

## General Sales Terms and Conditions

(Edition October 2019)

Effective as of November 1st 2019, the following terms of sale and supply shall constitute the General Terms and Conditions ("General Terms and Conditions") of F.lli Cosulich Spa.

Unless otherwise agreed in writing, this General Terms and Conditions shall apply to every sale of marine petroleum products ("Products") entered into between F.lli Cosulich Spa. as seller ("Seller"), and any buyer ("Buyer") of such Products.

For purpose of construing these General Terms and Conditions and the agreements entered with by the Seller, "Buyer" shall mean the vessel supplied ("Receiving Vessel") and jointly and severally her Master, Owners, Managers/Operators, Disponent Owners, Time Charterers and Charterers or any other party ordering bunkers and/or other services and any party on whose behalf the said agreements or contracts have been made.

### 1. INCORPORATION AND MERGER

- 1.1 Each sale of Products shall be considered reached, enforceable and binding for the parties upon Buyer's acceptance of Seller's offer/ quotation and shall be confirmed by e-mail, fax or other writing from the Seller to the Buyer ("Bunker Confirmation"). The Bunker Confirmation shall incorporate the General Terms and Conditions by reference so that the General Terms and Conditions thereby supplement and are made part of the particular terms set forth in the Bunker Confirmation. The Bunker Confirmation and these General Terms and Conditions shall together constitute the complete and exclusive agreement governing the contractual relationship between the Seller and the Buyer (the "Transaction").
- 1.2 No other prior agreements or understandings, whether verbal or written, shall apply unless specifically referenced in the Bunker Confirmation. In the event of an inconsistency between the particular terms of the Bunker Confirmation and the General Terms and Conditions, the Bunker Confirmation shall control for the purpose of that particular Transaction.
- 1.3 Seller reserves the option when confirming the supply in the Bunker Confirmation, to make the actual Physical Supplier's general terms of sale applicable. In such event the following terms will apply only to the extent that they are consistent with Physical Supplier's ones with the exception of Clauses 8 and 20 below, which despite any conflicting provision contained in the Physical Supplier's general terms of sale remain valid and enforceable unless a different mutually signed agreement between Buyer and Seller is entered into with regard to the specific Transaction.

### 2. PRICES

- 2.1 The price to be paid for Products sold in each Transaction agreed between the Buyer and Seller shall be stated in the Bunker Confirmation.
- 2.2 Unless otherwise specified, the quoted price term shall include only the cost of transport either by barge or by truck from the shore deposit to the Receiving Vessel ("Transport"). The Buyer shall pay any additional expenses or costs such as demurrage, wharfage, port dues, duties, taxes, fees and any other costs including, without limitation, those imposed by governmental authorities.
- 2.3 The prices agreed are valid for only 7 day-range (3 days before and 3 days after the Receiving Vessel's earliest estimated delivery date as agreed in the Bunker Confirmation) during the same month. Outside above 7-day range, or in the event that within the 7 day-range a month change occurs, the Seller shall have the right to amend the price.
- 2.4 Seller reserves the right, upon notification to Buyer, to adjust the price after Bunker Confirmation in order to reflect any unanticipated increase in costs to Seller incurred after issuance of the Bunker Confirmation. If Buyer does not accept such adjustment, the delivery shall be cancelled without liability to either party.

### 3. QUALITY

- 3.1 Unless otherwise specified in the Bunker Confirmation, the Products shall be of the quality generally offered by the Seller at the time and place of delivery, for the particular grade or grades ordered by the Buyer.
- 3.2 Any test results resulting from analysis of representative sample shall be considered meeting the guaranteed specification when they are within allowances for generally recognized industry standards of repeatability and reproducibility. All grades of product may contain petroleum industry allowed, bioderived components.
- 3.3 Where specifications designate a maximum value, no minimum value is guaranteed unless expressly stated in the Bunker Confirmation. Conversely, where minimum values are provided in a specification, no maximum values are guaranteed unless expressly stated in the Bunker Confirmation. Buyer shall have the sole responsibility for the selection of proper Products for use in the vessel being supplied ("Receiving Vessel") or other receiving facility. Any implied conditions and warranties, including the warranties of merchantability and fitness for a particular purpose, are expressly excluded and disclaimed.



