

IAN TAYLOR CHILE S.A.
GENERAL TERMS & CONDITIONS (Rev: 1-2017)
SALE OF MARINE LUBRICANTS AND SIMILAR PRODUCTS

The following are the General Terms and Conditions under which **Ian Taylor Chile S.A.** is prepared to enter into agreements with another party for the supply of marine Lubricants and/or other similar products as set forth here below.

1. DEFINITIONS

- 1.1.** In these General Terms & Conditions the following terms and expressions shall have the meanings set out below:
- (a) **“Additional Costs”**: means any costs and expenses in addition to those referred to in the Agreement incurred in connection with and/or as a consequence of Delivery including, but without limitation, delays attributable to the Vessel, lighters, cranes, pumping (drums), Delivery during public holidays or during weekends and special or other services not included in the Agreement. Unless otherwise expressly agreed between the Seller and the Buyer, in writing, all Additional Costs shall be paid by the Buyer;
 - (b) **“Agreement”** means the concluded terms for the sale and purchase of Products, as set forth in clause 4 herein;
 - (c) **“Buyer”** means: (i) any Party requesting offers or quotations from the Company for the provision of Products by the Company in accordance with these Terms & Conditions; and /or (ii) any Party with which (or on whose behalf) the Company has agreed to enter into and made an Agreement, including, but not limited to, the Master, Owners, operators, managers, time charterers, bareboat charterers or voyage charterers of the Vessel;
 - (d) **“Company”**: means **Ian Taylor Chile S.A.**;
 - (e) **“Delivery”**: means physical delivery of the Products in drums or other containers made by the Physical Supplier to the Buyer’s Vessel, alongside the Vessel or to the Buyer’s Agent. If the Product is pumped aboard from a lighter or shore-based facility, **“Delivery”** means the moment when the Product leaves the Physical Supplier’s pumping machinery and enters the Vessel via its intake flange.;
 - (f) **“Delivery Receipt”**: means the document signed by the Buyer or his representative and the Physical Supplier, representing and evidencing the receipt of the Products delivered to a Vessel pursuant to an Agreement;
 - (g) **“ETA”**: means the estimated time of arrival of the Vessel at the Place of Delivery;
 - (h) **“ETD”**: means the estimated time of departure of the Vessel from the Place of Delivery;
 - (i) **“LIBOR”** means the London interbank offered rates per annum for three (3) months deposit in United States’ dollars on the relevant day;
 - (j) **“Nomination”**: means the written communication from the Buyer to the Company, whereby the Buyer confirms the acceptance of a Quotation;
 - (k) **“Office Days”**: means a calendar day, but excluding Saturdays, Sundays and legal and public holidays in Chile, unless otherwise agreed; and **“Office Hours”**, means the period during an Office Day when the Company’s office is open for business, between 09:00 hours and 17:00 hours Chilean continental local time, unless otherwise agreed;
 - (l) **“Order Confirmation”**: means the written confirmation from the Company to the Buyer, whereby the Company communicates its acceptance of a Nomination;
 - (m) **“Party”** or **“Parties”**: means a party or the parties to an Agreement, as appropriate;

- (n) **“Physical Supplier”**: means the person instructed by or on behalf of the Company to physically supply or deliver the Marine Lubricants and/or other similar products to the Vessel, together with that person’s servants, agents, sub-contractors, successors, and assigns. The Physical Supplier may be the Company or any other third party;
- (o) **“Place of Supply”**: means the port or other readily identifiable geographical location specified in the Agreement, wherein or adjacent to which the Point of Delivery is located;
- (p) **“Point of Delivery”**: means the precise place at which Delivery is to be effected as provided in the Agreement or as may thereafter be confirmed, advised or revised by the Company or the Physical Supplier being, mooring, anchorage, or other point within, adjacent to or associated with the Place of Supply;
- (q) **“Port Agent”**: means the Vessel’s port agent at the Place of Supply;
- (r) **“Price”**: means the price for the Marine Lubricants and/or other similar products supplied in accordance with the Agreement;
- (s) **“Products”**: means lubricating oils, greases and other marine lubricant products of whatever type and description to be specified in the Agreement;
- (t) **“Quotation”**: means the offer (and the terms and conditions thereof) made by the Company to the Buyer in response to or in connection with a Request for Quotation sent by the Buyer to the Company for the supply of Marine Lubricants and/or other similar products;
- (u) **“Request for Quotation”**: means the communication from the Buyer to the Company, whereby the Buyer formally requests a Quotation from the Company, in respect of the supply of Marine Lubricants and/or other similar products;
- (v) **“Terms & Conditions”**: means these General Terms and Conditions;
- (w) **“Vessel”**: means the vessel, ship or any other type of watercraft to which Marine Lubricants and/or other similar products are to be delivered pursuant to the Agreement; and
- (x) **“Working Days”**: means a calendar day, but excluding Saturdays, Sundays and legal and public holidays in the Place of Supply, unless otherwise agreed; and **“Working Hours”**, means the period during a Working Day between 09:00 hours and 17:00 hours, Chilean continental local time (Valparaíso), unless otherwise agreed.
- (y) **“written” or “in writing”**: means any notice or other communication made in writing, in the English or the Spanish language, and sent by letter or e-mail.

