

**SPRAGUE ENERGY CORP.  
MARINE FUELS SUPPLY  
GENERAL TERMS AND CONDITIONS  
EFFECTIVE APRIL 1, 2007**

Terms and conditions whereunder Sprague Energy Corp. (the "Seller") agrees to sell and deliver, or to arrange for the sale and delivery of, Marine Fuels.

Unless otherwise agreed in writing between the Seller and the Buyer, these terms and conditions, as amended from time to time, which supercede any earlier terms and conditions issued by the Seller, shall override any terms and conditions stipulated, incorporated or referred to by the Buyer whether in its order, stamping of documentation or elsewhere.

**PART A**

**1. Definitions.**

Unless the context otherwise demands:

"Bunkering Commitment" means the contract of sale on the terms hereof between the Buyer and the Seller for the delivery in question.

"Buyer" means the party requesting the Seller either to sell and deliver to it, or to arrange for the sale and delivery to it of, Marine Fuels.

"Commitment" means a Bunkering Commitment or any other commitment governed by these terms and conditions. For the avoidance of doubt, each of a Floating Price Term Deal and a Fixed Price Term Deal is a Commitment.

"Delivery Port" means the port or place at which Marine Fuels are delivered under a Commitment.

"Equipment" means the Buyer's equipment at the Delivery Port.

"Floating Price Term Deal" means any deal with a fixed term, fixed volumes and a floating formulated price.

"Fixed Price Term Deal" means any of marine fuel oil, thin fuel oil, marine diesel fuel and gas oil.

"Pre-delivery Check List" means the check list prepared by the Seller and signed by or on behalf of the Seller and the Buyer to confirm agreement on the conditions and procedures under which physical delivery of the Marine Fuels shall take place.

"Spot Sale" means a one-off transaction for a defined volume of Marine Fuels to be delivered at an agreed location on an agreed date for an agreed price.

**2. Charges.**

In addition to the prices payable for Marine Fuels, the Buyer shall pay the following charges:

- (a) Any expenses incurred as a result of the Master of the vessel rejecting the whole or any part of the delivery under a Commitment;
- (b) Any mooring or unmooring charges or port dues which may be incurred by the Seller in connection with any vessel to which Marine Fuels are delivered hereunder;

- (c) Any duties, taxes (other than taxes on profits), impositions, charges, freights, premiums, or other costs incurred by the Seller, or for which the Seller is accountable, in respect of deliveries of Marine Fuels under a Commitment;
- (d) If the Seller (not having duty-free stocks available, and the Buyer first having been advised that this is the case) delivers to the Buyer from duty paid stocks, the amount of such duty;
- (e) Any additional costs incurred by the Seller in respect of deliveries made under a Commitment including payments for overtime.

### 3. Invoices.

3.1 Subject to Section 4.2, the Seller shall invoice the Buyer in US dollars.

### 4. Payment.

4.1 All money owed by the Buyer under a Commitment shall be paid to the Seller in the manner set out herein.

4.2 Payment by the Buyer shall be due in US Dollars according to the Seller's invoices, and without any discount, withholding, offset or allowance and shall be made by means of electronic wire transfer to the bank account stated on the invoice, such that funds are received into such account by the due date stated on the relevant invoice. The Seller reserves the right to charge interest and delivery costs on any amounts not paid by such date at the maximum rate allowable under applicable law.

4.3 Payments hereunder shall be due as set forth in the Commitment.

4.4 Delivery documents may be provided to the Buyer if requested, but payment shall not be conditional upon the Buyer's receipt of such documents.

4.5 The Buyer will execute any documentation required by the Seller in order to allow for an electronic wire payment to be made to the bank account specified on the Seller's invoice.

### 5. Credit.

5.1 If Marine Fuels are supplied or to be supplied under a Commitment on credit and if the financial condition of the Buyer becomes in the opinion of the Seller impaired or unsatisfactory, the Seller may demand that payment be made at any time before the date due for payment whether before or after delivery of the Marine Fuels or may demand the giving of such security as it may specify.

5.2 Marine Fuels are supplied under a Commitment on the faith and credit of the vessel to which they are supplied as well as on the faith and credit of the Buyer and its agents. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien attaching to a vessel.

