

PLUS PETROLEUM LIMITED

TERMS AND CONDITIONS OF SALE – MARINE FUELS

Effective January 1, 2019

1. Application

These General Terms and Conditions of Sale of Marine Fuels (“**Terms of Sale**”) in conjunction with a Supply Agreement shall collectively form the Contract and shall contain all agreements, arrangements and stipulations between the Buyer and Seller in respect of the supply of Marine Fuels contemplated by this document. The Contract can only be amended or changed by written agreement of both Buyer and Seller, and any attempt to do otherwise shall be considered ultra vires and null and void. In the event of any conflict between the documents comprising the Contract, the Supply Agreement and any amendments to the Supply Agreement shall be given priority over these Terms of Sale. The terms and conditions of the Contract shall not be varied by the inclusion of a Buyer’s purchase order number in the Supply Agreement or Confirmed Nomination, or by any terms and conditions that may be contained in any purchase order or other document issued by the Buyer.

2. Definitions

For the purposes of these Terms of Sale, and in any other documents issued by the Seller, the following terms shall have the following meanings:-

“**Agent**” any party acting on behalf of the Buyer and/or the Vessel

“**Arrival Notice**” a notice sent to the Seller by or on behalf of the Buyer providing the following information: 1) Vessel’s name; 2) Call sign; 3) IMO Number; 4) Flag; 5) Owners; 6) Agents; 7) Length Overall; 8) Gross Tonnage; 9) Net Tonnage; 10) Deadweight; 11) Ex-Names; 12) ETA; 13) any other information required, as advised to the

Buyer

“**Bunkers**” fuel oils supplied for use by the Vessel’s engines and machinery

“**Bunker Delivery Note**” a document recording the specifications and quantities of Marine Fuels delivered to a Vessel, issued at delivery by the Seller or the Seller’s Agent

“**Buyer**” the parties named on the Order Confirmation, who contract with the Seller to buy Marine Fuels, doing so with joint and several liability

“**Contract**” collectively, a Supply Agreement and these Terms of Sale

“**Day**” A calendar day, unless stated otherwise

“**Confirmed Nomination**” A notice in writing confirming the nomination of a vessel in accordance with clause 5.

“**Delivery Window**” the date range designated in the Supply Spot Agreement or Confirmed Nomination (as applicable), which shall begin on the ETA and end on the ETD. The Delivery Window shall not exceed seven (7) Days

“**ETA**” estimated date of arrival of the Buyer’s Vessel requiring the delivery of Marine Fuels

“**ETD**” estimated date of departure of the Buyer’s Vessel requiring the delivery of Marine Fuels

“**Government Official**” a government official or an officer or employee of a government or any ministry, department, agency, parastatal or instrumentality of any government, including any

	public sector company or an enterprise in which a government owns a majority or controlling interest or an officer or employee of a public international organization or any political party or official thereof, or any candidate for political office or any other person, individual or entity at the suggestion, request or direction or for the benefit of the aforementioned persons or entities
“Marine Fuels”	distillate marine fuels and/or residual marine fuels
“Marine Spot Supply Agreement”	an agreement entered into between the Buyer and Seller pursuant to which the Buyer makes a single purchase of Marine Fuels from the Seller
“Marine Term Supply Agreement”	an agreement entered into between the Buyer and Seller pursuant to which the Buyer purchases Marine Fuels from the Seller over a period of time
“Order Confirmation”	the written confirmation issued by Seller setting out the details of the supply of Marine Fuels including 1) the Buyer; 2) the type, grade and volume; 3) place of Supply; 4) the price; 5) payment terms; and other details relating to the supply of the Marine Fuel by the Seller to the Buyer
“Party”	Buyer or Seller and “Parties” means Buyer and Seller, collectively
“Place of Supply”	the location where the Marine Fuels are to be supplied
“Price”	the price stated in the Order Confirmation together with any applicable taxes, VAT or other duties and any delivery costs
“Seller’s	The Seller’s bank account

