

## General Terms and Conditions

### Preamble

This is a statement of the terms and conditions according to which the **Lanka IOC PLC**, a company duly incorporated in the Democratic Socialist Republic of Sri Lanka, under company registration number PQ 179 and having its registered office at Level 20, West Tower, World Trade Centre, Echelon Square, Colombo - 01, Sri Lanka in the said Republic of Sri Lanka (hereinafter called "LIOC") offers to sell and sells Marine Fuel.

Except where otherwise expressly agreed in writing by LIOC, these terms and conditions apply without limitation to any offer, quotation, order, agreement, or contract of whatever nature made or entered into by LIOC for the sale and supply of Marine Fuel.

Any terms and conditions of any another party will not apply, unless expressly accepted in writing by LIOC.

In the event that any clause or sub clause of these terms and conditions is rendered invalid by operation of law or is declared invalid by a duly appointed arbitral tribunal or a competent court of law, the remaining clauses and sub clauses of these terms and conditions shall remain valid and binding upon the parties.

### 1. Definitions

Throughout this Contract, except where the context otherwise requires, the following definitions shall be applied:

"Accepted Delivery Date"	The date nominated by the Buyer for the delivery of the Marine Fuel to the Vessel that is accepted and confirmed in writing by the Seller to the Buyer in the Seller's Confirmation Note
"Accepted Delivery Time"	the time arising during the Accepted Delivery Date nominated by the Buyer for the delivery of the Marine Fuel to the Vessel that is accepted and confirmed in writing by the Seller to the Buyer in the Seller's Confirmation Note.
"Accepted Delivery Period"	The period of 6 hours commencing with the Accepted Delivery Time during which the Seller's Bunker Tanker shall remain on standby ready to deliver the Marine Fuel to the Vessel. The exact arrival of the vessel has to be confirmed by the Buyer 24 hours ahead of the Estimated Time of Arrival.
"Bunker Delivery Receipts"	Receipts issued for the delivery of Marine Fuel in accordance with Clause 4.4 and 6.
"Buyer"	the Vessel to which Marine Fuel will be or is supplied, her Master, Owners, Managers and/or Operators, Disponent Owners, Bareboat Charterers, Time Charterers, and/or other Charterers, any party requesting offers or quotations for the purpose of ordering Marine Fuel from the Seller and any party by or on whose behalf any offers or quotations for the supply of Marine Fuel may be sought from the Seller and on whose behalf orders are placed or agreements or contracts for the purchase of Marine Fuel are made with the Seller.
"Confirmation Note"	The Confirmation Note that has been duly completed by the Seller and sent to the Buyer in electronic and/or paper format.

"Marine Fuel"	products derived from crude oil ordered by the Buyer from the Seller and to be delivered and/or delivered to the Vessel by the Seller and shall include (without limitation) Marine Gas Oil - ISO 8217:2005 DMA, Fuel Oil 180cst - ISO 8217:2005 RME 180 and Fuel Oil 380cst - ISO 8217:2005 RMG 380.
"Owner"	the registered Owner or Bareboat Charterer or Disponent Owners of the Vessel.
"Place of Delivery"	the location in or outside the Port Limits of a Port within the territorial limits of Sri Lanka that has been nominated by the Buyer for the receipt by the Vessel of the Marine Fuel and confirmed by the Seller in the Confirmation Note.
"Pricing Date Range"	the three (3) calendar day period commencing on 0000 hrs on the Accepted Delivery Date and ending at 2359 hrs on the third consecutive day thereafter.
"Public Holidays of Sri Lanka"	Such days as have been declared as Public Holidays by the Government of Sri Lanka.
"Seller"	Lanka IOC PLC, any of its offices, branch offices or duly authorized agents.
"Bunker Tanker"	the tanker or barge utilized by the Seller to deliver the Marine Fuel to the Buyer's Vessel.
"Vessel"	the vessel, ship, tanker, barge or off-shore unit that receives the Marine Fuels either as end-user or as transfer unit to a third party.

## **2. Grades/Quality**

- 2.1 The Buyer shall have the sole responsibility for the nomination of the grades of Marine Fuels fit for use by the Vessel.
- 2.2 The Seller only warrants that the Marine Fuel(s) supplied or to be supplied by the Seller to the Buyer, shall correspond with ISO Standard 8217:2005.
- 2.3 Save as provided in Clause 2.2 above the Seller does not make or give any warranties as to quality, merchantability, or fitness of the Marine Fuel(s) for any particular purpose and any implied warranties or conditions whether statutory, or otherwise are expressly excluded.
- 2.4 Where standard grades or specification of the Marine Fuel have been nominated by the Buyer, The Master and crew of the vessel and the Owner shall accept variations in the specification of the Marine fuel delivered by the Seller, limited to repeatability and reproducibility limits specified in the relevant ISO standards and shall not make any claim for compensation or otherwise against the seller in respect of such Marine Fuel within such limits.