5.3 If at any time the Buyer has exceeded any credit limit as set by the Seller, the Seller shall, in addition to any other remedy, be entitled to suspend deliveries under (in so far as they have not already taken place) or terminate the Commitment concerned. If at any time the Buyer has failed to make any payment or give any security required (whether in terms of this section or not), the Seller shall, in addition to any other remedy, be entitled to suspend deliveries (insofar as they have not already taken place) under or terminate the Commitment concerned and to assert all their rights against the vessel. The Seller may also procure that any other Commitment between the Buyer and any Delivering Company or the Seller be suspended or terminated. In the event of such suspension or termination the Buyer shall have no recourse against the Seller or any Delivering Company concerned.

## 6. Delivery and Health, Safety and Environmental Requirements.

6.1 Where such option is available at the Delivery Port, deliveries hereunder shall be made ex-wharf or ex-lighter in accordance with instructions given by the Buyer or its accredited representative or the Master of the vessel if agreed before commencement of delivery by the Seller.

6.2 Delivery shall be made during the Seller's normal working hours unless required at other times and permitted by port regulations, in which event the Buyer shall reimburse the Seller for all additional expenses incurred by the Seller.

6.3 The vessel will be bunkered as promptly as circumstances permit, but the Seller shall not be liable for any loss, expense, damage, delay or demurrage whatsoever which may be suffered by the Buyer as a result of any delay arising from congestion affecting the Seller's facilities, howsoever caused.

6.4 In any case where delivery is ex-lighter, the Buyer shall provide free of cost to the Seller a clear and safe berth for the lighter(s) alongside the vessel's receiving lines and the assistance of qualified staff to secure the lighter(s) moorings. The receiving vessel should provide a safe access to the lighter. This safe access means the use of the accommodation ladder. If the position of the lighter does not fit with the position of the accommodation ladder a pilot ladder should be rigged up. The receiving vessel is responsible for a safe access to and from the lighter. Vessels, including tankers, will be bunkered in turn as promptly as circumstances permit but the Seller shall not be liable for demurrage or for any loss, expense, damage or delay due to congestion at the terminal or to prior commitments of available barges, or when in the Seller's opinion clear and safe berth or the assistance of qualified staff to secure moorings is unavailable.

6.5 (a) The Seller shall not be required to deliver into any of the vessel's tanks Marine Fuels for the export of which a Government permit is required and has not been obtained by the Buyer or the Buyer's accredited representative.

(b) Unless otherwise agreed the Buyer shall not be entitled to receive Marine Fuels other than into tanks usually used as the fuel bunkers of the vessel to which the delivery is to be made.

6.6 If in the course of any delivery under a Commitment there is any escape or spillage of Marine Fuels:

(a) The Buyer agrees that, if a Pollution Event occurs before, during or after delivery of the Marine Fuels, the Seller may at its sole discretion take reasonable steps to control and terminate the Pollution Event, contain and remove the escaped Marine Fuels and clean the affected area. The Buyer must afford the Seller its reasonable co-operation in implementing steps under this section. If the Pollution Event is caused by an act or omission of the Buyer, its servants or agents (other than the Seller), the Buyer must indemnify the Seller for the cost of any steps taken under this section 6.6(a). In this section 6.6(a), "Pollution Event" means any occurrence as a result of which the Marine Fuels escaped onto or into land or water.

(b) The Buyer shall supply the Seller with any documents and information concerning the Pollution Event or any programs for the prevention thereof as are requested by the Seller or are required by law or regulations applicable at the Delivery Port.

6.7 The Buyer shall be fully responsible for the proper use, maintenance and repair of the Equipment. The Buyer will immediately inform the Seller of any defects, ruptures, spills or other problems with or related to the Equipment which occurs during the delivery process.

6.8 The Buyer will provide ready and safe means of access to the Equipment for delivery of the Marine Fuels at the Delivery Port and shall not obstruct access to the Equipment for delivery. Delivery will not commence until such time as

the pre-delivery checklist has been jointly and satisfactorily completed and signed by or on behalf of both the Seller and the Buyer.

6.9 The Seller and the Buyer represent to each other that they are in compliance with all applicable laws and government regulations with respect to the environment and that they have policies of environmental responsibility in place concerning their respective Marine Fuels processes.

7. **Documents.** On completion of the delivery of Marine Fuels to a vessel under a Commitment, the Master of the vessel or the Buyer's accredited representative shall give the Seller a signed receipt in a form required by the Seller of which two (2) copies shall be retained by the Master or such representative.