#### **4. QUANTITY**

- 4.1** The quantity of Products sold in each Transaction shall be as agreed between the Buyer and the Seller as per the Bunker Confirmation. Notwithstanding acceptance of the Buyer's order, the Seller's obligation to supply such quantities shall be subject to availability of Products from the Seller's source of supply at the time and place delivery is requested. All quantities are understood to be approximate with a margin of 10% (ten per cent) more or less at Seller's option. Actual quantity delivered may vary in accordance with normal operational tolerances of delivery equipment.

#### **5. TITLE AND RISK**

- 5.1** Either in the event that the Transport of the Products is arranged by Seller or in the event that the Buyer has arranged its own Transport, the delivery shall be deemed completed and title and risk of loss of the Products shall pass to the Buyer at the flange connecting the Seller's shore deposit with the receiving facilities of the nominated barge, coastal tanker or truck.
- 5.2** Where the Transport of the Products is arranged by Seller, the Seller shall act as a mere freight forwarder and will therefore conclude the relevant contract with the appointed carrier in its name but on behalf of the Buyer.
- 5.3** The Buyer shall be responsible for connection to the permanent intake of the Receiving Vessel and pumping of the Products from the barge, the coastal tanker or the truck shall be performed under the direction and responsibility of the Buyer.

#### **6. MEASUREMENT, TESTING, CLAIMS**

- 6.1** The quantity of Products delivered shall be conclusively determined from the official gauge or meter of the bunkering barge or tank truck effecting delivery. However, where Physical Supplier's general terms of sale -or in those ports where legal requirement or industry practice- dictate that quantities are measured by referencing either shore tank figures or barge loading figures, such measurements shall instead be conclusive. In cases of delivery ex-wharf, shore-tank figures shall be conclusive. Quantities calculated from the Receiving Vessel's soundings shall not be considered.
- 6.2** Quantity claims are waived by Buyer unless expressly noted in writing on the Bunker Delivery Receipt ("BDR") at the time of delivery. In ports where such notation on the BDR is not permitted, quantity claims must be presented at the time of delivery in a separate Letter of Protest to the Seller or to the supplier appointed by the Seller.
- 6.3** In gauging shore tanks or barge, the chief engineer of Receiving Vessel or his representative shall, jointly with the Seller or Seller's Supplier, measure and verify quantities of Products sold and delivered hereunder in tanks or barges from which delivery is made. Should such chief engineer or his representative fail or decline to so verify quantities, measurement of quantity made by the Seller or Seller's Supplier as aforesaid shall be final and conclusive as to quantities sold and delivered hereunder, and no claims for variance shall be allowed subsequent to delivery.
- 6.4** As far as respect to the quality of the Products supplied, samples shall be drawn at the time of delivery. The method of sampling will be governed by local regulation, if any, otherwise the accepted sampling method is the one used by the local supplier appointed by the Seller (barge, truck or shore-tank). Save as provided for under point 6.5 below, these samples, sealed and duly signed by seller/supplier or their representatives, shall be conclusive and representative of the quality of the Products supplied to the Receiving Vessel and should it be necessary, the sample(s) shall be tested and analyzed by an independent laboratory and results shall be binding on both Buyer and Seller. The independent laboratory shall be appointed at the port of supply by mutual agreement, and the laboratory's fee shall be provisionally shared equally by the Buyer and Seller. In the event that Seller proposes an independent laboratory and Buyer takes no action to either accept this proposal or to suggest an alternative inspector, then Seller's choice of inspector shall be binding and any tests performed by such laboratory shall be similarly binding, regardless of whether or not Buyer chooses to send a representative to such testing.
- 6.5** Any samples drawn by Buyer's personnel either at the time of bunkering or at any date after bunkering shall not be valid as an indicator of the quality supplied. The fact that such samples may bear the signature of personnel involved in the chain of the delivery shall have no legal significance as these local personnel have no authority to bind Seller to different contractual terms. Seller shall have no liability for any claims arising in circumstances where Buyer has commingled the Products on board the Receiving Vessel with other fuels.
- 6.6** The Buyer waives any claim against the Seller with respect to the quantity or quality of the Products supplied unless the Buyer's claim is submitted to the Seller in writing within seven (7) days after the date of delivery of the Products. In any event, should any timely claim submitted by Buyer not be settled to Buyer's satisfaction in a commercial manner, any legal action by Buyer thereon shall be formally waived and time barred unless commenced under Clause 21 (Law and Jurisdiction) within 12 months of the delivery date or, in claims related to non-delivery, within 12 months of the scheduled delivery date.
- 6.7** In case of suspicious results or evident discrepancies between analysis of the Official retained sealed sample and any other analysis, the Seller has the rights to take fresh samples of the bunker supplied on board the receiving vessel and the results of the new analysis will prevail over the ones of the sample (s) under clause 6.2. In case of new sampling being taken, the Seller shall produce proper documents to substantiate the necessity of new samples for his perusal and investigations. Buyer failure to allow Seller's representatives to board the receiving vessel will constitute a waiver of Buyer's claim.
- 6.8** It is the duty of the Buyer to take all reasonable actions to eliminate or minimize any damages or costs associated with any off-specification or suspected off-specification Products. To this end Buyer shall cooperate with the Seller in achieving the most cost-effective solution including the consumption of the Products after treatment and/or special handling. In the event that the Products are off-specification and cannot be consumed by the Receiving Vessel, Buyer's remedies shall be limited exclusively and solely to