## **3. Quantities/Measurements**

- 3.1 Quantities of any Marine Fuels delivered by or on behalf of the Seller to the Buyer shall be determined from the gauge of the Bunker Tanker effecting delivery, or in case of delivery ex-wharf, of the shore-tank.
- 3.2 The Master of the Vessel, its Chief Engineer or a member of its Crew shall, together with the Seller's representative, measure and verify the quantities of Marine Fuel delivered from the Seller's Bunker Tanker and/or shore tank(s). Such measurements or soundings

shall be taken both before and after the Bunker Tanker delivers the Marine Fuel to the Vessel.

- 3.3 The quantities of Marine Fuel(s) to be delivered by the Seller to the Buyer shall be measured and calculated in accordance with the latest ASTM Petroleum Measurement Tables.
- 3.4 The Measurements/soundings taken in accordance with Clauses 3.1, 3.2 and 3.3 above shall be recorded on the Seller's Bunker Delivery Receipt and shall be signed on behalf of the Buyer by the Master of the Vessel or the Chief Engineer or a member of the Crew and on behalf of the Seller by the Seller's representative.
- 3.5 Any disclaimer, remark or protest made by the Master of the Vessel, the Chief Engineer or a member of the Vessel's Crew on the Bunker Delivery Receipt will have no effect whatsoever on the Seller's rights and remedies under these terms and conditions.. The Bunker Delivery Receipt signed by or on behalf of the Buyer and the Seller as provided herein shall be final conclusive and binding between the parties as to the quantity of Marine Fuel delivered to the Vessel.
- 3.6 If the Master of the Vessel, the Chief Engineer or a member of the Crew or any representative of the vessel and/or Buyer fails or declines to verify the quantities of Marine Fuel delivered to the Vessel, the measurements made by or on behalf of the Seller shall be final, conclusive and binding on the parties and shall not be called in question by the Buyer, the Owner and/or any person claiming on their behalf..
- 3.7 The quantity of Marine Fuel delivered shall be the quantity specified in the Confirmation Note with a tolerance at Seller's option of  $\pm 10$  MT if the quantity specified is less than 100 MT,  $\pm 5\%$  of the quantity specified if in the range 100 to 700 MT and  $\pm 35$  MT if the quantity specified is in excess of 700 MT.

#### **4. Sampling**

- 4.1 The Seller shall arrange for a representative sample of each grade of Marine Fuel to be drawn throughout the entire bunkering operation and that sample shall be thoroughly mixed and carefully divided into three (3) identical samples. If practically possible, the sampling shall be performed in the presence of both the Sellers and the Buyers or their respective representatives. The absence of the Buyers or their representatives shall not prejudice the validity of the samples taken.
- 4.2 The sample shall be drawn at a point nearer to the bunker tanker manifold that is supplying the Marine Fuels or from the supplying tanks of the Bunker Tanker, subject to the provisions in clause 4.3 below.
- 4.3 The sample shall be drawn using a drip sampler, which shall be constructed, secured and sealed in such a way so as to prevent the sampling device and the sample being tampered with throughout the transfer period. In case that drip sampling is not available onboard the Seller's Supply Bunker Tanker, or shore tank, samples shall be taken as a composite of each tank divided with 1/3 from each the top/mid/bottom of the tanks.
- 4.4 The three (3) identical samples referred to in sub-clause 4.1 shall be securely sealed and provided with labels showing, inter alia, the Vessel's name, identity of delivery facility, product name, delivery date and place and point of sampling and seal number, authenticated with the Vessel's stamp and signed by the Sellers' representative and the Master of the Vessel or his authorized representative.
- 4.5 Two (2) samples shall be retained by the Seller for minimum sixty (60) days after delivery of the Marine Fuels to the Vessel or, on being requested in writing by the

Buyers, for as long as the Buyers may reasonably require, and the remaining one (1) sample shall be retained by the Vessel.

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

4.7 In the event of any dispute with regard to the quality of the Bunkers delivered, the samples drawn pursuant to clauses 4.1 to 4.6 above shall be deemed to be conclusive and final evidence of the quality of the product delivered. In case of any dispute, one of the samples retained by Sellers shall be forwarded to an independent laboratory agreed to by both Seller and Buyer for final and binding analyses. The seal of the relevant sample must be breached only in the presence of both parties unless one/both have declared in writing that they will not be present; and both parties shall have the right to appoint any independent person(s) or institute(s) to witness the breaking of the seal. Samples subsequently taken shall not be allowed as (additional) evidence. If any of the seals have been removed or tampered with by an unauthorized person, such sample(s) shall be deemed to have no value as evidence of the sample delivered pursuant to the terms and conditions.