8. **Risk and Title.**

8.1 Except as may be otherwise agreed as regarding deliveries at any particular Delivery Port, delivery of Marine Fuels shall be deemed to be completed and title and risk shall pass from the Seller to the Buyer as the Marine Fuels pass the flange connecting the delivery facilities provided by the Seller with the receiving facilities provided by the Buyer.

8.2 The responsibility for connecting the delivery facilities provided by the Seller to the receiving facilities provided by the Buyer shall be in accordance with the custom of the Delivery Port.

9. **Quality.** The Marine Fuels to be supplied hereunder shall conform to ISO 8217/2005 for the relevant grade or product being delivered unless otherwise agreed between Seller and Buyer. This section constitutes the whole of the Seller's obligations with respect to the quality of the Marine Fuels to be supplied and (save to the extent that exclusion thereof is not permitted or is ineffective by operation of law) all statutory or other conditions and/or warranties, express or implied, with respect to the description or quality of the Marine Fuel or its fitness for any purpose are hereby excluded.

10. **Measurement and Samples/Quantity and Quality Claims.**

10.1 The quantities of Marine Fuels delivered shall be measured and calculated in accordance with the ASTM – IP Petroleum Measurement Tables or the methods of any other recognized standards authority at the discretion of the Seller.

10.2 Absent manifest error the Seller's weights and measurements shall be presumed to correctly reflect the quantities delivered. However, without prejudice to such presumption the Buyer or Buyer's accredited representative shall be at liberty to witness and check such weights and measurements.

10.3 The Seller shall take one primary sample of each grade of Marine Fuels delivered from which four representative samples shall be taken by the Seller. The Buyer or Buyer's accredited representative shall be at liberty to witness the sampling. Three of these samples are taken for quality purposes ("quality samples"). The fourth sample is known as the MARPOL Control Sample. One sealed quality sample and the MARPOL Control Sample shall be handed to the Master of the vessel receiving the Marine Fuels and the other two quality samples retained by the Seller for a thirty (30) day period or the minimum period allowable under applicable law, whichever is the longer, from the date of delivery in a safe place where they will not deteriorate. At the end of the said period the remaining quality samples may be discarded unless the Buyer has made a complaint or claim under section 10.4 within the said period, in which case one of the samples shall be retained by the Seller for its own use and the other sample shall be retained by the Seller for analysis by the expert referred to in section 10.5.

10.4 Any complaint or claim on the part of the Buyer with regard to the quality or quantity of the Marine Fuels delivered under a Commitment must be made to the Seller as soon as possible and in any event within 30 days after the date of delivery, in default of which the Buyer shall be deemed to have waived all complaints or claims in relation to the quality of the Marine Fuels so delivered.

10.5 Any dispute as to quantity or quality of Marine Fuels delivered under a Commitment shall, save for in instances of manifest error or fraud, be determined finally and conclusively by an expert appointed jointly by the Buyer and the Seller or, if they cannot agree to such an appointment, then the parties will be free to pursue such legal remedies as are permitted herein. In the case of quality disputes, the expert shall be requested to analyze one or more of the quality samples taken in accordance with section 10.3 above and where possible, base his or her decision upon the results thereof.

**11. Restrictions.** To the extent that Marine Fuel is sold or to be sold to the Buyer on a duty or tax exempt basis, Buyer shall comply with all local requirements and shall execute all such documents necessary to permit the sale on such basis, including any declarations on use of the Marine Fuel. To the extent that a claim is made by any authorities against the Seller on the basis that such Marine Fuel was liable for duty or taxes and such claim arose partly or wholly due to the action, omission or fault of the Buyer (including any use of the Marine Fuel in domestic waters), then the Buyer shall indemnify Seller against any claims, losses, costs (including costs as between Attorney or Solicitor and Client), damages, liabilities, fines, penalties and expenses attributable to such action, omission or fault of the Buyer.

**12. Indemnity/Liability.**

12.1 The Buyer will indemnify the Seller against any claims, losses, costs (including costs as between Attorney or Solicitor and Client), damages, liabilities, fines, penalties and expenses incurred or sustained arising out of or in connection with any Commitment except to the extent that such claims, losses, costs, damages, liabilities and expenses arise through the negligent act or omission of the Seller.

12.2 The Seller shall not have any liability to the Buyer under or in connection with any Commitment for:

- (a) loss of actual or anticipated profit;
- (b) losses caused by business interruption;
- (c) loss of goodwill or reputation; or
- (d) any indirect, special or consequential cost, expense, loss or damage, even if such cost, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by the Seller and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise.