replacement of the nonconforming Products. If Buyer removes Products without the express written consent of Seller, then all such removal and related costs shall be solely for Buyer's account.

- 6.9** In any event, Seller's liability hereunder for any claims, whether arising from quality, quantity, accident, delay, spill or other cause, shall not exceed the price of that portion of the products sold hereunder on which liability is asserted. Furthermore, no liability will be borne by the Seller for (a) any demurrage or other Receiving Vessel's delay or for indirect, special, incidental or consequential damages, including, but not limited to, damages arising from the exercise of Seller's right to suspend and/or terminate delivery of Products or (b) any acts or omissions of agents and/or subcontractors of Seller, including, without limitation, fuel transporters or fueling agents.

## **7. PAYMENT**

- 7.1** Unless otherwise provided in the Bunker Confirmation, all sales shall be on a cash in advance or irrevocable letter of credit basis. All letters of credit procured by Buyer in favor of Seller shall be in a form and substance acceptable to Seller and issued only by a bank acceptable to Seller.
- 7.2** The payment of the Products shall be made in the currency as stated in telex/fax/ email invoice or at the opinion of the Seller, in other currency at the exchange rate applicable on the date payment is due to Seller.
- 7.3** In case payment by Buyer is not made by the due date, Seller shall charge Buyer with interests at Libor plus 8% and all amounts more than 15 days past due shall incur an additional 5% as administrative fee. All payments received from Buyer after an invoice is overdue shall first be applied to interest, legal collection costs and administrative fees incurred before they will be applied to the principal amounts on a subsequent delivery.
- 7.4** Notwithstanding the foregoing at any time and from time to time, Seller may, if Seller considers it inadvisable to make deliveries to Buyer on credit, request that Buyer pays cash in advance or put up security acceptable to Seller, and in such event, until Buyer shall comply with Seller's request, no deliveries need to be made hereunder. Buyer's obligation to pay for the full invoiced amount shall be absolute and unconditional and shall not be affected by any right of set off, counter claim, defense or other right Buyer may have against Seller whether or not these claims or defenses are connected with, and whether or not they are out of the consignments concerned.
- 7.5** Buyer may not designate application of funds to a newer invoice so long as there are any unpaid charges, interest, collection costs or administrative fees on a previous one. Any waiver by Seller of interest charges or administrative fees on a particular invoice shall not be construed as a waiver by Seller of its right to impose such charges on subsequent deliveries.
- 7.6** If the payment due date falls on a weekend or any bank holiday in the country where payment is to be remitted (other than a Monday), payment must be made on the first prior available banking day. If the payment due date falls on a Monday bank holiday, payment may be made on the next available banking day.
- 7.7** The Buyer and the Seller are responsible for their respective banking charges.