## **5. Delivery**

5.1 The Marine Fuels shall be delivered to the Vessel at the port or place stated in the Confirmation Note 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 Holidays of Sri Lanka.

5.2 Notwithstanding that the Accepted Delivery Date and the Accepted Delivery Time having been confirmed by the Seller in its Confirmation Note, the Buyer, or their agents at the port or place of delivery, shall give the Sellers or their representatives at the port or place of delivery, 72 and 48 hours approximate and 24 hours definite notice of the Vessel's arrival and the location and time at which deliveries are required. Such notice shall be given on Seller's e-mail address and/or fax numbers provided in the Confirmation Note.

5.3 The Buyer warrants that the Vessel can safely receive Marine Fuels and shall at the port or place of delivery be in possession of all certificates and/or permits required to comply with all relevant regulations pertaining to delivery and/or receipt of Marine Fuels to enable the Vessel to enter, remain and accept delivery of Marine Fuels at the port or place of delivery.

5.4 The Seller shall not be required to deliver any Marine Fuel to the Vessel for export, if any Sri Lankan Government permit that is required by the Buyer/Vessel for that purpose has not been obtained by the Buyer/Vessel before the Accepted Delivery Date. In the event the Buyer has not obtained the requisite Government permit, the Seller may reserve the right to deliver the Marine Fuel after collecting 100% price of the Marine Fuel from the Buyer prior to delivering the Marine Fuel.

5.5 Not less than 48 hours prior to the Accepted Delivery Date, the Master of the Vessel shall inform the Seller in writing of:

5.5.1 maximum allowable pumping rate and pressure and agree on communication and emergency shut-down procedures;

5.5.2 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.

- 5.6 Following receipt of 24 hours definite notice of the Vessel's arrival, Seller's Bunker Tanker shall proceed to the place of delivery where the Marine Fuel is to be delivered to the Vessel. The Seller and the Master of the Bunker Tanker shall exercise reasonable endeavours to reach the place of delivery on or before the Accepted Delivery Time. All movements of the Bunker Tanker and/or delivery of the Marine Fuel(s) shall at all times be subject to prevailing weather conditions and the safety of the Bunker Tanker and her crew.
- 5.7 Upon the Seller's Bunker Tanker reaching the Place of Delivery nominated by the Buyer, the Master of the Seller's Bunker Tanker, or the Seller on his behalf, shall give Notice of Readiness to the Master of the Vessel or the Buyer's agent at the port and/or place of delivery that the Bunker Tanker is ready to deliver the Marine Fuel to the Vessel. The Bunker Tanker shall remain at such Place of Delivery for a period of six (6) hours commencing from the time of issuing Notice of Readiness to deliver the Marine Fuel has been issued.
- 5.8 Following the provision of Notice of Readiness as set out in Clause 5.7 above, the Bunker Tanker shall make a single attempt to deliver the Marine Fuel to the Vessel at the Place of Delivery in accordance with the provisions of these Terms and Condition and the Confirmation Note.
- 5.9 Upon Seller's Bunker Tanker arriving alongside Buyer's vessel for the purpose of supplying the Marine Fuel(s), the Vessel and/or her Master and crew shall:
- 5.9.1 provide a free, safe and always afloat and accessible side of the Vessel for the delivery of Marine Fuel and render all necessary assistance to enable the Seller to deliver the Marine Fuel.
  - 5.9.2 whenever required by the Seller or the Seller's representative and at no cost whatsoever to the Seller, moor and unmoor the Bunker Tanker, hoist and lower such supply hose(s) from and to the Bunker Tanker and assist the Seller in any way requested to enable the smooth delivery of the Marine Fuel to the Vessel.
  - 5.9.3 connect and disconnect the Bunker Tanker's delivery hose(s) to the Vessel's marine fuel intake manifold/pipe. The Master of the Vessel and her crew shall ensure that the hose(s) are properly secured to the Vessel's marine fuel manifold prior to commencement of delivery of the Marine Fuel.
  - 5.9.4 ensure that before and during delivery of the Marine Fuel to the Vessel, the Vessel's scrubbers (if any) are safely blocked.
  - 5.9.5 ensure that all pipes and manifolds and receiving tanks on the Vessel are completely checked and ready to receive the Marine Fuel. The Buyer's responsibilities include but are not limited to ensuring proper opening/closing of relevant valves to avoid risk of any spillage during delivery.
- 5.10 The Buyer shall strictly follow and adhere to all local and international procedures, practices and any special requirements utilized or adopted for the purpose of receiving marine fuel, whether advised to or not by the Seller or the Seller's representative. The Master of the Vessel and the Buyer shall be solely responsible for ensuring that such procedures, practices and special requirements are strictly adhered to.
- 5.11 If possible, the Vessel shall provide segregated tankage to receive the contracted quantity of Marine Fuel and the Vessel shall always be able to perform its own blending on board.
- 5.12 If delivery is required on Public Holidays of Sri Lanka, the extra expenses incidental to such delivery shall be reimbursed by the Buyer as additional costs.