12.3 Without prejudice to the above provisions, the Seller's maximum aggregate liability to the Buyer under or in connection with any delivery howsoever arising shall not exceed in aggregate the price payable by the Buyer for such delivery.

**13. Agents.** If the Commitment is made by an agent acting for or on behalf of the Buyer, whether such agency is disclosed or undisclosed, then such agent shall be liable (as well as the Buyer) not only as agent but as principal for the performance of all the obligations of the Buyer.

**14. Termination.**

14.1 Without prejudice to any other rights and remedies, the Seller may by notice to the Buyer terminate any Commitment with immediate effect if:

- (a) the Buyer is in breach of any of its obligations under any Commitment and fails to remedy such breach within thirty (30) days after written notice of the existence of such breach;

- (b) there is a Change of Control of the Buyer;
- (c) the Buyer should go into liquidation or should do or suffer any similar act or thing under any applicable law, such as (a) the making of a general assignment for the benefit of creditors by the Buyer; or (b) the entering into of any arrangement or composition with creditors (other than for the purposes of a solvent reconstruction or amalgamation); or (c) the institution by the Buyer of proceedings seeking to adjudicate the Buyer as bankrupt or insolvent; or seeking protection or relief from creditors, or seeking liquidation, winding up, or rearrangement, reorganization or adjustment of the Buyer or its debts (other than for purposes of a solvent reconstruction or amalgamation), or seeking the entry of an order for the appointment of an administrator, a receiver, trustee or other similar official for the Buyer or for all or a substantial part of the Buyer's assets; or (d) the institution of any proceeding of the type described in (c) above against the Buyer; or
- (d) anything analogous to any of the events described in paragraph (c) happens to or in relation to the Buyer in any jurisdiction.

14.2 Subject to section 14.3, a Change of Control shall occur for the purposes of these terms and conditions where:

- (a) a person acquires Control of the Buyer where no person previously had Control of the Buyer; or
- (b) the ultimate parent company of the Buyer ceases to have Control of the Buyer; or
- (c) a person acquires Control of the ultimate parent company of the Buyer; or
- (d) a person who is not under the Control of the ultimate parent company of the Buyer acquires Control of the Buyer.

14.3 For the purposes of these terms and conditions, Control means, in relation to any company, having legal and beneficial ownership of not less than fifty (50%) per cent of the voting rights attached to the issued share capital of that company.

14.4 On termination of any Commitment all sums owed to the Seller shall become immediately due and payable.

14.5 Without prejudice to any other rights or remedies, Seller may suspend deliveries or vary the stipulated method of payment with immediate effect if the Buyer is in breach of any of its obligations under any Commitment.

## 15. Exceptions.

15.1 Neither the Seller nor the Buyer shall be responsible for any failure to fulfill their respective obligations under any Commitment (other than the payment of money) if fulfillment has been delayed, hindered, interfered with, curtailed or prevented:

- (a) by any circumstance whatsoever which is not within the control of the Seller or of the Buyer as the case may be; or
- (b) by any curtailment, failure or cessation of supplies of Marine Fuels from any of the Seller's sources of supply (whether in fact sources of supply for the purposes of any Commitment or not) provided that such curtailment, failure or cessation is related to a circumstance which is outside the control of the Seller; or
- (c) by any compliance with any law, regulation or ordinance, or with any order, demand or request of any international, national, port, transportation, local or other authority or agency or of any body or person purporting to be or to act for such authority or agency or any corporation directly or indirectly controlled by any of them.

Any such event or circumstance being an "Event of Force Majeure" for the purposes of these terms and conditions.

15.2 The performance of any obligation, whether arising out of any contract, arrangement or otherwise, by which any authority, agency, body or person is entitled to require and does require any Marine Fuels by way of royalty in kind shall be deemed to constitute a compliance with an order or request as provided in section 15.1(c).

15.3 If by reason of any of the causes referred to in section 15.1 above, either the availability from any of the Seller's sources of supply of Marine Fuels, whether deliverable under any Commitment or not, or the normal means of transport of such Marine Fuels is delayed, hindered, interfered with, curtailed or prevented, then the Seller shall be at liberty to withhold, reduce or suspend deliveries under any Commitment to such extent as the Seller may in its absolute discretion think fit and the Seller shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers. Any additional quantities which the Seller does acquire from other suppliers or from alternative sources may be used by the Seller at its complete discretion and need not be taken into account by the Seller for the purpose of determining the extent to which it is to withhold, reduce or suspend deliveries under any Commitment. The Buyer shall be free to purchase from other suppliers any deficiencies of deliveries of Marine Fuel caused by the operation of this section but the Seller shall not be responsible for any additional cost thereby incurred by the Buyer.