Account”	as stipulated on the Seller’s invoice
“Spill”	an escape or spillage of Marine Fuel
“Surveyor”	an independent surveyor appointed in accordance with these Terms of Sale to undertake sampling and analysis of Bunkers and/or Marine Fuel
“Supplier”	the manufacturer and/or supplier of Marine Fuel and other accessories sold by the Seller to the Buyer
“Vessel”	The vessel, ship, rig, platform or other installation to which the Marine Fuel is to be delivered by the Seller to the Buyer as identified on the Order Confirmation

3. Price and Payments

- (a) The price of the Marine Fuels shall be in the amount expressed per unit and in the currency stated in the Supply Agreement for each grade (where applicable) of Marine Fuels. The price shall be valid for the Delivery Window.
- (b) In addition to the price stated in the Supply Agreement, the Buyer shall pay any and all additional charges associated with the delivery, including but not limited to:
 - a. wharfage charges, barging charges including demurrage or other similar charges;
 - b. mooring charges or port duties incurred by the Seller which are for the Buyer’s account;
 - c. any overtime charges incurred if delivery takes place outside of regular working days and hours at the relevant port of delivery, if such delivery is permitted by port regulations;
 - d. duties, taxes, charges, freights or other costs in the country where delivery takes place which the Seller incurs. Where the Marine

- Fuels are supplied without payments by the Buyer of duties and taxes (which shall include, without limitation, customs duty, excise duty, VAT, or sales tax), the Buyer shall indemnify the Seller against any duties, charges, costs, liability, interest and penalties that may be incurred by the Seller, at any time, as a result of the failure of the Buyer, or the Vessel, to qualify for such treatment, or the failure of the Buyer to provide any necessary proof or other supporting documentation, within the requisite time period specified by the applicable law, regulation or procedure.
- (c) If the Buyer or the Vessel fails to take delivery within the Delivery Window, the Seller can choose to:
- a. Deliver to the Buyer on a date of the Seller's choice at the price stated in the Supply Agreement plus any additional costs incurred by the Seller in delivering outside the Delivery Window; or
 - b. Accept a new Delivery Window as the basis of a new Contract for which a new price can be agreed upon with the Buyer; or
 - c. Terminate the Contract and the Buyer shall pay to the Seller any costs resulting from the Buyer's cancellation or failure to take delivery, including without limitation, the lost fuel value and costs to return the Marine Fuels to storage including associated demurrage
- (d) The Seller shall endeavor to issue its invoice promptly upon delivery, but the Buyer's obligation to pay the Price shall exist independently of any invoice and the Buyer shall pay the Price in accordance with the terms of the Contract. All invoices and related documents shall be communicated electronically. The Seller shall be under no obligation to send them by post or courier or otherwise by hard-copy and the Buyer shall not be entitled to demand the same or decline payment in the absence of hard copies.
- (e) Payment shall be made, net of all banking charges, in United States Dollars (or any equivalent currency as the Seller may require). The Buyer has the obligation of ensuring that payment has been made to the Seller's legitimate bank account, and shall be aware of the risk of email and cyber fraud and put in place procedures to avoid becoming a victim of fraud. If payment is made to the wrong account, the Buyer shall bear the loss.
- (f) The Buyer is not entitled to make any deductions or withhold any payment of any sums due to the Seller either in part or in full by reason of any set-off, counterclaim or for any other reason, whether relating to the Contract or past agreements or Contracts.
- (g) In respect of any sum unpaid after its due date, for whatever reason, and in addition to the Price and any other sums payable by the Buyer arising from late payment, the Buyer shall pay to the Seller compensation calculated at 20% of the unpaid sum. Such compensation is a reasonable pre-estimate of the Seller's loss, taking account of the additional management time incurred in dealing with late payments, the loss of opportunity to reinvest the missing funds and currency exchange fluctuations. This late payment compensation is payable in addition to the Price and accrued interest.
- (h) The Seller endeavors to provide Bunker Delivery Notes with its invoices but the Buyer shall not be entitled to insist upon receipt of a Bunker Delivery Note before making payment.
- (i) The Buyer shall indemnify and pay to the Seller on first demand any and all costs incurred by the Seller in collecting or seeking to collect any sums unpaid by the Buyer. Such costs may include but not be limited to attestation and translation costs, fees of third party debt collection agencies, lawyer's fees and communication/postal costs.