- 5.13 If the quantity of Marine Fuel ordered by the Buyer and confirmed by the Seller exceeds the quantity that can be carried by the Seller's Bunker Tanker(s), the Seller shall be entitled, having given 24 hours prior notice of its intention to the Buyer, to deliver the Marine Fuel in part deliveries and the Buyer shall accept delivery of the special part deliveries in which case each part delivery shall be construed as a separate delivery. Any breach by the Seller in respect of any part delivery will be a severable breach and the Buyer will not have the right to treat the whole contract as repudiated, except at the discretion of the Seller.
- 5.14 In the event Buyer's Vessel is not present at the Place of Delivery at the Accepted Delivery Time the Seller may, at its discretion:
- 5.14.1 without any liability whatsoever to the Buyer or any third party and without prejudice to its rights under Clause 11.2, treat the contract between the Buyer and the Seller as terminated and withdraw the Bunker Tanker; or
- 5.14.2 continue to hold the Bunker Tanker at the place and Place of Delivery nominated by the Buyer for delivery of the Marine Fuel to the Vessel subject to the Buyer paying demurrage at the rate of US Dollars 1,000 per hour without any interruption whatsoever from the expiration of the Accepted Delivery Period until such time as the Marine Fuel is delivered to the Vessel and the Bunker Tanker's hoses are disconnected from the flange of the Vessel's marine fuel/bunker manifold (howsoever called).
- 5.15 If, notwithstanding the Seller acting in accordance with Clause 5.14.2 above, the Vessel does not arrive at the nominated Place of Delivery by the end of the Accepted Delivery Period the Seller may at its discretion without any liability whatsoever to the Buyer or any third party and without prejudice to its rights under Clause 11.1 treat the contract between the Buyer and the Seller as terminated and withdraw the Bunker Tanker and the Marine Fuel.
- 5.16 If Buyer's Vessel arrives during the Accepted Delivery Period at the Place of Delivery nominated by the Buyer but the Marine Fuel remains undelivered to the Vessel at the end of the Delivery Period because:
- 5.16.1 the Vessel is not ready and/or unable to take delivery of the Marine Fuel, and/or
- 5.16.2 the Seller's Bunker Tanker is unable due to bad weather to deliver the Marine Fuel;
- the Seller may, at its discretion:
- 5.16.3 without any liability whatsoever to the Buyer or any third party and without prejudice to its rights under Clause 11.2, treat the contract between the Buyer and the Seller as terminated and withdraw the Bunker Tanker and the Marine Fuel; or
- 5.16.4 continue to hold the Bunker Tanker at the place and Place of Delivery nominated by the Buyer for delivery of the Marine Fuel to the Vessel and the Buyer shall pay demurrage at the rate of US Dollars 1,000 per hour without any interruption whatsoever from the expiration of the Delivery Period until such time as the Marine Fuel is delivered to the Vessel and the Bunker Tanker's hoses are disconnected from the flange of the Vessel's marine fuel/bunker manifold (howsoever called).
- 5.17 If the Buyer is unable or fails, for any reason whatsoever, to receive the full quantity of Marine Fuel ordered by the Buyer and sought to be delivered by the Seller, the Seller shall have the right to invoice the Buyer for the loss incurred by having to transport the

Marine Fuel back to the Seller's storage facility or by having to sell the Marine Fuel at a lower price than that applicable to the grade nominated by and agreed to be paid by the Buyer. The Seller may use this right without prejudice to the Seller's other right to recover damages arising at law or under the contract with the Buyer.

5.18 If at any time for any reason the Seller believes that there may be a shortage in the availability of Marine Fuel in any Common User Facility ("CUF") used by Seller and that as a result, the Seller may be unable to meet the demands of all its customers, the Seller may, at its sole discretion, allocate the Marine Fuel available to it in such CUF among its customers in such a manner as it may determine as most reasonable and the Buyer shall have no claim against the Seller in the event that the Seller is compelled to allocate the Marine Fuel in this manner under this clause.