15.4 The Seller reserves the right to increase the price charged for any Marine Fuel (whether the price was originally determined by reference to the Seller's prices or separately agreed in writing) if there is any increase in the costs incurred or to be incurred by the Seller in making the relevant supply due to factors which are beyond the control of the Seller. These factors include without limitation any increased taxes, duties, the making of any law, order, by-law or other regulation, the occurrence of any currency fluctuation affecting the cost of any imported items.

15.5 No curtailment or suspension of deliveries, or acceptance of deliveries, pursuant hereto shall operate to extend the term of any Commitment or to terminate any Commitment, unless such curtailment or suspension lasts for a continuous period of thirty (30) days, in which case either party shall be entitled to terminate any Commitment forthwith on written notice to the other party. Neither the Buyer nor the Seller shall be liable for any damage, loss, expense, claim or costs, incurred by the other party as a result of such termination. Such termination shall be without prejudice to any right, obligation or liability which has accrued prior to the effective date of such termination. Shipments of Marine Fuels of any portion thereof, the delivery or acceptance of which has been prevented by any of the causes referred to in section 15.1, shall be deducted from the amount required to be delivered and received hereunder unless otherwise agreed. Performance under any Commitment shall resume to the extent made possible by the end or amelioration of the cause(s) referred to in section 15.1.

## **16. New and Changed Regulations.**

16.1 It is understood by the parties that the parties are entering into a Commitment in reliance on the laws, rules, regulations, decrees, agreements, concessions and arrangements (hereinafter called "Regulations") in effect on the date hereof with governments, government instrumentalities or public authorities affecting the Marine Fuels sold hereunder including, but without limitation to the generality of the foregoing, those relating to the production, acquisition, gathering, manufacturing, transportation, storage, trading or delivery thereof, insofar as such Regulations affect the Seller.

16.2 In the event that at any time and from time to time during the term of a Commitment any Regulations are changed or new Regulations 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 therefore, and the effect of such changed or new Regulations (a) is not covered by any other provision of these terms and conditions, and (b) has a material adverse effect upon either the Seller or the Buyer, then the Seller or the Buyer (as the case may be), shall have the option to request renegotiations of the prices or other pertinent terms provided for in these terms and conditions. Said option may be exercised by the relevant party at any time after such changed or new Regulation is promulgated, by written

notice of desire to renegotiate, such notice to contain the new prices or terms desired by that party. If the parties do not agree upon new prices or terms within thirty (30) days after the relevant party has given such notice, the relevant party shall have the right to terminate any Commitment at the end of the said thirty (30) day period. Any Marine Fuels lifted during such thirty (30) day period shall be sold and purchased at the price and on the terms applying hereunder without any adjustment in respect of the new or changed Regulations concerned.

## 17. Notices.

17.1 Except where expressly stated otherwise, a notice, demand, request, statement, or other communication under or in connection with a Commitment shall only be effective if it is in writing. Faxes and email are permitted provided however that any notice of breach sent by email must be followed by a fax or letter.

17.2 Notices, demands, requests, statements or other communications under or in connection with a Commitment shall be sent to a party at the addresses or numbers specified from time to time by the party to whom the notice is addressed.

17.3 Any notice given under or in connection with a Commitment shall be effective only upon actual receipt at the address specified as per section 17.2.

17.4 Any notice given under or in connection with a Commitment outside working hours in the place to which it is addressed shall be deemed not to have been given until the start of the next period of working hours in such place.

17.5 No notice given under or in connection with a Commitment may be withdraw or revoked except by notice given in accordance with this section.

17.6 Where a Commitment is made by an agent acting for the Buyer then notice may be given either to the agent or to the Buyer at the option of the Seller.

18. **Waiver.** The failure of either of the parties to enforce any of the provisions of any Commitment at any time shall not be construed as a waiver of that provision unless specifically so notified by that party in writing which expressly states it is a waiver. No waiver of any breach of a Commitment shall be held to be a waiver of any other breach or a continuing waiver of any further breach of a Commitment.