1.2 The headings used in these Terms & Conditions are inserted for convenience only and shall not be deemed to be any indication of the meaning of the clauses and sub-clauses to which they relate.

2. **SCOPE OF APPLICATION.**

2.1 These Terms & Conditions shall be deemed as being fully incorporated in and an integral part of any Quotation made by the Company and any Agreement which the Company may subsequently enter into with the Buyer, even if these Terms & Conditions are incorporated by reference only and not materially attached to such Quotation or Agreement. By issuing a Nomination, the Buyer, inter alia, represents and warrants that it has read, understood and fully accepts these Terms & Conditions, without reservation or limitation whatsoever.

2.2 In the event of any conflict or inconsistency between any part of these Terms & Conditions and any part of any Quotation, Order Confirmation or Agreement made, given or entered into by the Company with the Buyer, these Terms & Conditions shall always prevail, and shall override and cancel any terms and conditions incorporated in or referred to by the Buyer, whether orally or in writing, in any Request for Quotation, Nomination or in any other communication from the Buyer to the Company for all purposes whatsoever. In the event of any conflict or inconsistency between any part of the Nomination and any part of the Order Confirmation, the Order Confirmation shall always prevail.

- 2.3. When Products are delivered by a Physical Supplier, the terms and conditions or any other similar terms of business of the Physical Supplier, insofar and to the extent that they differ from the Company's Terms & Conditions, shall be deemed incorporated into the Company's Terms & Conditions by this reference as though fully set out herein, and shall be deemed as having been irrevocably accepted by the Buyer without any limitation or reservation whatsoever.

3. **BUYER'S AGENTS AND COMMUNICATIONS.**

- 3.1 Unless the Party with whom the Company is corresponding specifically declares to the Company, prior to the Agreement, that the Party with whom the Company is corresponding is not the Buyer and at the same time provides to the Company the full name and address of the Buyer, then the Party with whom the Company is corresponding shall be deemed to be the Buyer.

- 3.2 Any notice or other communication or document to be given, made or delivered by the Buyer to the Company under or in connection with any Agreement shall be in writing, in the English or the Spanish language, and shall be delivered to the Company by leaving it at or sending it by Federal Express, TNT or DHL or email to the following address or email address:

Ian Taylor Chile S.A.	Tel:	+56 (32) 226 1000
Blanco 937, Office 601	E-mail:	bunkers@empresastaylor.com
Valparaiso, Chile.		

4. **THE AGREEMENT.**

- 4.1 The Company's Quotations or estimates of costs shall be understood at all times as being conditional and subject to availability, and may be amended or changed by the Company at any time before the Buyer sends the Nomination to the Company.

- 4.2 The Agreement shall be deemed to have been concluded and shall be valid and binding upon the Parties once the Company, having received the Buyer's **Nomination**, issues to the Buyer the **Order Confirmation**.

- 4.3 For the avoidance of doubt, it is agreed and understood that:

- (a) the Agreement includes: (a) the Company's Quotation; (b) the Buyer's Nomination; (c) the Company's Order Confirmation; (d) these Terms & Conditions; (e) if applicable, the terms and conditions of any Physical Supplier as provided in sub-clause 2.3; and (f) any applicable laws or regulations; and
- (b) the Agreement represents the entire agreement of the Parties with respect to the sale and Delivery of Products as agreed thereby, and there are no other promises, representations or warranties with regard to the transaction evidenced by the Agreement.