4. Grades and Quantity

- (a) The Marine Fuels supplied hereunder shall be the Seller's commercial grades as determined in accordance with the prevailing ISO standard and set out in the Supply Agreement. The Buyer shall be solely responsible for nominating to the Seller the grade of Marine Fuels for each delivery from the range of Marine Fuels supplied by the Seller at the location in question. The quality of the Marine Fuels shall be determined in accordance with Clause 6.
 - (b) The Seller or its representative shall measure the quantity of the Marine Fuels delivered and the Buyer (or its representative) at its own expense may witness such measurement and is encouraged to do so. The Buyer will be charged for Marine Fuels on the basis of these measurements and determination of quantity shall be made solely by the Seller. All such measurements made by the Seller shall be final and binding save for manifest error or fraud. The Seller shall record the quantity of fuel delivered on the Bunker Delivery Note. For avoidance of doubt, the Bunker Delivery Note shall be binding evidence of the quantity delivered. Any attempt to unilaterally change or modify the quantity of Marine Fuels to be delivered under the Supply Agreement or Confirmed Nomination (as applicable) by a representative of the Vessel prior to or during delivery shall be prohibited.
 - (c) There are no conditions, guarantees or warranties, express or implied, by common law, statute, or otherwise as to the satisfactory quality, merchantability of the Marine Fuels for any particular purpose or otherwise, which extend beyond the description as set out in the Contract.
 - (d) The Buyer hereby warrants that it has not relied upon any representations made by or on behalf of the Seller but has relied exclusively on its own knowledge and judgment as to the fitness for its purpose of the Marine Fuels nominated.
- (a) Within 24 hours of a Contract being formed the Buyer shall send to the Seller a compliant Arrival Notice confirming arrival in accordance with the Delivery Window stated in the Order Confirmation as well as 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.
 - (b) Thereafter further Arrival Notices shall be sent 3, 2 and 1 days before the Vessel's arrival at the Place of Supply. If the Contract is entered less than 3 days from delivery then Arrival Notices shall be provided daily from the date of the Contract.
 - (c) The Buyer or its appointed agent at the Place of Supply shall ensure compliance with all requests from the Seller or its subcontractors concerning the Vessel's arrival.
 - (d) The Seller is entitled to cancel the Contract if the Buyer fails to provide Arrival Notices as aforesaid.
 - (e) The Seller shall revise the Price and date of supply or shall have the right to cancel the Contract if the Vessel is not available to receive Products within 12 hours of the original delivery period or within 2 hours of the arrival time as stated in the last Arrival Notice.

5. Arrival Notice

6. Sampling

- (a) Sampling by the Seller shall be accomplished throughout the Marine Fuels delivery process. The Seller or its representatives shall take a minimum of four (4) representative samples of each grade of Marine Fuels delivered. The Buyer shall have the right (and is encouraged) to have its representative witness the drawing of the samples but the failure of the Buyer to attend the sampling process or to sign the samples shall not prejudice the validity of the samples. Unless otherwise agreed in writing, the samples shall be taken in accordance with the sampling procedures at the Place of Supply. At least two (2) of

these representative samples shall be given to the Buyer, one (1) of which is for MARPOL compliance purposes. Two (2) samples shall be retained by the Seller or its representative for at least fourteen (14) days following the date of delivery in a safe place for subsequent verification of the quality thereof, if required.