19. **Severability.** The validity of the provisions of a Commitment shall not be affected if any particular provision or provisions of a Commitment is or are declared illegal, unenforceable, or contrary to law or public policy. If as a result of a specified declaration any of the rights or obligations of a party are materially affected, then the parties shall meet and negotiate in good faith in order to arrive at an amendment of the provision(s) of a Commitment so affected, in such manner as will most closely and accurately reflect the intents and purposes of a Commitment.

## 20. Succession.

20.1 Any Commitment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. The Buyer shall not assign all or any part of the benefit of, or any rights or benefits under, any Commitment without the prior written consent of the Seller, which consent shall not be unnecessarily or unreasonably withheld or denied.

20.2 The Seller may at any time assign all or any part of the benefit of, or its rights and benefits under, any Commitment. The Seller may at any time sub-contract or enter into any arrangement whereby another person is to perform any or all of its obligations under any Commitment.

## 21. Language.

21.1 Each notice, demand, request, statement, or other communication under or in connection with a Commitment shall be:

- (a) in English; or
- (b) if not in English, accompanied by an English translation made by a translator, and certified by an officer of the party giving the notice to be accurate.

21.2 The receiving party shall be entitled to assume the accuracy of and rely upon any English translation of any document provided pursuant to sub-section 22.1(b).

22. **No Partnership** Nothing in a Commitment and no action taken by the parties under a Commitment shall constitute a partnership, association, joint venture or other co-operative entity between any of the parties.

## 23. Information.

23.1 Data supplied, whether personal or otherwise, by a Buyer and/or which relates to a Buyer's account will be held and processed by computer or otherwise by the Seller to operate the Buyer's account(s); to confirm, update and enhance the Seller's customer records; for statistical analysis; to establish any identity or otherwise as required under applicable legislation; to assess each Buyer's credit status on an ongoing basis; and otherwise as considered necessary or appropriate by the Seller. In each case the processing may continue after the Commitment has ended. Alternatively, the Buyer may be requested to complete or fulfill other checks as may be necessary to satisfy credit assessments, money laundering or fraud detection requirements.

23.2 The Seller may disclose data relating to the Buyer and/or a Buyer's account(s) (a) to a credit reference agency where it may be accessed by other financial institutions to assist assessment of any application for credit made to the Seller and for debt tracing and fraud prevention; (b) to any agent or sub-contractor of the Seller performing services in connection with the Buyer's account; (c) to a Delivering Company or any other person to whom the Seller proposes to transfer any of its rights and/or duties under a Commitment; (d) to any guarantor or person providing security in relation to Buyer's obligations under a Commitment; (e) as required or permitted by law or any regulatory authority; and/or (f) as otherwise considered necessary or appropriate by the Seller.

23.3 Without prejudice to any other provisions for termination contained in these terms and conditions, all monies due and owing by the Buyer to the Seller shall become due and payable forthwith if the Seller discovers that any information provided by the Buyer to the Seller is materially inaccurate.

## 24. Confidentiality.

24.1 Each party shall treat as confidential all information obtained as a result of entering into or performing any Commitment which relates to:

- (a) the subject matter of these terms and conditions; or
- (b) the other party.

24.2 Each party shall:

- (a) not disclose any such confidential information to any person other than any of its directors or employees who needs to know such information in order to discharge his/her duties;
- (b) not use any such confidential information other than for the purpose of satisfying its obligations under any Commitment; and

(c) procure that any person to whom any such confidential information is disclosed by it complies with the restrictions contained in this section as if such person were a party to any Commitment.

24.3 Notwithstanding the other provisions of this section, either party may disclose any such confidential information:

- (a) if and to the extent required by law or for the purpose of any judicial proceedings;
- (b) to the delivering company if different than Seller;
- (c) to its affiliates, professional advisers, auditors and bankers;
- (d) if and to the extent the information has come into the public domain through no fault of that party; or
- (e) if and to the extent the other party has given prior written consent to the disclosure, such consent not to be unreasonably withheld.

Any information to be disclosed pursuant to sub-section 24.3(a) shall be disclosed only after notice to the other party.

24.4 The restrictions contained in this section shall continue to apply after the termination of any Commitment without limit in time.

**25. Amendments & Variations.** These terms and conditions may not be amended or modified orally and no amendment or modification shall be effective unless it is in writing and signed by authorized representatives of each of the Seller and the Buyer.