- 4.4 Any sale of Products shall require a **Request for Quotation** to be submitted in writing by the Buyer to the Company. The prospective Buyer must state in the Request for Quotation the grade, specification and quantity of Products to be delivered to the Vessel, the Vessel's ETA and an estimated date when the Delivery will occur. The Buyer shall give the Company written confirmation of any verbal Request for Quotation on the same Working Day as it was verbally made. The Company, however, reserves the right in its absolute and unfettered discretion to reject any Request for Quotation, without the need to have or to give any grounds or reason therefor.

- 4.5 If, however, the Company decides to submit an offer or quotation, it shall send to the Buyer a **Quotation** at the earliest possible time. If the Quotation is found acceptable by the Buyer, it shall confirm the acceptance thereof by sending to the Company a **Nomination** in writing, including in the Nomination any and all additional information which the Company may require in the Quotation.

- 4.6 The Company shall confirm its acceptance of the Nomination at the earliest possible time, by sending to the Buyer an **Order Confirmation** in writing, whereupon an **Agreement** shall be deemed as having been reached and concluded between the Parties.

5. QUALITY & WARRANTY.

- 5.1 The Buyer shall have sole responsibility for the selection of suitable Products to be provided to the Vessel under the Agreement and that such Products are suitable and fit for use by the Vessel. The Buyer further warrants that the Vessel it has nominated to receive the Products is in compliance with all applicable local, national and international laws, conventions, rules, regulations and requirements.
- 5.2 The Products supplied under the Agreement shall conform with the types and specifications stipulated in the Agreement for delivery to the Vessel. **THIS CONSTITUTES THE WHOLE OF THE COMPANY'S OBLIGATIONS WITH RESPECT TO THE QUALITY OF THE PRODUCTS SUPPLIED TO THE VESSEL UNDER THE AGREEMENT. EXCEPT FOR THIS CLAUSE 5.2 THE PRODUCTS ARE SOLD "AS IS", AND THE COMPANY OTHERWISE MAKES NO WARRANTIES OF QUALITY, MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES OR CONDITIONS, WHETHER STATUTORY OR OTHERWISE, ARE EXPRESSLY EXCLUDED AND DISCLAIMED.**

6. SAMPLING AND DETERMINATION OF QUANTITY

When the Delivery is made in bulk, the quantity of Product delivered to the Vessel shall be determined by the Physical Supplier's personnel, using the Physical Supplier's gauges or meters. The Buyer may, at its expense, be present or represented during the Physical Supplier's measurement of the quantity of Product delivered to the Vessel, but the determination of quantity delivered shall be made solely by the Physical Supplier. The Buyer shall be charged /invoiced for Products delivered to its Vessel on the basis of the Physical Supplier's measurements.

7. DELIVERY OF PRODUCTS

- 7.1 The Company shall not be required to deliver Products into any of the Vessel's tanks or other places which are not regularly used for storage of such Products, and shall not be required to deliver any Product for export in respect of which a Government permit or license is required and has not been obtained. The Buyer shall be responsible for obtaining any required government permit or license for the export of the Products. If such a permit or license is not obtained, then the Company and/or Physical Supplier shall be under no obligation to deliver the Products and shall not be responsible for any loss or damage whatsoever resulting from such non-delivery.
- 7.2 The Buyer shall be responsible for ensuring that the Company is kept fully and timely advised in writing as to any amendments to the ETA or ETD of the Vessel, the Point of Delivery and/or the required delivery date and shall liaise fully with the Company and the Physical Supplier to ensure timely Delivery. Deliveries shall be made during Working Days and Working Hours at the Place of Delivery. However, if permitted by the regulations of the Place of Delivery and if requested by the Buyer and agreed to by the Company, Deliveries may be made outside Working Days and/or Working Hours, in which event the Buyer shall pay all overtime and any other Additional whatsoever thereby incurred.
- 7.3 Before commencement of the Delivery of Products in bulk, the Buyer agrees and warrants that: **(a)** the Vessel's scuppers shall be inspected and safely and properly blocked (and shall remain blocked during the delivery operation), which inspection and blocking shall be made by the Vessel's own crew; and **(b)** the Vessel shall ensure that all pipes and manifolds and receiving tanks are completely checked and ready to receive the Products, including but not limited to ensuring proper opening/closing of relevant valves, without any risk for spillages, accidents etc. The Buyer shall notify the Company in writing before the Delivery begins, of the maximum allowable pumping rate and pumping pressure the Vessel can accept. Before the Delivery begins, the Buyer shall also notify the Company / Physical Supplier's personnel of the Vessel's communications and emergency shutdown procedures.
- 7.4 Delivery of Products may be effected in one or more consignments at the Point of Delivery, by such means as the Company shall deem appropriate in the circumstances. In the event of Delivery by barge, the Buyer shall at its own expense provide a clear and safe berth for the barge(s) alongside the Vessel's receiving lines and shall provide all necessary facilities and assistance

