strikes, lockouts or other industrial action, unless limited to the employees of the Party seeking to invoke force majeure;

(h) fire, accident, explosion - except where caused by negligence of the Party seeking to invoke force majeure;

(i) any other similar cause beyond the reasonable control of either Party.

The Party seeking to invoke force majeure shall notify the other Party in writing within two (2) Days of the occurrence of any such event/condition.

17. Termination

Without prejudice to accrued rights hereunder, either Party hereto shall be entitled to terminate the Contract in the event of:
(a) any application being made or any proceedings being commenced, or any order or judgment being given by any court, for

(i) the winding up, dissolution, liquidation or bankruptcy of either Party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver or administrator is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors; or

(ii) the appointment of a receiver, liquidator, trustee, administrator, administrative receiver or similar functionary of the other Party of all or a substantial part of its assets (otherwise than for the purpose of a reconstruction or amalgamation); or

(b) any act being done or event occurring which, under the applicable law thereof, has a substantially similar effect to any of the said acts or events described above; or

(c) either Party is in breach of the provisions of Clause 12 (Sanctions Compliance Clause) (if applicable); or

(d) either Party is in breach of any material provision under the Contract; or

(e) if a force majeure event as defined in Clause 16 (Force Majeure) prevents or hinders the performance of the Contract for a period exceeding ten (10) consecutive days from the time at which the impediment begins to prevent performance if notice is given without delay or, if notice is not given without delay, from the time at which notice thereof reaches the other Party.

18. Pollution

(a) In the event of any spillage (which for the purpose of this Clause shall mean any leakage, escape, spillage or overflow of the Marine Fuels) causing or likely to cause pollution occurring at any stage of the bunkering operation, the Buyers and the Sellers shall jointly, and regardless as to whether the Buyers or the Sellers are responsible, immediately take such actions as are reasonably necessary to effect clean up and which shall always be conducted in accordance with such local laws and regulations which may compulsorily apply.

b) Where it is a compulsory requirement of the law of the port or place of delivery of the Marine Fuels that the Sellers shall have in place their own oil spill contingency plans, the Sellers shall ensure that they have in place valid oil spill contingency plans.

(c) Each Party hereby guarantees payment of and/or agrees to indemnify and hold the other Party harmless for any claims, losses, damages, expenses, penalties or other liabilities incurred (including but not limited to those incurred under any state, national or international oil pollution legislation), as a result of any spillage arising out of or in connection with the performance of the Contract where such spillage is caused or contributed to by that Party. To the extent that such spillage is caused or contributed to by any fault on the part of both Parties, each Party shall indemnify the other Party for its respective degree of fault.

(d) The Sellers shall use their best endeavours to ensure that the owners of the Bunker Tanker are fully insured for oil spill liabilities as required by statutory rules or regulations. If such coverage or insurance is not obtained by the owners of the Bunker Tanker, it shall be the sole responsibility of the Sellers to establish such coverage for their account. Proof and conditions of such coverage, whether established by the Marine Fuels supplying company or by the Sellers shall be made available to the Buyers at their request, as soon as practically possible.

19. Drugs and Alcohol Policy

(a) Each Party shall enforce a company drug and alcohol policy on board the Vessel and the Bunker Tanker and, in the case of the Sellers, also in their facilities.

(b) Such company drug and alcohol policies shall meet or exceed the standards in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended.

(c) The Buyers' personnel shall comply with the Sellers' policy in the Seller's facilities or on board the Bunker Tanker, and the Sellers' personnel shall comply with the Buyers' policy when on board the Vessel.

(d) Both Parties acknowledge and agree that the selling, possession, distribution, use or being under the influence of alcohol or any controlled substance or dangerous drugs other than those medically prescribed is prohibited.

20. Confidentiality

(a) Neither Party shall disclose to third parties any confidential information relating to pre-contractual discussions and/or the terms and conditions of the Contract, except with the prior written consent of the other Party, which shall not be unreasonably withheld, or to the extent required by law, or by a request of a government or its agency thereof.