- 7.8** The Buyer agrees to pay, in addition to other charges contained herein, internal and external attorneys' fees on a full indemnity basis for the Seller's collection of any non-payment or underpayment as well as any other charges incurred by the Seller in such collection including, but not limited to, the cost of bonds, fees, internal and external attorneys' fees associated with enforcing a maritime lien, attachment or other available right, whether in law, equity or otherwise.
- 7.9** All unpaid invoices from Seller to Buyer shall immediately be considered overdue, upon the occurrence of any of the following events: (i) any invoice of Seller to Buyer is five (5) days overdue; (ii) any vessel owned or operated by Buyer is arrested or attached by Seller or a third party for unpaid debts; or (iii) there is a change in the financial circumstances or structural organization of Buyer sufficient to cause Seller to reasonably believe that its likelihood of receiving payment from the Buyer is jeopardized or that its security interest in any of Buyer's owned or operated vessels is jeopardized.
- 7.10** In the event that more than one invoice is past due at the same time, Seller shall be entitled, at its sole discretion, to specify the particular invoice to which any subsequent payments shall be applied.
- 7.11** Seller reserves the right, in addition to all other rights and remedies available to it under applicable law, in equity, or otherwise, to suspend further deliveries of Products, and demand payment of all outstanding balances, if the outstanding balances due from Buyer (including estimates of unbilled sales) exceed the Buyer's applicable credit limit, or if Buyer fails to make any payment as herein provided or otherwise defaults under the General Terms and Conditions.

## **8. CREDIT AND SECURITY**

- 8.1** Products supplied in each Transaction are sold and effected on the credit of the Receiving Vessel, as well as on the promise of the Buyer to pay, and it is agreed and the Buyer warrants that the Seller will have and may assert a maritime lien against the Receiving Vessel for the amount due for the Products delivered together with all delivery and other charges forming part of the Transaction. This maritime lien shall extend to the Receiving Vessel's freight payments for that particular voyage during which the Products were supplied and to freights on all subsequent voyages. Disclaimer of lien stamps placed on a Bunker Delivery Receipt shall have no effect towards the waiver of such lien.
- 8.2** Any notice by the Buyer that a maritime lien on the Receiving Vessel may not be created because of the existence in Buyer's charter-party of a "Prohibition of a Lien Clause", or for any other reason, must be given to Seller in the initial order in which case no credit can be granted to Buyer and the Products shall be paid for in cash or equivalent prior to delivery.



- 8.3** In the event of a breach of the warranty set forth in sub-paragraphs 8.1 and 8.2 above before delivery, the Seller shall be entitled to terminate the Transaction. Further, the Seller reserves the right to impose a cancellation fee in the amount set forth in Clause 11 below.
- 8.4** If the purchase of Products is contracted for by an agent and/or broker, then such agent and/or broker, as well as the principal, shall be bound by and be fully liable for obligations of the Buyer in the Transaction, whether such principal be disclosed or undisclosed, in case of errors, omissions, wrongdoings or misleading information.
- 8.5** Buyer warrants that all sales made under these General Terms and Conditions are made also to the registered owner of the Receiving Vessel, in addition to any other parties that may be listed as Buyer in the Bunker Confirmation and/or in the bunker invoice.