- required to effect Delivery. The Buyer agrees to indemnify and hold the Company harmless against any and all claims and expenses in respect of any loss, damage or delay caused by the Vessel to any barge and/or its equipment. The Company shall be under no obligation to make any Delivery where, in the opinion of the Company or the Physical Supplier, a clear and safe berth is not made available.
- 7.5** When the Delivery is made in bulk, the Buyer shall make all connections and disconnections of the delivery hose to the Vessel, unless the custom of the Place of Supply requires otherwise, but in any event it shall be the responsibility of the Buyer to ensure that the connection of the delivery hose to the Vessel has been properly, effectively and safely made. The Buyer shall ensure that the Vessel renders all customary assistance and provides sufficient tank space and equipment for a safe, prompt and full Delivery of the Products. The Buyer is responsible for ensuring that Products are delivered at a safe rate and pressure and that all equipment utilised for that purpose has been duly and properly kept and maintained, tested and inspected and is by all means in a safe and adequate condition and proper working order.
- 7.6** When Delivery is made in bulk, Delivery shall be deemed completed when the Products have passed the flange connecting the Physical Supplier's delivery facilities with the receiving facilities provided by the Buyer. Title to the Products shall pass to the Buyer, and the Company's responsibility for the Products shall cease and the Buyer shall assume all risks and liabilities relating thereto, including loss, damage, deterioration, depreciation, contamination, evaporation or shrinkage of Products and responsibility for loss, damage and any harm caused by pollution or in any other manner to third parties, at the time the Product leaves the Physical Supplier's delivery facilities. The Buyer agrees to indemnify and hold the Company and/or the Physical Supplier harmless, without limitation, in respect of any such liability, claim or demand which might arise after such Delivery has been completed.
- 7.7** Unless otherwise specifically agreed between the Company and the Buyer, the Company shall be under no obligation to deliver Products to the Vessel immediately upon her arrival at the Point of Delivery. The Company shall have no liability or responsibility for any losses, expenses, demurrage, damages or increased costs incurred as a result of any delays in the Delivery of Products to the Vessel arising from conditions, circumstances or causes which are outside the Company's control. Additionally, the Company shall have no liability for any losses, expenses, demurrage, damages or increased costs sustained by the Buyer arising out of delays relating to congestion affecting the Company's and/or the Physical Supplier's facilities.
- 7.8** The Buyer is responsible for ensuring that the Vessel is ready to receive the Products at the Point of Delivery on the date and time stipulated in the Agreement, and confirmed in accordance with the provisions of sub-clause 7.9 of these Terms and Conditions. In the event that the Vessel's arrival at the Point of Delivery is or is likely to be delayed, the Buyer must so advise the Company. The Buyer shall also ensure that the Port Agent at the Place of Supply is similarly informed. At the Buyer's request the Company will use its best endeavours to supply a delayed Vessel on the terms originally agreed, but the Buyer shall be responsible for all additional costs arising from the Vessel's delayed arrival.
- 7.9** The Buyer shall give to the Company not less than **96, 72 and 48 hours advance notice** of the Vessel's arrival at the Point of Delivery. Notice must be given during Office Days and Office Hours. Notice given outside these hours will be deemed to have been given at 09:00 hours on the following Office Day. The Buyer shall instruct the Port Agent at the Place of Supply to liaise with the Company and the Physical Supplier so as to ensure compliance with these provisions.
- 7.10** The Buyer shall promptly take delivery of the Products when tendered and shall promptly withdraw the Vessel from the delivering vessel, vehicle or facility upon completion of Delivery. If the Buyer or the Vessel causes delay in the use of the supplying vessel or supplying vehicle, the Buyer shall be responsible to the Company for any losses, costs, liabilities or any other Additional Expenses which the Company incurs thereby, including but not limited to, demurrage, calculated at the Physical Supplier's prevailing rate.