- (b) If the Buyer issues a claim regarding the quality of the Marine Fuels in accordance with Clause 11(c) below, and provided the claim is legitimate in accordance with ISO 8217, one (1) of the two (2) Seller's retained samples shall be submitted by the Seller for relevant analysis to a mutually agreed local independent laboratory. The independent laboratory's analysis shall, absent manifest error or fraud, be conclusive and final and binding on both Buyer and Seller as to the quality of the Marine Fuels delivered. The analysis shall be established by tests in accordance with ISO 8217 and/or any other tests agreed to between the Buyer and the Seller in writing. Any cost associated with the Buyer appointing a representative to witness the sample seal-breaking and/or analysis at the independent laboratory shall be the sole responsibility of the Buyer.
- (c) When the Buyer (or its representative) or the Master of the vessel requests that sampling is carried out in accordance with the MARPOL guidelines and the Seller confirms it is safe to do so, the Seller reserves the right to appoint an independent surveyor to take such sample. The costs incurred by the Seller for this service and any consequential costs will be charged to the Buyer. In making such arrangements, no liability for delaying the vessel will be accepted by the Seller.
- (d) Samples other than those drawn by the Seller or its representative shall not be admissible for the purposes of determining quality, notwithstanding that these samples may have been signed by an agent or representative of the Seller, unless this has been expressly agreed in the Supply Agreement.

7. Delivery

- (a) The Marine Fuels shall be delivered to the Vessel at the port or place stated in the Supply Spot Agreement or Confirmed Nomination (as applicable) and such delivery shall be subject to the regulations of such port or place. The Seller shall not be liable for any inability to deliver on public/dock holidays.
- (b) The Vessel's ETA and ETD shall be as stated in the Supply Spot Agreement or Confirmed Nomination (as applicable) and this defines the Delivery Window. The Seller shall use its reasonable efforts, but shall be under no obligation to make the delivery if the Buyer or its Agents requests the supply to be made outside the Delivery Window.
- (c) The Buyer, or its Agent at the Place of Supply, shall give the Seller, or its representatives at the Place of Supply, a minimum of forty-eight (48) hours (the running of which shall exclude non-working days (i.e Saturdays, Sundays and public/dock holidays)) prior written notice before arrival, indicating the exact location at the Place of Supply, the time within the Delivery Window that the delivery is required and confirmation of the receiving rates, grades and quantities of Marine Fuels that are required and if the samples are to be drawn in accordance with the MARPOL guidelines. The Seller or its representatives must receive this notice during its regular working hours and business days. If the Buyer or its Agent fails to do so, the Seller shall not be liable for any resulting delay in delivery and the Buyer shall reimburse any costs incurred by the Seller.
- (d) On receipt of the notice referred to in 6(c) above, the Seller or its representatives shall provide the agent or the Buyer with an estimate of the date and time of delivery.
- (e) The Buyer shall hold harmless and indemnify the Seller in respect of any liability and damage arising from any acts or omissions of the Buyer or its servants in connection with the delivery of Marine Fuels or the bunkering operations.