5.19 The Seller shall not be liable for any demurrage paid or incurred by the Buyer and/or the Vessel to any party or for any loss, damage or delay of the Vessel of any length or nature whatsoever.

## **6. Documentation**

6.1 Before commencement of delivery the Sellers shall present for written acknowledgement by the Master of the Vessel or his authorized representative, a bunker requisition form or similar document, duly signed by the Sellers or their representative, which shall contain the quantities to be delivered and information required in accordance with ISO Standard 8217:2005, in particular, the values for:

- Density in kg/m<sup>3</sup> at 15°C
- Sulphur content in % m/m
- Flash point in °C
- Delivery temperature in °C

6.2 The Master of the Vessel, the Chief Engineer or a member of the Crew shall, together with the Seller's representative, measure and verify the quantities of Marine Fuel delivered from the Seller's Bunker Tanker and/or shore tank(s) before commencement of delivery and shall sign and stamp the initial ullaging / sounding report.

6.3 Once the delivery is completed and quantities measured, Seller's Bunker Tanker and/or shore tank(s) ullaging / soundings report after the delivery and a Bunker Delivery Receipt shall be signed and stamped by the Master of the Vessel or his authorized representative, and returned to the Sellers, or their representative, as acknowledgement of the actual volume and the actual delivery temperature only and a duplicate copy shall be retained by the Master of the Vessel. This receipt shall contain the following minimum information which is warranted by the Sellers:

- Delivered quantity in MT
- Density in kg/m<sup>3</sup> at 15°C
- Delivery temperature in °C
- Flash point in °C
- Sulphur content in % m/m

6.4 The seal numbers of samples drawn during the delivery of Marine Fuels shall be inserted into the Bunker Delivery Receipts and by signing the Bunker Delivery Receipts the Buyer and the Seller are deemed to have agreed that the samples referred to therein are valid and taken in accordance with the requirements as set out in the clause 4.4.

## **7. Payment**

- 7.1 Payment for the Marine Fuels shall be made by the Buyers to the Seller in advance or within the number of days stated in the Confirmation Note, after the completion of delivery.
- 7.2 In the event payment has been made in advance of delivery, same shall be adjusted on the basis of the actual quantities of Marine Fuels delivered and additional payment and/or refund shall be made within thirty (30) days after the completion of delivery.
- 7.3 Payment shall be made in full, without set-off, counterclaim, deduction and/or discount, free of bank charges to the bank account indicated by the Seller on its respective invoices.
- 7.4 Notwithstanding any agreement to the contrary, payment will be immediately due in case of bankruptcy, liquidation or suspension of payment or comparable situation of the Buyer, or arrest or assets and/or property of the Buyer, or in case of any other situation, which in the sole discretion of the Seller, is deemed to adversely affect the financial position of the Buyer.
- 7.5 Payment shall be deemed to have been made on the date the payment is credited to the counter of the bank designated by the Sellers. If payment falls on a non-business day, then payment shall be made on or before the business day nearest to the due date. If the preceding and succeeding business days are equally near to the due date, then payment shall be made on or before the preceding business day.
- 7.6 Any delay in payment shall entitle the Seller to pass on to the Buyer interest at, presently, the rate of two (2) per cent per month or any part thereof being the interbank interest rate charged from the Seller by its Bank without prejudice to any rights or remedies available to the Seller which the Buyer shall settle immediately. The Buyer shall also be liable to the Seller for the Seller's administration costs estimated and agreed at US Dollar one (1) per MT supplied.
- 7.7 Payments made by the Buyer shall at all times be credited in the following order: (1) costs, (2) interest and administration fee, and (3) invoices in their order of age, if not yet paid.
- 7.8 All costs borne by the Seller in connection with the collection of overdue payments, whether made in or out of court or arbitration proceedings and in general, all costs incurred by the Seller in connection with any breach of this agreement by the Buyer, shall be for the sole account of the Buyer.
- 7.9 The Seller shall at all times be entitled to require the Buyer to grant to the Seller what the Seller deems to be sufficient security for the performance of all its obligations under this Agreement. The failure of the Buyer to provide such security upon the request of the Seller shall entitle the Seller to stop any further execution of any agreement(s) between the Buyer and the Seller until such time as the Buyer has provided the required security. In the event of non-payment, the Sellers reserve the right to pursue such legal remedies as may be available to them to recover the amount owed.

## **8. Prices**

- 8.1 Any agreement for the supply and delivery of any Marine Fuel, whether entered into by brokers or any other agent on behalf of the Seller or otherwise, shall only bind the Seller upon the provision by the Seller to the Buyer of a written 'Confirmation Note'.