**26. Governing Law and Jurisdiction.** The provisions hereof shall be governed by the laws of the State of Maine and except as provided in Section 10.5 herein, any dispute arising out of or in connection with a Commitment, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by litigation in the Federal or State Courts situated in the State of Maine for the avoidance of doubt, the UN Convention on Contracts for the International Sale of Goods (1980) shall not apply.

## **PART B**

**The provisions in this Part B are only applicable to Spot Sales and are in addition to the provisions in Part A:**

### **1. Nominations.**

- 1.1 The Buyer may request a price quotation from the Seller or its designated representative specifying grades, estimated quantities and estimated date of arrival of the relevant vessel at a Delivery Port. The Seller shall provide a quote valid for a delivery which is within five percent (5%) more or less of the agreed volume and for a three (3) day loading range being thirty-six (36) hours on either side of 12:00 p.m. on the estimated date of arrival. The provision of the quote by the Seller under this sub-section, and its acceptance by the Buyer, shall constitute a Bunkering Commitment and, upon such acceptance, the Buyer shall be obligated to lift and the Seller shall be obligated to sell and deliver or arrange for the sale and delivery of the agreed volume, at the quoted price on these terms and conditions within such three (3) day loading range. The order for Marine Fuels shall be considered firm and binding upon Buyer's acceptance of price quoted by Seller. Confirmation in writing by Seller of price may be provided to the Buyer but the absence of such confirmation shall not void the agreement of sale.
- 1.2 The Buyer shall ensure that either the Master of the vessel which requires delivery of Marine Fuels or the accredited representative of the Buyer at the Delivery Port, gives not less than two (2) local working days notice to the Seller of the estimated time of such vessel's readiness to receive such Marine Fuels, identifying the Buyer and specifying the grades and actual quantities of Marine Fuels and the method of delivery required.
- 1.3 If the vessel shall not have arrived at the Delivery Port within the agreed loading range as notified in section 1.1 above, the Buyer shall be deemed to be in breach of the Commitment and the Buyer shall, in addition to any liability under these terms and conditions, be liable to the Seller for any expense that the Seller has incurred as a result of receiving the notice. If the vessel arrives earlier than the agreed loading range, the Seller shall exercise reasonable efforts to supply the vessel upon request but shall not be bound to do so until the commencement of the three (3) day loading range.
- 1.4 The quantity of any grade of Marine Fuels to be delivered shall not exceed the quantity of that grade nominated pursuant to section 1.1 above by more than five percent (5%) unless prior written consent of the Seller has been obtained by the Buyer or its accredited representative.

### **2. Price.**

- 2.1 Except as otherwise agreed between the Seller and the Buyer the price to be paid for Marine Fuel delivered hereunder shall be the price agreed pursuant to section 1.1 above.
- 2.2 The prices applicable to the commencement of delivery under a Commitment shall remain effective until the completion of delivery under that Commitment.
- 2.3 The Buyer shall be liable for all costs, expenses and/or charges incurred by the Seller on account of the Buyer's failure, breach and/or non-compliance with its obligations under any agreed nomination as set out in section 1 above.
- 2.4 If price controls are imposed, the Seller shall not be required to deliver if the maximum price allowed is below that previously established with the Buyer.

## PART C

The provisions in this Part C are only applicable to Floating Price Term Deals and are in addition to the provisions in Part A:

### 1. Nominations.

- 1.1 For any delivery of Marine Fuels under a Floating Price Term Deal, the Buyer shall ensure that either the Master of the vessel which requires delivery of Marine Fuels or the accredited representative of the Buyer at the Delivery Port, gives to the Seller:
- (a) not less than seven (7) local working days' notice of the estimated date of such vessel's readiness to receive such Marine Fuels; and
  - (b) not less than four (4) local working days' notice of the actual final confirmation lifting date (the "AFCL Date"),
- identifying which Floating Price Term Deal applies to the delivery and specifying the grades, the actual quantities and the method of delivery required. Upon receipt by the Seller of the AFCL Date, the Buyer shall be obligated to lift and the Seller shall be obligated to sell and deliver or arrange for the sale and delivery of the agreed volume, upon these terms and conditions within thirty-six (36) hours on either side of 12:00 noon on the AFCL Date (the "Range"). In the event that the Range or part thereof extends into a preceding or subsequent month than the month of the AFCL Date, the Range shall be shortened so as to fall solely within the same month as the month of the AFCL Date.
- 1.2 If the vessel shall not have arrived at the Delivery Port within the Range the Buyer shall be deemed to be in breach of the Commitment and the Buyer shall, in addition to any liability under these terms and conditions, be liable to the Seller for any expense that the Delivering Company has incurred as a result of receiving the notice. If the vessel arrives earlier than the Range, the Seller shall exercise reasonable efforts to supply the vessel upon request but shall not be bound to do so until the commencement of the Range.
- 1.3 The quantity of any grade of Marine Fuels to be delivered shall not exceed the quantity of that grade nominated pursuant to section 1.1 above by more than five percent (5%) unless the prior written consent of the Seller has been obtained by the Buyer or its accredited representative.
- 1.4 The Buyer shall be liable for all costs, expenses and/or charges incurred by the Seller on account of the Buyer's failure, breach and/or non-compliance with its obligations under any agreed nomination as set out in section 1.1 above.