- (f) The Buyer shall obtain all necessary permits and comply with all regulations applicable at the Place of Supply for the receipt, handling and use of the Marine Fuel and shall indemnify the Seller for all consequences, losses and/or damages including fines and penalties suffered by the Seller as a result of the Buyer or the Vessel or its crew failing to do so. In the event of a breach of this clause the Seller shall be entitled to cancel the Contract.
- (g) All requests for information from the Seller, the Seller's Agents or sub-contractors and from any port agent appointed by the Seller shall be promptly replied by the Buyer.
- (h) No guarantee is given by the Seller in relation to the delivery time or date or rate of pumping/delivery and the Seller shall not be liable for any losses or damages including demurrage howsoever caused, suffered by the Buyer due to any delay in delivery. Without prejudice to the generality of the foregoing the Seller will not be liable for any loss incurred by the Buyer due to any failure or delay in supply due to (a) congestion at the delivery facilities or prior commitments of available barges, (b) local customs, pilots, port or other authorities or (c) shortage of Marine Fuels or (d) failure of supply equipment, or (e) any circumstances out of the direct control of the Seller.
- (i) The Buyer shall be responsible for connections and disconnections of the delivery hose and for giving all necessary assistance and equipment to take delivery and for providing a free, safe and accessible side for the supply barge. The Master of the supply barge shall determine whether mooring alongside the Vessel is safe and if it is not, the Seller may delay or cancel delivery and all costs incurred will be for the Buyer's account.
- (j) The Seller shall not be held liable for any damages caused by contact or collision between the Vessel and any supply barge and claims arising from any such event shall be handled directly between the Buyer and the supply barge owners, The Buyer shall indemnify the Seller against any claims made against the Seller arising out of any such incident.
- (k) Lightering/barging charges and related mooring, unmooring and port dues shall be for the account of the Buyer, together with any overtime charges issued by the physical supplier or any other party concerned with delivery. Overtime shall be charged in accordance with the local practices at the Place of Supply. The Buyer will be liable for all demurrage or additional expenses incurred if the Buyer causes delay in the supply of Marine Fuels.
- (l) The Buyer shall be responsible for any losses and costs to the Seller resulting from its failure to take complete delivery of the Marine Fuel specified in the Order Confirmation, including but not limited to any loss of profit and any loss on the resale of the Marine Fuel, barge or truck demurrage and the costs of storing or selling the Marine Fuel. The Buyer shall bear the risk in the Marine Fuel during the return transport.
- (m) If the supply is delayed by the Buyer for any reason or the Vessel fails to leave the Place of Supply immediately after discharge as a result of the actions of the Buyer, the Buyer shall indemnify the Seller for any consequent loss or damage suffered by the Seller including losses arising due to the delay in the supply of other vessels,
- (n) Where the regulations or practice of the Place of Supply require that a port agent be appointed for the delivery of bunkers, the Seller may appoint such an agent on the Buyer's behalf and the Buyer and the Vessel shall be jointly and severally liable for any related costs.
- (o) Upon completion of delivery, a Bunker Delivery Note shall be issued by or on behalf of the Seller and the Vessel's representative (Master, Chief Engineer or other senior officer) shall be invited to sign the same.
- (p) The Seller reserves the right to have the delivery made by a third party supplier if for any reason delivery cannot be made

from its own supply; however, the Seller shall remain responsible for the performance of the Contract.

- (q) If a spill occurs during supply, the Buyer shall promptly take all action reasonably necessary to remove the spillage and mitigate its effect. If the Buyer fails to promptly take such action, the Seller may, at its option, take such measures it considers to be necessary or desirable in connection with the removal of the spillage and the mitigation of its effects by employing its own resources or contracting with others. Without prejudice to the first of this clause 6(q), the Seller shall indemnify the Buyer against all liability, costs and expenses (including but not limited to those incurred by the Buyer in accordance with this Clause 6(q) arising from any spillage to the extent that such spillage has been caused or contributed to by the negligence of the Seller or failure of or defect in the Seller's equipment. The Buyer shall indemnify the Seller against all liability, costs and expenses (including but not limited to those incurred by the Seller in accordance with the provisions of this Clause 6(q)) arising from any spillage except to the extent that such spillage has been caused or contributed to by the negligence of the Seller or failure of or defect in the Seller's equipment. The Buyer shall promptly provide the Seller with any requested documents and information regarding a spill including the Vessel's spill contingency plan or any other applicable program for the prevention or mitigation of pollution as required by any applicable laws or regulations.

8. Title, Risk of Loss and Property

- (a) Title to the Marine Fuel shall pass only when the Buyer has paid for the Marine Fuel and paid all other sums due to the Seller under the Contract or other Contracts. The Buyer must ensure at all times that Marine Fuel supplied by the Seller but not yet paid for are stored in such manner that they can be identified to the Contract and to keep bunkers supplied pursuant to a single Contract segregated from other bunker fuels delivered to the Vessel.