- 7.11** On completion of Delivery, the Buyer (or his representative) and the Physical Supplier shall together sign a **Delivery Receipt**, as presented by the Physical Supplier. The Buyer and the Physical Supplier shall each retain an original of the Delivery Receipt for their records.
- 7.12** In the case of Products which are to be delivered in drums, pails or other similar means of storage, it is agreed that the Products shall be deemed to have been so delivered when placed at the disposal of the Buyer at the pier or such other place as may have been agreed between the Parties, whereupon the Buyer or his representative shall sign or counter-sign a document provided by the Physical Supplier, acknowledging receipt of the Products, in such form as may be customary or legally required at the Place of Delivery.

8. HEALTH, SAFETY AND ENVIRONMENTAL PROTECTION.

- 8.1** The Buyer represents and warrants that the Vessel will be properly crewed, equipped, managed, maintained and operated, and that her crew will be properly trained and instructed in accordance and in full compliance with all applicable national laws and regulations and international conventions, so as to avoid any leakage, spillage, overflow or discharge of Products (hereinafter referred to as a "**Pollution Event**"). The Vessel shall at all times be in constant communication with the Physical Supplier's delivery personnel during the entire Delivery operation
- 8.2** If a Pollution Event occurs while the Products are being delivered, the Buyer shall promptly take such action as is necessary to immediately stop the discharge and to remove the discharged Products and mitigate the effects of such Pollution Event. Without compromising, eliminating, diminishing or in any way lessening the Buyer's responsibilities under this sub-clause, the Company and/or the Physical Supplier is hereby authorised in its full discretion, but at the expense of the Buyer, to take such measures and incur such expenses (whether by employing its own resources or by contracting with others) as are necessary in the judgment of the Company and/or the Physical Supplier to remove the discharged Products and mitigate the effects of such Pollution Event. The Buyer and the Vessel shall fully cooperate and render such assistance as is required by the Company and/or the Physical Supplier in the course of these actions. All expenses, claims, costs, losses, damages, liability and penalties arising from a Pollution Event shall be borne by the Party that caused the Pollution Event by a negligent act or omission. If both parties have acted negligently, all expenses, claims, losses, damages, liability and penalties, shall be divided between the Parties in accordance with the respective degree of negligence. The burden of proof to show the Company and/or the Physical Supplier's negligence shall be on the Buyer. The Buyer shall provide the Company all documents and other information concerning any Pollution Event or any programme for the prevention thereof that is required by the Company and/or the Physical Supplier, or may be required by any law or regulation applicable at the time and Place of Supply.

9. LIEN

The sale of Products and their Delivery to the Vessel shall be made not only on the Buyer's credit and promise to pay for the said Products but also on the financial credit of the Vessel. The Buyer represents and warrants that it has the requisite authority to procure the Products that shall be delivered to the Vessel under this Agreement, on the Vessel's credit, thereby giving the Company a maritime lien against the Vessel. The Buyer further warrants that the Company has the right to assert and enforce a lien against the Vessel or any sister or associated vessel for the Price plus, without limitation, accrued interests and any other costs and expenses related to the enforcement of the lien. The Buyer expressly warrants that he has the authority of the Vessel's owner to pledge the Vessel's credit as aforesaid. The Vessel is ultimately responsible for the debt incurred through the Agreement.

10. PRICE OF PRODUCTS

- 10.1** Quotations are based on the spot price of Products at the Place of Supply and at the time of Delivery plus any applicable taxes, duties, Value Added Tax (VAT), charges and any other costs and expenses existing or applicable at the time when the Agreement is concluded. Any subsequent change or increase in any applicable taxes, duties, charges and any other costs and expenses whatsoever and any additional costs and expenses borne by the Company as a consequence of

having to change the Physical Supplier after the conclusion of the Agreement, shall be added to the Price. The Company shall give notice to the Buyer as to any such circumstances within a reasonable time after it becomes aware of the existence thereof. Unless otherwise agreed, if the Delivery occurs after the end of the Effective Pricing Period, the Price quoted in the Agreement will be subject to change at the Company's sole option.