- 8.2 The price of the Marine Fuels shall be in the amount expressed per unit and in the currency stated in the Confirmation Note for each grade of Marine Fuels delivered free on board or ex-wharf as applicable. The price shall be valid for the Pricing Date Range.
- 8.3 Prices quoted or agreed by the Seller are inclusive of VAT / taxes, unless specifically stated otherwise.
- 8.4 Buyer or the Owner of the Vessel shall bear any and all charges associated with the Vessel for the delivery of Marine Fuels, including but not limited to:
- 8.4.1 wharfage charges including demurrage or other similar charges,
  - 8.4.2 mooring charges or port duties,
  - 8.4.3 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.
- 8.5 If the Buyer or the vessel fails to take delivery within the Accepted Delivery Date, the Seller may at its sole discretion increase the price for supply and delivery of the agreed quantity of Marine Fuel after the end of Pricing Date Range.
- 8.6 If the party ordering the Marine Fuel is not the Owner of the Vessel or is a Time Charterer of the Vessel, the Seller shall have the right to insist, as a precondition for the sale of the Marine Fuel, that a payment guarantee be provided by the Buyer and/ or its representative/ broker in the form of an irrevocable bank guarantee issued by the recognized international bank or any other Guarantee in such form as may be acceptable to the Seller. If a payment guarantee is not received within 24 hours of the Seller's request being communicated to the Buyer, the Seller may, without prejudice to its right to recover a cancellation charge as provided for in this agreement and without any liability to the Buyer or any third party whatsoever, cancel any contract with the Buyer for the supply of Marine Fuel.
- 8.7 The Buyer warrants that it is authorized by the Vessel and the Owner to grant the Seller a lien over the Vessel which shall take effect upon delivery of the Marine Fuel and shall remain in force until the Price of the Marine Fuel and any Demurrage that may become due is received in full by the Seller.

## **9. Claims**

- 9.1 Any claim with regard to the quantity delivered must be notified by the Buyer or the Master of the Vessel to the Seller or its representative within 48 hours after completion of delivery in the form of a statement of a letter of protest. If the Buyer fails to present such letter of protest to the Seller, any claims that the Buyer may have shall be deemed to have been waived and shall be permanently barred.
- 9.2 Claims concerning the quality of the Marine Fuel delivered shall be submitted to the Seller in writing within 30 (thirty) days after delivery, failing which the right to complain or claim any compensation whatsoever shall be deemed to have been waived and permanently barred.
- 9.3 In the event a claim is raised pursuant to sub-clause 9.2, the parties hereto shall have the quality of the Marine Fuels analyzed by a mutually agreed, qualified and independent laboratory. The Sellers shall provide the laboratory with one of the samples retained by them as per sub-clause 4.5. If ISO grades have been specified the analysis shall be established by tests in accordance with ISO Standard 8217:2005 and ISO 4259:2006. If non-ISO grades have been agreed, tests will be made in accordance with standards corresponding to the aforementioned ISO standards. Unless otherwise

agreed, the expenses of the analysis shall be for the account of the party whose claim is found wrong by the analysis.

- 9.4 The Buyer shall be obliged to make payment in full and fulfil all other obligations in accordance with the terms hereof, whether or not they have any claims or complaints.
- 9.5 In any event any claim by the Buyer shall be time barred unless legal proceedings have been initiated as set forth in Clause 15 hereof within 12 (twelve) months of the date of delivery or the date that delivery should have commenced pursuant to the written confirmation from the Seller.

## **10. Risk/Title**

- 10.1 Delivery shall be deemed to be completed and all risk including loss, damage, deterioration, depreciation, evaporation or shrinkage of the Marine Fuels shall pass to the Buyers once the Marine Fuels have passed the Sellers' flange connecting the Vessel's bunker manifold with the delivery facilities provided by the Sellers.
- 10.2 Title in and to the Marine Fuel delivered and/or properly rights in and to such Marine Fuel shall remain vested in the Seller until full payment has been received by the Seller of all amounts due in connection with sale and delivery of such Marine Fuel to the Buyer.
- 10.3 Until full payment of any amount due to the Seller has been made, the Buyer shall not be entitled to use the Marine Fuel other than for the propulsion of the Vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the Marine Fuel to any third party or other Vessel.
- 10.4 In case of breach hereof by the Buyer, the Seller is entitled to redelivery of the Marine Fuel by the Buyer and/or the Vessel without prior juridical intervention, without prejudice to all other rights or remedies available to the Seller.
- 10.5 In the event that the Marine Fuel is mixed with other marine fuels onboard the Vessel, the Buyer hereby grants the Seller a contractual lien over such part of the mixed marine fuels as corresponds to the quantity or net value of Marine Fuel delivered. The Buyer further warrants to the Seller that it (the Buyer) is duly authorized by the Vessel and or the Owners to grant a lien over the Marine Fuel to the Buyer.
- 10.6 In case the Marine Fuel, in part or full, are no longer present or can no longer be identified or distinct from other marine fuel, the Seller shall have the right without any prior notice to attach the Vessel and/or any sister ship and/or any other assets of the Buyer (or the Owner of the Vessel as per Clause 8.6) wherever situated in the world without prior notice as security for all the Seller's claim(s) against the Buyer.