- (b) Subject to clause 7(c), risk of loss and property in the Marine Fuels delivered shall pass to the Buyer as the Marine Fuels pass through the flange of the Vessel's manifold.
- (c) If the Seller agrees to deliver Marine Fuels to the Buyer's nominated barge, storage tank or coastal lighter, risk of loss and property shall pass to the Buyer as the Marine Fuels pass through the flange of the permanent hose connection of the Seller's delivery facility.

9. Health, Safety and the Environment

- (a) The Seller shall provide the receiving vessel with Safety Data Sheets ("SDS") appropriate to the grade of Marine Fuels delivered. The Buyer shall provide its employees, users and customers with health, safety and environmental information, such information together with the SDS shall hereinafter be referred to as the "HSE Data". The Buyer shall ensure that its employees comply fully with all requirements, obligations and recommendations relating to the handling and use of the Marine Fuels delivered hereunder and shall impose upon all of its customers to whom the Marine Fuels are to be supplied the same obligation to comply fully with the requirements, obligations and recommendations of the HSE Data.
- (b) Except for death or personal injury caused by the Seller's negligence, the Seller shall not be responsible in any respect whatsoever for any loss, damages or injury resulting from any hazards inherent in the nature of any Marine Fuels.
- (c) The Buyer and Seller shall each, at all times, comply with any obligations, requirements or recommendations contained in any applicable law, statute, directive or regulation of any territory, state or jurisdiction in or through which the Marine Fuels may be delivered, sold transported or used and all Government, state or local regulations at the port such as, but not limited to, those related to fire, transportation, handling and storage or spillage or loss of Marine Fuels.

Compliance by the Buyer with the recommendations in the HSE Data shall not excuse the Buyer from its obligations under this clause 8(c).

- (d) The Buyer shall indemnify and keep indemnified the Seller against any liability, claim or proceeding whatsoever arising out of or in connection with any failure by the Buyer to comply with its obligations under this clause 8.

10. Force Majeure

- (a) In addition to any other relief provided by law, no failure or omission by either Party to comply with any of its obligations under the Contract (save for any obligation to make payment) shall give rise to any claim against that Party, or be deemed to be a breach of contract, insofar as the failure or omission is caused by force majeure, which is defined as any cause not reasonably within the control of that Party, whether or not foreseen, including (without limitation and to the extent that they are not reasonably within the control of the relying Party) such causes as labor disputes, strikes, governmental intervention, compliance with any law, regulation or ordinance or with any order, demand or request of an 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 other corporation directly or indirectly controlled by any of them, acts of administrative authorities, decisions of the courts, riot, wars, military operations, terrorism actions, civil commotion, hijacking, fire, explosion, flood, storm, natural disasters or any act of God. 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 purpose of any Contract or not), provided that such curtailment, failure, or cessation is related to a circumstance, which is outside the control of the Seller, shall be considered as an event of force majeure for the purpose of the Contract.

- (b) The Seller reserves the right to increase the price charged for any Marine Fuels 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 constitute a force majeure event pursuant to Clause 9(a).
- (c) Where the event of force majeure continues for a continuous period of more than one (1) month, and unless agreed otherwise between the Buyer and the Seller, each of them may then terminate the Contract, by written notice to the other. Such termination shall not give rise to any liability, compensation or indemnity of any kind. In the case of a Supply Fuel Agreement, such termination shall apply only in respect of deliveries at ports affected by the force majeure event.

11. Claims

- (a) Any dispute as to the quantity of the Marine Fuels based on the density of the Marine Fuels delivered shall be submitted by the Buyer to the Seller in writing within fourteen (14) days of the date of delivery, failing which, such claim shall be deemed waived and forever barred. Comments inserted in the Bunker Delivery Note or in a separate protest handed to the physical supplier shall not qualify as notice to the Seller.
- (b) Any dispute as to short delivery which does not fall under clause 10(a) shall be presented by the Buyer to the Seller at the time of delivery and the Buyer's representative shall have witnessed such measurement in accordance with clause 4(b), failing which, such claim shall be deemed waived and forever barred. Any dispute as to the quantity of the Marine Fuels delivered under this clause 10(b) shall be recorded at the time of delivery in a Note of Protest.
- (c) Any claim as to the quality of Marine Fuels delivered must be submitted by the Buyer to the Seller in writing within fourteen (14) days of delivery, failing which, such claim shall be deemed waived and forever barred. The Buyer shall promptly furnish the Seller with the results of testing of the retained sample

provided to the vessel by the Seller and shall provide full supporting evidence of its claim within sixty (60) days of delivery to enable the Seller to properly evaluate the claim failing which such claim shall be deemed waived and forever barred.