10.2 Unless otherwise agreed, the Price shall be calculated and payable in dollars, lawful currency of the United States of America. The Buyer shall pay any and all Additional Costs which are incidental to and incurred as part of the sale and Delivery of Products under the Agreement, which are or should be for the account and expense of the Buyer, including, but not limited to, agency fees; wharfage, berthing and other port fees, costs or expenses; clean-up costs; overtime; pilotage; calling costs and expenses; barging; overtime and demurrage.

10.3 **Unless otherwise agreed between the parties and expressly set out in the Order Confirmation:**

(a) Payment of the Price shall be made in full before commencement of Delivery, in United States' dollars, to the bank account designated by the Company, in readily available funds, free and clear of any banking charges or any other deductions whatsoever.

(b) Timely payment of the Price shall be deemed as being of the essence of the Agreement. Any delay in payment of any amount due to the Company for whatever reason under the Agreement, shall entitle the Company, without prejudice to any other rights or remedies which the Company may have under the Agreement, to charge interests over the outstanding amount per day of delay, beginning on the day after payment was due under paragraph (a) above, at a rate equal to LIBOR plus an additional three percentage points (3%). Fractions of a day shall count as one day.

(c) If at any time the reputation, standing, creditworthiness, liquidity or solvency of the Buyer or any subsidiary, parent, associate or affiliate thereof should give the Company reasonable cause for concern, the Company, without prejudice to all other rights and remedies available to it under these Terms & Conditions may, by giving written notice to the Buyer, withdraw, terminate or suspend, as the case may be, any credit or special payment terms granted to the Buyer and all sums outstanding shall thereupon fall due for immediate payment.

(d) The Buyer expressly agrees and acknowledges that all payments to be made or credited by it under or in connection with the Agreement, shall be calculated without reference to any set-off, claim or counterclaim whatsoever, and shall be made free and clear of and without any deduction for or on account of any set-off, claim or counterclaim whatsoever.

11. CLAIMS

11.1 Any and all claims in connection with the **quantity of Products** delivered must be notified by the Buyer or the Master of the Vessel to the Company and the Physical Supplier, immediately after completion of Delivery in the form of a letter of protest. If the Buyer or the Vessel's Master fails to present such immediate letter of protest to the Company or the Physical Supplier, such claim shall be deemed to have been waived and shall be absolutely barred for all purposes whatsoever. Additionally, any short-delivery claim must be presented to the Company, in writing and accompanied by supporting documentation, within **15 (fifteen) calendar days** after the completion of Delivery, or be deemed waived and forever barred. Furthermore, any eventual statements or remarks made by the Buyer or the Master on the Delivery Receipt, including a "No Lien" stamp or similar declaration, shall have no effect or value whatsoever.

11.2 Any and all claims concerning the **quality of the Products** delivered shall be submitted to the Company in writing, within **30 (thirty) calendar days** after Delivery, with a clear statement as to the nature or the claim(s) together with sufficient supporting documentation, failing which any rights to complain or to claim compensation of whatever nature shall be deemed to have been waived and absolutely barred for all purposes.

- 11.3** If the Buyer submits a claim against the Company with respect to the quality or quantity of the Products supplied, the Company or the Company's nominated representative shall be entitled to board the Vessel with reasonable notice and investigate the Vessel's records, log books, engine logs, etc., and to make copies of any such document which the Company or the Company's nominated representative may consider necessary to assess the merits of the claim, and the Buyer shall instruct (or where the Buyer has chartered the Vessel request the Owner to instruct) the Master, officers and crew of the Vessel to provide full assistance and support in any such manner as the Company or the Company's nominated representative may require. Failure to allow boarding and/or to produce the required copies of documents and/or lack of full cooperation by the Vessel's Master, officers and crew shall constitute a waiver of the Buyer's claim.
- 11.4** In each and every case, any and all claims of the Buyer shall be time-barred unless arbitration proceedings have been commenced against the Company in accordance with clause 19 hereof, and notice of same legally served, within **12 (twelve) months** from the date of Delivery of the Products.
- 11.5** The Company shall not be responsible for any claim arising out of circumstances where the Buyer has commingled the Products delivered under the Agreement with any other Lubricants and/or other similar products stored on board the Vessel.