### 2. Price.

The price formula (which for the avoidance of doubt includes without limitation both the pricing basis and the premium) shall be as agreed in the Floating Term Deal between the Seller and the Buyer.

- 2.1 It is the intention of the parties that the price formula to be paid for the Marine Fuel delivered hereunder, as more fully detailed in section 1.1 above, shall not change during the validity of any Floating Price Term Deal. However, it is hereby agreed that the Seller may review the price formula if:
- (a) the Seller decides to change the reporting service (e.g. Platt's, Argus, etc.) which it uses to determine its Marine Fuels prices;
  - (b) the prevailing reporting service decides to change the methodology which it uses to assess Marine Fuel prices; or

- (c) the Seller incurs a substantial costs increase for any element of the price of the Marine Fuels as a result of market conditions or changes in supply chain costs.

The Seller will provide the Buyer with at least thirty (30) days written notice of any proposed change in the price formula resulting from a review of the price formula.

If in the Buyer's opinion the increased prices are unreasonable, the Buyer may within thirty (30) days of receiving such notification from the Seller terminate the Floating Price Term Deal by giving thirty (30) days prior written notice to the Seller.

2.2 If price controls are imposed, the Seller shall not be required to deliver if the maximum price allowed is below that previously established with the Buyer.

### **3. Termination.**

Either party may terminate any Commitment for any reason by giving not less than three (3) months' prior written notice to the other party.



## **PART D**

**The provisions in this Part D are only applicable to Fixed Price Term Deals and are in addition to the provisions in Part A:**

### **1. Contract/Nominations.**

- 1.1 The Buyer may request a fixed price quotation from the Seller or its designated representative specifying grades, quantities and periods for supply, the Delivery Port and fixed price and market floating price. Upon confirmation of the offer by the Buyer and acceptance by the Seller, the parties will enter into a specific fixed price contract.
- 1.2 For any delivery of Marine Fuel under a Fixed Price Term Deal, the Buyer shall ensure that either the Master of the vessel which requires delivery of Marine Fuels or the accredited representative of the Buyer at the Delivery Port, gives to the Seller:
- (a) not less than seven (7) local working days' notice of the estimated date of such vessel's readiness to receive such Marine Fuels; and
  - (b) not less than four (4) local working days' notice of the actual final confirmation lifting date (the "AFCL Date"),

identifying which Fixed Price Term Deal applies to the delivery and specifying the grades, the actual quantities and the method of delivery required. Upon receipt by the Seller of the AFCL Date, the Buyer shall be obligated to lift and the Seller shall be obligated to sell and deliver or arrange for the sale and delivery of the agreed volume, upon these terms and conditions within 36 hours either side of 12:00 noon on the AFCL Date (the "Range"). In the event that the range or part thereof extends into a preceding or subsequent month than the month of the AFCL Date, the Range shall be shortened so as to fall solely within the same month as the month of the AFCL Date.

- 1.3 If the vessel shall not have arrived at the Delivery Port in the Range, the Buyer shall be deemed to be in breach of the Commitment and the Buyer shall, in addition to any liability under these terms and conditions, be liable to the Seller for any expense that the Seller has incurred as a result of receiving the notice. If the vessel arrives earlier than the Range, the Seller shall exercise reasonable efforts to supply the vessel upon request but shall not be bound to do so until the commencement of the Range.
- 1.4 The Buyer shall be liable for all costs, expenses and/or charges incurred by the Seller on account of the Buyer's failure, breach and/or non-compliance with its obligations under any agreed nomination as set out in section 1.1

### **2. Price.**

The price shall be as agreed in the Fixed Price Term Deal between the Seller and the Buyer.