(b) The Parties shall take reasonable precautions to ensure that no unauthorised disclosure of confidential information takes place.

(c) If a Party is uncertain as to whether information is confidential, the Sellers or the Buyers (as the case may be) shall consult with the other Party.

(d) Should either Party be required by law to disclose confidential information, the disclosing Party will, where permitted, notify the other Party and shall disclose only the minimum confidential information required to satisfy legal requirements.

(e) Information is not confidential for the purposes of this Clause if it was in the possession of the Party prior to receipt from the other Party; becomes publicly available other than as a result of a breach of the Contract by one of the Parties; or is lawfully received from a third party.

(f) This Clause shall survive termination of the Contract.

21. Third Party Rights

No third parties may enforce any term of the Contract.

22. Assignment

Neither Party shall assign any of their rights under the Contract without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed, or unless otherwise agreed in the Election Sheet.

23. Partial Validity

If any provision of the Contract is or becomes or is held to be illegal, invalid or unenforceable in any respect under any law or jurisdiction, the provision shall be deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if such amendment is not possible, the provision shall be deemed to be deleted from the Contract to the extent of such illegality, invalidity or unenforceability, and the remaining provisions shall continue in full force and effect and shall not in any way be affected or impaired thereby.

24. Dispute Resolution Clause

(a)* The Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with the Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party requiring the other Party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other Party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the Party referring a dispute to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator

and shall advise the other Party accordingly. The award of the sole arbitrator shall be binding on both Parties as if the arbitrator had been appointed by agreement.
Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the Parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.
In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small Claims Procedure and neither the claim nor any counterclaim exceeds the sum of USD 400,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceedings are commenced.
(b)* The Contract shall be governed by US maritime law or, if the Contract is not a maritime contract under US law, by the laws of the State of New York. Any dispute arising out of or in connection with the Contract shall be referred to three (3) persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen. The decision of the arbitrators or any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the SMA Rules current as of the date of the Contract.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the SMA Rules for Shortened Arbitration Procedure current as of the date of the Contract.
(c)* The Contract shall be governed by and construed in accordance with Singapore**/English** law.

Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in accordance with the Singapore International Arbitration Act (Chapter 143A) and any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.
The arbitration shall be conducted in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration (SCMA) current at the time when the arbitration proceedings are commenced.
The reference to arbitration of disputes under this Clause shall be to three arbitrators. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party requiring the other Party to appoint its own arbitrator and give notice that it has done so within fourteen (14) calendar days of that notice and stating that it will appoint its own arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other Party does not give notice that it has done so within the fourteen (14) days specified, the Party referring a dispute to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be binding on both Parties as if the arbitrator had been appointed by agreement.
Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 150,000 (or such other sum as the Parties may agree) the arbitration shall be conducted before a single arbitrator in accordance with the SCMA Small Claims Procedure current at the time when the arbitration proceedings are commenced.
(d)* The Contract shall be governed by and construed in accordance with the laws of the place mutually agreed by the Parties and any dispute arising out of or in connection with the Contract shall be referred to a dispute resolution forum at a mutually agreed place, subject to the procedures applicable there.

(e) The parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with the Contract. In the case of any dispute in respect of which arbitration has been commenced under Subclause (a), (c) or (d), the following shall apply:

(i) Either Party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other Party of a written notice (the “Mediation Notice”) calling on the other Party to agree to mediation.

(ii) The other Party shall thereupon within fourteen (14) calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the Parties shall thereafter agree a mediator within a further fourteen (14) calendar days, failing which on the application of either Party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the Parties may agree or, in the event of disagreement, as may be set by the mediator.

(iii) If the other Party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the Parties.

(iv) The mediation shall not affect the right of either Party to seek such relief or take such steps as it considers necessary to protect its interest.

(v) Either Party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vi) Unless otherwise agreed or specified in the mediation terms, each Party shall bear its own costs incurred in the mediation and the Parties shall share equally the mediator's costs and expenses.