#### **9. NOTICE AND DELIVERIES**

- 9.1** The delivery of the Products will always be at the flange connecting the Seller's shore deposit with the receiving facilities of the nominated barge, coastal tanker or truck and, unless otherwise specified, the Seller will arrange the Transport of the Products on behalf of the Buyer, acting in its exclusive capacity as freight forwarded appointed by the Buyer.
- 9.2** In the event that delivery is desired outside normal working hours and is permitted by port regulations, the Buyer shall pay all overtime and additional expenses incurred in connection therewith Buyer shall provide free of cost a clear safe berth, position or anchorage alongside the Receiving Vessel lines. Seller shall be under no obligation to make deliveries when in its sole opinion a clear and safe berth, position or anchorage is not available. The Buyer shall make all connections and disconnections of the delivery hose to the Receiving Vessel or barge or coastal tanker nominated on behalf of the Buyer and shall render all other necessary assistance and equipment to promptly receive the Products.
- 9.3** The Buyer shall give Seller at least 48 hours written notice of the scheduled time of delivery, excluding Sundays and holidays.
- 9.4** Seller shall use due diligence in the timely delivery of Products to Buyer's vessels. However, Seller shall not be liable for any delays due to congestion at the loading terminal, prior commitments of available barges/trucks, or discretionary decisions of the local transportation provider as to the vessel's order of placement in the daily barge program. In the case of delays not caused by the above circumstances, and which can be attributed to the negligence of Seller, Seller will reimburse Buyer for extra port costs such as shifting, pilotage and berthing. However, under no circumstances will Seller be liable for costs of ship's demurrage, off-charter hire or for indirect, special, incidental other consequential damages. If the actual delivery date is later than the contracted date stated in the Bunker Confirmation, the price may be subject to price fluctuations up to time of delivery, at the Seller's discretion. If the Receiving Vessel shall not have arrived within five (5) days after the expected date of arrival, the Seller shall have the right, at its sole discretion, to cancel the Transaction without prejudice to any other rights the Seller may have.
- 9.5** If, for reasons for which the Seller is not responsible the Seller is not, or is not with sufficient punctuality, so supplied by its contractor that it is unable punctually to discharge its delivery/service obligation towards the buyer, the Seller shall be entitled to withdraw from the Transaction entered into with the buyer.
- 9.6** The Seller shall be at liberty to make arrangements with other companies (the above mentioned "Supplier/s") to supply the whole or any part of the Products sold in each Transaction.
- 9.7** The Buyer shall be responsible for all demurrage or additional expenses incurred by the Seller if the Buyer, its Receiving Vessel or its port agent causes delay to the barge, truck or delivery facilities. The Buyer shall also pay any charges for mooring, unmooring and port dues, if incurred. In addition, the Buyer shall be liable for any expenses incurred by the Seller resulting from the Buyer's failure to accept the full quantity of Products ordered by the Buyer.

#### **10. SELLER'S LIABILITY**

- 10.1** Any express or implied condition, warranty, term, duty or undertaking, statutory or otherwise not specifically stated herein is hereby excluded. Seller shall not be liable for, and Buyer shall indemnify Seller against, any losses, claims, demands, costs or expenses arising out of any action taken by any third party against the Seller in connection with the supply of Products under this contract, whether or not the Seller is in breach of any of its obligations under this contract.
- 10.2** If any liability on the part of the Seller to Buyer shall arise under this contract for any loss or damage of whatever nature, such liability shall not exceed 25% of the price of the Products delivered hereunder to Buyer or, where the claim relates to a failure to supply, 25% of the price of the Products which ought to have been delivered, and in no event shall Seller's liability hereunder howsoever arising extend to any claim for any consequential or indirect damages, including without limitation, demurrage claims, loss of contract, loss of profit or any other economic losses.
- 10.3** Seller's supplier of Products and all employees, representatives or agents of Seller and of such Seller's suppliers will have the benefit of any and all rights stipulated for the Seller under these conditions with respect to exclusion of liability and with respect to indemnification of Seller thereof.
- 10.4** In the event that suppliers of any other person who may benefit from Seller stipulation in this connection would be held liable, the total liability shall be limited to an amount equal to the net price of the delivery involved and in any event Seller shall have no liability for any incidental, consequential or special damages (including but not limited to loss of revenue) arising.
- 10.5** Where a date of delivery is indicated, the obligation of the Seller shall be to deliver as soon thereafter as is practicable having regard to congestion affecting the Seller's delivery facilities or the facilities of its suppliers or agents or to the prior commitment of bunkering barges or other delivery vehicles. However, such date is not guarantee and time shall not be of the essence in respect thereof or of any other obligation on Seller part contained in these conditions Seller shall not be liable for any damage or loss whether arising directly or indirectly out of delays in delivery of Products.