## **11. Cancellation**

- 11.1 In the event the Buyer cancels its order after the Seller's Confirmation Note has been issued but before the provision of 24 hours' definite notice of the Vessel's arrival the Buyer shall pay the Seller a Cancellation Charge as liquidated damages to cover the Seller's administration costs and expenses including (if applicable) Bunker Tanker hire costs calculated as follows:
- 11.1.1 If the order is for less than or equal to two hundred and fifty (250) tonnes, the cancellation charges will be United States Dollars Three Thousand (US Dollars 3,000)
- 11.1.2 If the order is for over two hundred and fifty (250) tonnes, the cancellation charges will be United States Dollars Six Thousand (US Dollars 6,000)

- 11.2 In the event the Seller withdraws the Bunker Tanker in accordance with Clauses 5.14.1, 5.15 or 5.16.3 above the Buyer shall pay the Seller a cancellation charge of US Dollars 6,000 as liquidated damages to cover the Seller's administration costs and expenses including the Bunker Tanker hire costs up to the point of withdrawal.
- 11.3 Notwithstanding anything to the contrary in any agreement between the Buyer and the Seller, the Seller shall have the option to immediately cancel the agreement in full or in part, or to store the Marine Fuel in whole or in part for the account and risk of the Buyer and to charge the Buyer the expenses thereby incurred, or to hold the Buyer fully to the agreement, or take any other measures which the Seller deems appropriate, without prejudice to its rights of indemnification, without any liability of the Seller, in any (but not limited to) one of the following cases:
- 11.3.1 if the Buyer, for whatever reason, fails to accept the Marine Fuel in part or in full at the place and time designated for delivery;
  - 11.3.2 if the Buyer fails in part or in full to comply with its obligations to pay any amount due to the Seller and/or provide security as set out herein;
  - 11.3.3 if, before the date of delivery, it appears in the opinion of the Seller that the financial position of the Buyer entails a risk for the Seller;
  - 11.3.4 any application being made or any proceedings being commenced, or any order or judgment being given by any court, for
    - 11.3.4.1 the liquidation, winding up, bankruptcy, insolvency, dissolution, administration or re-organization or similar, or
    - 11.3.4.2 the appointment of a receiver, liquidator, trustee, administrator, administrative receiver or similar functionary of the other party of all or a substantial part of its assets (otherwise than for the purpose of a reconstruction or amalgamation);
  - 11.3.5 the other party suspending payment, ceasing to carry on business or compounding or making any special arrangement with its creditors, or;
  - 11.3.6 any act being done or event occurring which, under the applicable law thereof, has a substantially similar effect to any of the said acts or events described above.

## **12. Arrest of the Vessel**

Notwithstanding anything to the contrary herein and without prejudice to any rights or remedies otherwise available to the Seller, the Buyer, by its acceptance of these conditions, expressly authorizes the Seller to arrest the Vessel to which Marine Fuel may have been supplied, or any other vessel owned or operated by or under the management of the Buyer, or the Owner of the Vessel under any applicable jurisdiction as security for any claims that the Seller may have against the Buyer or the Vessel/her Owner. Should the Buyer fail to make any payment to the Seller immediately when due, the Seller may dispose of such arrested Vessel whether by sale or otherwise as applicable under the relevant jurisdiction. Any costs or expenses of whatever kind incurred by the Seller in respect of such arrest shall be for the sole account of the Buyer and shall be added to the claim for which arrest is made.

## **13. Force Majeure**

- 13.1 The Seller or the Seller's supplier shall not be liable for any loss, damage or demurrage due to any delay or failure in performance (a) because of compliance with any order or

request of any government authority, or person purporting to act therefor, or (b) when supply of the Marine Fuel or any facility of production, manufacture, storage, transportation, distribution or delivery contemplated by the Seller's supplier is interrupted, unavailable or inadequate for any cause whatsoever that is not within the immediate control of the Seller or the Seller's supplier, including (without limitation) if such is caused by labour disputes, strikes, governmental intervention, wars, civil commotion, fire flood, earthquake, accident, storm, swell, ice, adverse weather or any act of God.