- (d) Despite the provisions of Clause 4, the Buyer shall take all reasonable measures, including retention and/or burning of Marine Fuels in accordance with the Seller's instructions, to eliminate or minimize any costs associated with an off-specification or suspected off-specification supply.

12. Liability

- (a) The liability of the Seller for any loss, damage, claim or other expenditure arising out of or in connection with the failure by the Seller to perform its obligations under this Contract shall not exceed and shall be limited to:
 - a. the removal at a reasonable location to be agreed between the Seller and the Buyer of any Marine Fuels delivered which is not in accordance with the Contract and is unsuitable for use onboard the vessel, and either (i) the replacement by the Seller of such Marine Fuel, or (ii) reimbursement of the cost of such Marine Fuels;
 - b. the reasonable repair costs of any components that are physically damaged as a direct result of using any Marine Fuels supplied by the Seller which is not in accordance with the Contract; and
 - c. those losses, claims or expenses arising from the death or personal injury to any person caused by the Seller's sole negligence.

The Seller shall have no obligation to make any payment to the Buyer under this clause 11 unless and until the Seller has received full payment from

the Buyer of all sums due in accordance with clause 3.

- (b) The Seller shall not be liable for any of the following:
 - a. indirect, special, punitive, exemplary, incidental or consequential losses, damages or expenses; or
 - b. loss of actual, projected and/or prospective profits, anticipated cost savings, contracts or financial or economic loss; or
 - c. any demurrage or deviation costs.
- (c) The Seller shall not be responsible for any claim arising from commingling of Marine Fuels delivered by the Seller with other fuel(s) onboard the vessel.
- (d) If the Buyer removes Marine Fuels without the consent of the Seller, all removal and related costs shall be for the Buyer's account. Nothing in the Contract shall in any way limit the Buyer's obligations to mitigate any of its losses in accordance with clause 10(d).
- (e) The Buyer shall indemnify and hold the Seller, Seller's affiliates and the directors, employees and agents of the Seller and Seller's affiliates harmless against all claims, liabilities, loss, damage, costs, fines, penalties and expenses whatsoever and by whomsoever brought arising in connection with any delivery of Marine Fuels except to the extent such claims, liabilities, loss, damage, costs, fines, penalties and expenses are caused by the negligence of the Seller or Seller's affiliates, or breach by the Seller of its obligations under the Contract.

13. Arbitration and Governing Law

- (a) The Contract shall be governed and construed in accordance with Nigerian law.
- (b) Any dispute arising out of or in connection with this Contract, which cannot be resolved between the Parties through their respective chief executive officers, shall be referred to arbitration in Nigeria according to the provisions of the

Arbitration and Conciliation Act 2004 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this clause. The proceedings shall take place in English.

- (c) The reference shall be to three (3) 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 the 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 upon both Parties as if he has been appointed by agreement.
- (d) Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
- (e) In cases where neither the claim nor any counterclaim exceeds the sum of US \$100,000 the arbitration shall be conducted in accordance with the Small Claims Procedure current at the time when the arbitration proceedings are commenced.
- (f) All arbitration awards shall be final and binding on the Parties. By agreeing to arbitration under the Arbitration and Conciliation Act, the Parties undertake to carry out any award immediately and without delay; and the Parties also waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority, insofar as such waiver may be validly made.