## **11. CANCELLATION CLAUSE**

**11.1** If subsequent to the Bunker Confirmation, the Buyer cancels the order, even in part, for any reason whatsoever, including circumstances entirely outside of Buyer's control, then Seller without prejudice to any other rights it may have, shall be entitled to recover a) any cancellation fees imposed by the Physical Supplier or by the other local suppliers; b) a fee of \$ 5,00 per metric ton of Products to which cancellation refers or any difference between the contract price of the undelivered Products and the amount received by the Seller upon resale to another party (or, if another buyer cannot be found, any market diminution in the value of the Products as reasonably determined from available market indexes) whichever is greater; and c) all costs and damages arising from any underlying physical or derivative paper contracts which Seller has entered into in order to effect supply.

## **12. INDEMNITY**

**12.1** The Buyer shall defend, indemnify and hold the Seller harmless with respect to any and all liability, loss, claims, expenses, or damage the Seller may suffer or incur by reason of, or in any way connected with, the acts, omissions, fault or default of the Buyer or its agents in the purchase, receipt, use, storage, handling or transportation of the Products in connection with each Transaction.

## **13. CONTINGENCIES**

**13.1** The Seller shall not be in breach of its obligations under any Transaction in the event that performance is prevented, delayed, or made substantially more expensive as a result of any one or more of the following contingencies, whether or not such contingency may have been foreseen or foreseeable at the time of contracting and regardless of whether such contingency is direct or indirect:

- i) labor disturbance, whether involving the employees of the Seller, Supplier or otherwise, and regardless of whether the disturbance could be settled by acceding to the demands of the labor group;
- ii) compliance with applicable law or a change, request or order of any governmental authority or agent;
- iii) shortage in raw material, transportation, manufacturing, or fuels from the Seller's contemplated source of supply, not shown by the Buyer to be due to the Seller's lack of diligence; or
- iv) any cause beyond the reasonable control of the Seller, whether or not foreseeable.
- v) any determination, at Seller's sole discretion, that proceeding with a delivery would be a violation of the sanctions' laws or regulations of any jurisdiction to which Seller may be subject.

**13.2** In the event that performance is prevented or delayed by such a contingency, the Seller may reduce deliveries in any manner as it may determine in its sole discretion.

**13.3** If performance is made substantially more expensive by such a contingency, the Seller shall have the option either to reduce or stop deliveries or to continue deliveries and increase prices in fair proportion to the increased cost of operation under such a contingency.

**13.4** The Seller shall not be liable for demurrage or delay resulting from such a contingency.

**13.5** Quantities not sold or purchased due to the occurrence of such a contingency may be reduced or eliminated from the contractual amount at the discretion of the Seller.

**13.6** Nothing in this provision shall be deemed to excuse the Buyer from its obligation to make payments for Products received.

**13.7** Seller shall be entitled to recover from the Buyer all additional costs including, but not limited to acquisition and transportation costs as a result either direct or indirect from the consequences of such extraordinary events.

**13.8** Under no circumstances the Buyer will be excused under this paragraph of Buyer's obligation to make payment for all amounts due on account of the Products previously delivered hereunder.

## **14. TAXES AND ASSESSMENTS**

**14.1** The Buyer will pay the Seller the amount of all excise, gross receipts, import, motor fuel, superfund and spill taxes, and all other federal, state and local taxes (collectively, "Taxes and Assessments") or the foreign equivalent as determined in the sole, absolute and unfettered discretion of Seller (other than taxes on income), and paid or incurred by the Seller directly or indirectly with respect to the Products and/or on the value thereof insofar as the same are not expressly included in the price quoted. Any additional Taxes and Assessments incurred by Seller arising from a Transaction and imposed by any governmental and/or any regulatory authority after delivery as a result of an audit, whether domestic and/or international, shall be borne solely by Buyer.