12. BREACH OF THE AGREEMENT AND INDEMNITY

- 12.1** The Company may terminate the Agreement at any time, in whole or in part, at its own discretion, upon the Buyer's breach of any provision of the Agreement, or if the Buyer makes an assignment for the benefit of its creditors or if bankruptcy proceedings are commenced by or against the Buyer.
- 12.2** The Buyer shall indemnify the Company and/or the Physical Supplier against and defend and hold them harmless from all claims, suits or actions, losses, liabilities (whether civil or criminal), costs, controls, restrictions, charges, fees (including, without limitation, legal and accountancy fees and disbursements), expenses, payments, penalties, fines, general and/or liquidated damages, or other sanctions of a monetary nature whatsoever suffered or incurred by the Company and/or the Physical Supplier and arising directly or indirectly in any manner out of any act, omission or default by the Buyer in the performance of any of the obligations assumed by it in the Agreement or any other acts, omissions or defaults on the part of the Buyer or on the part of any of the persons for whom the Buyer is responsible, including, but not limited to, its servants and employees, the Master, officers or crew of the Vessel, or the Buyer's agents, brokers or representatives, and the Buyer shall indemnify the Company and/or the Physical Supplier against and defend and hold them harmless from all losses, liabilities (whether civil or criminal), costs, controls, restrictions, charges, fees (including, without limitation, legal and accountancy fees and disbursements), expenses, payments, penalties, fines, general and/or liquidated damages, or other sanctions of a monetary nature whatsoever suffered or incurred by the Company and/or the Physical Supplier and arising directly or indirectly in any manner out of any such acts, omissions or defaults.
- 12.3** Any act, omission or default which, if it were an act, omission or default of the Buyer, would be a breach of the Agreement on its part shall be deemed to be such an act, omission or default for which the Buyer is responsible if done, omitted or committed by any person, entity, firm or company who controls, is under common control with, or is controlled by the Buyer.

13. DELAYS AND CANCELLATION.

- 13.1** Notwithstanding anything else to the contrary herein and without prejudice to any other rights or remedies otherwise available to the Company hereunder, the Buyer expressly agrees that the Company shall have the right, at its sole discretion, to cancel the Agreement, or to adjust the Price in accordance with Clause 10 of these Terms and Conditions, in the event that the Vessel is suffering (or is expected to suffer) a delay exceeding 48 hours from the estimated date of Delivery of the Products, as set out in the Buyer's Request for Quotation and incorporated in the Agreement.
- 13.2** If the Buyer for whatever reason (including circumstances entirely outside the Buyer's control)

cancels the Agreement after an Order Confirmation has been sent by the Company, the Buyer shall be liable for any and all losses suffered and liabilities incurred by the Company and/or the Physical Supplier as a result of the cancellation;

14. LIABILITY OF THE COMPANY AND COMPENSATION.

14.1 The Company and/or the Physical Supplier shall not be liable to the Buyer for any loss or damage of whatsoever nature and howsoever occurring out of or in connection with the performance or non-performance of the Agreement or for any other reason, cause or circumstance whatsoever, whether in contract, tort or otherwise, including, but not limited to, loss of prospective profit, loss of profit, loss of time, loss of hire, demurrage, delay damages, anticipated cost savings, loss of contracts or any other indirect, special, incidental, consequential, punitive or exemplary damages of any kind whatsoever, even if caused by or attributable to the negligence of the Company, the Physical Supplier or their respective employees, agents, servants or sub-contractors.

14.2 If, notwithstanding the foregoing, the Company and/or the Physical Supplier is nevertheless found to be liable to the Buyer, the total amount payable by way of compensation, other than in respect or death or personal injury, shall not exceed the Price charged for the Products supplied to the Buyer under the Agreement; provided, however, that it shall be a pre-condition for the payment of any such compensation by the Company, that all sums due to or otherwise payable to the Company from the Buyer are fully paid and settled before payment of any such compensation.

15. FORCE MAJEURE.

15.1 The Buyer shall not be liable for any failure to fulfil any term or condition of the Agreement if fulfilment has been delayed by an event of **Force Majeure**. Nothing in this provision, however, shall be deemed to excuse the Buyer from its obligation to make payments for Products delivered to the Vessel.