(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

(Note: The Parties should be aware that the mediation process may not necessarily interrupt time limits.)
*Subclauses (a), (b), (c) and (d) are alternatives to be specified in the Election Sheet; if this Clause has been incorporated into the Contract without an express choice of law and arbitration forum chosen from Subclauses (a), (b), (c) and (d), then Subclause (a) of this Clause shall apply. Subclause (e) shall apply in all cases except for alternative (b).
**Singapore and English law are alternatives; if Subclause (c) is agreed also indicate choice of Singapore or English law. If neither or both are indicated, then English law shall apply by default.

25. Notices

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

26. Entire Agreement and Priority of Terms

(a) The written terms of the Contract comprise the entire agreement between the Buyers and the Sellers in relation to the sale and purchase of the Marine Fuels and supersede all previous agreements whether oral or written between the Parties in relation thereto. No amendments to a Contract may be made unless agreed by both Parties in writing.

(b) Each of the Parties acknowledges that in entering into the Contract it has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether or not made negligently) other than as is expressly set out in the Contract.

(c) Any terms implied into the Contract by any applicable statute or law are hereby excluded to the extent that such exclusion can legally be made. Nothing in this Clause shall limit or exclude any liability for fraud by any Party to the Contract.

(d) In the event of a conflict between any of the provisions of these General Terms and Conditions and the Election Sheet, the provisions of the Election Sheet shall prevail over the provisions of these Terms and Conditions. If there is a conflict between any of the provisions of these General Terms and Conditions, the

Election Sheet and the Confirmation Note respectively, the provisions of the Confirmation Note shall prevail over these General Terms and Conditions and the Election Sheet to the extent of such conflict, but no further.

BIMCO BUNKER TERMS 2018 – ANNEX A (ELECTION SHEET)

Customisation of Provisions in the BIMCO Bunker Terms 2018 Name of the Sellers	Name of the Buyers
Effective Date (state effective date of the Contract)	
Clause 4 (sampling) (a)	During bunkering a primary sample shall be drawn at barge manifold. Official samples to be taken from barge manifold during bunkering together with ship crew ; ship samples are not accepted and barges will not witness & sign them
Clause 5 (Delivery)	All deliveries are subject to first come first serve basis
Clause 6 (Documentation) (c) (ii)	Remarks on BDN is not permitted
Clause 9 (Claims)	+ Before barge loading, Cancellation of confirmation note or any changes on quantity always subject to cancellation fee (%4 of the bunker value , Min USD 5.000) plus commercial losses, costs of hedging arrangements or related trading and operational positions. + Once barge loaded from the terminal, quantity cannot be changed. +If the buyer fails to take the delivery, in whole or in part of the quantities ordered on nominated dates, the buyer shall be responsible for cancellation fee (%4 of the bunker value with minimum USD 23.500 buyer pays against sellers invoice without any prove documents etc) Supplier may also claim any costs and losses resulting from such failure, including any and all costs and expenses whatsoever incurred by seller plus commercial losses, costs of any hedging arrangement or related trading and operational position and/or further commitments may not be performed due to such failure of buyers. The seller, then shall have a right, at buyer's risk and expense, either to transport the bunkers back to the storage at minimum charge usd 23.500 payable by buyer without any proof documents etc...
Clause 9(b)(ii)	In the event a claim is raised pursuant to Sub clause 9(b)(i) (Claims), the Parties hereto shall have the quality of the Marine Fuels analysed by a mutually agreed, qualified, accredited and independent laboratory in Turkey on official samples taken from the barge manifold with numbers stated on the BDN retained onboard supplying barge.
Clause 10 (Risk/Title)	(b) to apply
Clause 15 (Liability)	Notwithstanding any other provision in these General Terms and Conditions, the liability of either

	Party, whatsoever or howsoever caused, shall (exclusive of interest and legal and enforcement costs) not exceed the invoice value of the Marine Fuels or USD 500,000, whichever is the lower figure,
Clause 24 (Dispute Resolution Clause)	State choice of law and arbitration venue to apply (a) English law, London arbitration,
Additional clauses	