14. Cancellation

- (a) In the event that the Buyer cancels a supply after the Seller's Order Confirmation then the Buyer shall be liable for any costs, expenses or charges incurred by the Seller and the Buyer shall be liable to compensate the Seller for its lost profit, such sums to be paid immediately upon demand.
- (b) In the event the Seller cancels a Contract by reason of the Buyer's breach or by reason of conduct on the part of the Buyer entitling the Seller to cancel or the Seller establishing that sanctions are in force necessitating its withdrawal from a Contract then the Buyer shall have no recourse to the Seller and the Buyer shall be responsible for all losses, costs and expenses suffered by the Seller by reason of the cancellation, which shall include but not be limited to the Seller's loss of profit on the Contract, costs or charges reasonably incurred to the Seller's sub-contractors or suppliers, and administrative costs.

15. Substitution, Assignment and Non Waiver

- (a) The Seller shall be entitled to substitute itself with a third party for the performance of all or part of its obligations.
- (b) The buyer shall not be entitled to cede or assign any of its rights and obligations hereunder.
- (c) No waiver or amendment by either party of any provisions of the Contract shall be binding unless made expressly and reduced to writing. Further, any such waiver or amendment shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach. Any agreement to waive or amend any provision of these Terms of Sale shall only be capable of being mutually concluded in writing with an authorized executive of the Seller.

16. Lien

- (a) It is agreed and acknowledged that a lien over the Vessel is created for the price of

the Products supplied together with any interest accrued. The Buyer, if not the Owner of the Vessel, hereby expressly warrants that they have full authority of the

Agents/Traders/Owners/Managers/Operators/Charterers to pledge the Vessel in favor of the Seller and that they have given notice of the provisions of this Contract to them. The Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien(s) attaching to a Vessel.

- (b) The laws of Nigeria shall always apply with respect to the existence of a maritime lien, regardless of the country in which the Seller takes legal action. The Seller shall be entitled to assert its rights of lien or attachment or other rights, whether in law, in equity, or otherwise, in any jurisdiction where the Vessel may be found.
- (c) The Buyer or the Vessel or its owners must notify the Seller of its intention to exclude the liability of the Vessel at least 12 hours in advance of the supply by sending written notice to cen@plus-petro.com or jko@plus-petro.com failing which any notice or any stamp in the Bunker Delivery Note seeking to vitiate the Seller's maritime lien on the Vessel shall be of no effect.

17. Additional Provisions

- (a) If any provision of the Contract is declared illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, the remainder of such provision and the Contract shall remain in effect to the fullest extent permitted at law.
- (b) The Contract contains the entire agreement of the Parties and supersedes all prior agreements whether oral or written with respect to the delivery of Marine Fuels under this Contract and there are no other promises, representations or warranties affecting it. This Contract shall not be modified or amended in any way unless mutually agreed between the Buyer and Seller and evidenced in writing. Each Party warrants

that it has not entered into the Contract in reliance on any representation, whether oral or in writing, which is not set out in the Contract.

- (c) In the event of conflict or inconsistency between these Terms of Sale and the Supply Agreement, the Supply Agreement shall prevail over these Terms of Sale.
- (d) If any order shall be placed by an agent for a principal as the Buyer hereunder, then such agent shall be liable not only as agent but also for the performance of all obligations of the principal hereunder.
- (e) Where sales are concluded through a broker or an agent, commissions may be paid by the Seller to such broker or agent. Any brokers' commission payable by the Seller shall only be paid after confirmation of receipt in full of all outstanding invoice amounts without set-off into the Seller's instructed bank under Clause 3(a).
- (f) Except for the provisions of Clause 12(e) of these Terms of Sale which may be enforced by the Seller, Seller's affiliates and assignees of Seller or Seller's affiliates and the directors, employees and agents of the Seller, Seller's affiliates and assignees of Seller or Seller's affiliates, the Parties do not intend any term of the Contract to be enforceable by any person (a "third party") who is not a Party to the Contract. The Parties may rescind or vary the Contract, in whole or in part, without the consent of any third party including, without limitation, those listed above.