15.2 The Company shall not be liable for any failure to fulfil any term or conditions of the Agreement if fulfilment has been delayed, hindered or prevented or made substantially more expensive by any circumstances whatsoever which are not within the control of the Company and/or the Physical Supplier (whether foreseeable or not) including, but without limiting the generality of the foregoing, any fire, explosion, mechanical breakdown, flood, storms, earthquakes, tidal waves, acts of God, war, military operations, national emergency, civil commotion, strike, lockout or labor dispute, any governmental order, request or restriction, any limitation, restriction or interruption to the Company's or the Physical Supplier's existing or contemplated sources of supply of Products or the means of supply, delivery or transportation thereof, plant shutdowns, and any compliance with any law, regulation or ordinance, or with any order, demand or request of any international, national, port or local authority or agency.

16. BUYER'S INSURANCE.

16.1 The Buyer shall be fully and exclusively responsible for effecting and maintaining in force adequate insurance which fully protects the Buyer, the Company, the Physical Supplier and any third parties from all risks, hazards and perils associated with or arising out from the Agreement and the Delivery of Marine Lubricants and/or other similar products.

16.2 Insurance deductibles, if any, shall be for the exclusive cost and account of the Buyer.

17. ASSIGNMENT.

The Buyer shall not assign or transfer or purport to assign or transfer any of its rights or obligations under the Agreement, unless with the prior written consent of the Company. The Company, however, may at any time in its unfettered discretion assign the Agreement to any third party, without limitation, restriction or condition whatsoever.

18. GENERAL MATTERS.

18.1 In these Terms & Conditions, a reference to:

(a) a person includes a reference to (i) any individual, firm, body corporate, unincorporated

association, partnership, state or agency thereof and (ii) that person's legal personal representatives, successors and permitted assigns; and

- (b) a clause or sub-clause, unless the context otherwise requires, is a reference to a clause or sub-clause of these Terms & Conditions.

Words importing the plural shall include the singular and vice versa.

- 18.2** The Company shall be entitled, in its unfettered discretion, to amend these Terms & Conditions in any manner and at any time as it deems fit. Any amendments to these Terms & Conditions shall be notified by the Company to the Buyer before concluding any Agreement.
- 18.3** No failure or delay on the part of the Company in exercising any right, power or remedy under these Terms & Conditions and/or any Agreement shall operate as a waiver thereof or a waiver of any other rights, powers or remedies nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise of any such right, power or remedy or the exercise of any other right, power or remedy. No waiver by the Company shall be effective unless it is given in writing.
- 18.4** The rights, defenses, powers and remedies conferred on the Company by these Terms & Conditions or any Agreement are cumulative, may be exercised as often as the Company thinks fit and are in addition to (and are not exclusive of) any rights, defenses, powers or remedies provided by law, all of which are expressly reserved by the Company.
- 18.5** If at any time any provision of these Terms & Conditions is declared invalid or unenforceable in any respect under the laws of any jurisdiction, or any indication to that effect is received by the Company and/or the Buyer from any competent authority, the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties or, at the discretion of the Company, such provision may be severed from these Terms & Conditions.
- 18.6** Where any matter requires the acceptance, confirmation, instruction, approval or consent of the Company such acceptance, confirmation, approval or consent shall not be deemed to have been given unless given in writing by a duly authorised representative of the Company. The Company may give or withhold any acceptance, confirmation, approval, instruction or consent in its unfettered discretion.

19 **LAW & JURISDICTION**

- 19.1** These Terms & Conditions and any Agreement made between the Company and the Buyer, shall be governed by the laws of the **Republic of Chile**.
- 19.2** Subject to sub-clause 19.3 hereof, any and all disputes which may arise under or in connection with these Terms & Conditions and/or any Agreement relating hereto or for any other reason whatsoever, shall be submitted to **arbitration in the city of Valparaiso, Chile** in accordance with article 1203 of the Chilean Code of Commerce. The arbitrator shall be especially empowered to resolve any matter relating to his/her competence and/or jurisdiction.
- 19.3** Without prejudice to the Company's arbitration rights and the mandatory selection of a Chilean arbitral forum for the resolution of any and all disputes arising out of the Agreement, the Company expressly reserves its right to obtain security for its claims against the Buyer by commencing its arbitration proceeding by arresting, seizing or attaching the Vessel or other property owned by the Buyer in any jurisdiction where the Vessel or such property may be found.

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