- 13.2 The Buyer shall not be liable for failure to receive any particular delivery if prevented there from by force majeure. Provided however the Buyer and/or the receiving vessel shall not declare force majeure until the Buyer has exercised reasonable diligence to perform the contract and in any event until after the expiration of \_\_\_ hrs after the provision of 24 hours' definite notice of the Vessel's arrival. (This can be deleted)

#### **14. Safety and the Environment**

- 14.1 If a spill occurs while the Marine Fuel are being delivered, the Buyer shall promptly take such action, as is necessary, to remove the spilled Marine Fuel and mitigate the effects of such spill. Without prejudice to the generality of the foregoing the Seller is hereby authorized at its full discretion at the expense of the Buyer to take such measures and incur such expenses (whether by employing its own resources or by contract with others) as are necessary in the judgment of the Seller to remove the spilled Marine Fuel and mitigate the effects of such spill. The Buyer shall cooperate and render such assistance as is required by the Seller in the course of such action. All expenses, claims, costs, losses, damages, liability and penalties arising from spills shall be borne by the party that caused the spill by its 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 Seller's negligence shall be on the Buyer. The Buyer shall give the Seller all documents and other information concerning any spill or any program for the prevention thereof, that may be required by the Seller, or are required by law or regulation applicable at the time and Place of Delivery.

- 14.2 Both Seller and Buyer shall obtain valid and comprehensive insurance for protection against oil spills and leakages as required under the laws of Sri Lanka.

14.3

#### **15. Dispute Resolution**

- 15.1 This agreement shall be governed and construed in accordance with the laws of Sri Lanka.
- 15.2 Any and all disputes arising out of or in connection with this agreement or any agreement relating hereto, shall be finally settled by arbitration in Colombo except where the Seller decides otherwise in its sole discretion,
- 15.3 It is further agreed without prejudice to any rights hereunder of the Seller or any claim raised pursuant to Clause 15.2 above the Seller has the right to proceed against the Vessel, her Owner, the Buyer or any third party in such jurisdiction as the Seller in its sole discretion sees fit, whether by way of Court Action and/or arbitration *inter alia* for the purpose of securing and recovering payment of any amount due to the Seller from the Buyer and/or the Vessel and/or its Owner and or any third party..

## **16. Liability**

- 16.1 The liability of the Seller howsoever arising in respect of any supply of Marine Fuel for which a Confirmation Note and/or Bunker Request Form has been issued shall not exceed the total value of the products supplied under such Confirmation Note and/or Bunker Request Form.
- 16.2 Liabilities of the Seller for consequential damages are excluded. In any event and notwithstanding anything to the contrary herein, liability of the Seller shall under no circumstances exceed the invoice value of the Marine Fuel supplied by the Seller under the relevant agreement to the relevant Vessel.
- 16.3 The Buyer shall be liable towards the Seller and herewith undertakes to indemnify the Seller and/or the Owner of the Seller's barge for any and all damages and/or costs suffered or otherwise incurred by the Seller due to a breach of contract and/or fault or neglect of the Buyers, its subsidiaries, agents, servants, (sub) contractors, representatives, employees and the officers, crews and/or other people whether or not onboard of the respective vessel(s). The Buyer furthermore undertakes to hold the Seller harmless in case any third party institutes a claim of whatever kind against the Seller on account of any fault or neglect of the Buyer directly or indirectly connected to any agreement regulated by these terms and conditions. Third party shall mean any physical or legal person/company other than the Buyer.
- 16.4 No servant or agent of the Seller (including independent (sub) contractors from time to time employed by the Seller) shall be liable to the Buyer for any loss, damage or delay, while acting in the course of or in connection with its employment and/or agency for the Seller. Without prejudice to the above every exemption, limitation, condition and liberty herein contained, and every right, exemption from liability, defence or immunity of whatever nature applicable to the Seller or to which it is entitled hereunder shall also be available and shall extend to protect every such servant, representative or agent of the Seller acting as aforesaid.
- 16.5 In the event of a collision between the Vessel and the Seller's Bunker Tanker, any dispute arising from such collision shall be resolved between the Owner/ charterer of the Vessel and the owner of the Bunker Tanker. .

## **17. Validity**

- 17.1 These terms and conditions shall be valid and binding for all offers, quotations, prices and deliveries made by the Lanka IOC PLC, any associated company, representative or agent as of \_\_\_\_\_ or at any later date.
- 17.2 These terms and conditions are available in the website [www.lankaiooc.com](http://www.lankaiooc.com) on which site the Seller may notify amendments, alterations, changes or verifications to same. Such amendments, alterations, changes or verifications are deemed to be a part of the entire terms once the same have been set out on the website.