**14.2** The Buyer will present the Seller with any required documentation, including but not limited to registrations, exemptions, certifications, claims, refunds, declarations or otherwise, in a form and format, and on or before whatever due date the Seller shall require, to satisfy the Seller's concerns in connection with any of the above taxes or assessments. Further, the Buyer shall indemnify and hold the Seller harmless for any damages, claims, liability or expense the Seller might incur due to the Buyer's failure to comply with this requirement.



## **15. SAFETY AND ENVIRONMENTAL PROTECTION**

- 15.1** It shall be the sole responsibility of the Buyer to comply and advise its personnel, agents and/or customers to comply, both during and after delivery, with all the health and safety requirements applicable to the Products and to ensure so far as possible that any user of such Products avoids without limitation any frequent or prolonged skin contact with the Products. The Seller accepts no responsibility for any consequences arising from failure to comply with such health and safety requirements or arising from such contact. The Buyer shall protect, indemnify and hold the Seller harmless against any damages, expense, claims or liability incurred as a result of the Buyer, or any user of the Products, or its customers failing to comply with the relevant health and safety requirements.
- 15.2** In the event of a spill or discharge occurring before, during or after bunkering, the Buyer shall immediately notify the appropriate governmental authorities and take whatever action is necessary, and pay all costs to carry out the clean-up. Failing prompt action, the Buyer authorizes the Seller and Supplier to conduct such clean-up on behalf of the Buyer at the Buyer's risk and expense, and the Buyer shall indemnify and hold the Seller and Supplier harmless against any damages, expense, claims or liability arising out of any such spill or clean-up unless such spill or clean-up shall be proven to be wholly caused by Seller's negligence. Under no circumstances, the Seller will be liable for environmental damages which have not been caused by its own direct activity.
- 15.3** The Buyer warrants that the Receiving Vessel is in compliance with all governmental trading and pollution regulations. The Receiving Vessel will not be moored at a wharf or alongside other marine loading facilities of the Seller or Supplier unless free of all conditions, deficiencies or defects which might impose hazards in connection with the mooring, unmooring or bunkering of the Receiving Vessel.

## **16. SANCTIONS COMPLIANCE**

- 16.1** Buyer warrants that the nominated Vessel and, if the above Vessel is a bunker barge or lighter, the Vessel(s) which will ultimately consume the Products delivered under this Agreement, is/are not (i) designated in any sanctions list issued by the United Nations, United States, and/or European Union, and/or (ii) owned or controlled by any person or entity registered in or operating from Iran or Syria or designated in any sanctions list issued by the United Nations, United States, and/or European Union.
- 16.2** Buyer further warrants that the Vessel is not destined for any Country designated in any sanctions list issued by the United Nations, United States and/or European Union, and that any cargo and/or goods aboard the Vessel are not destined for the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to 31 C F R § 560 211 of the U S. Code of Federal Regulations. Buyer agrees to indemnify and hold Seller harmless for any sanctions and/or financial penalties assessed against Seller resulting from a violation of this Clause 16.2.
- 16.3** In respect of any Products to be supplied by Seller, Seller affirms that the Products do not contain any crude oil or petroleum products that Seller knows, or has reasonable cause to suspect, to have originated in or been exported from Iran or other sanctioned countries. Seller provides no warranty, express or implied, with respect to the ultimate origin of the Products being provided to Buyer.
- 16.4** Seller and all its offices and dedicated agencies abide by international trade sanctions regulations, including those of the United Nations, United States, and European Union. Seller reaffirms that it will abide by all international trade sanctions to the best of its ability, and that in accordance with any applicable sanctions' legislation, Products supplied by Seller will not under any circumstances have an Iranian Certificate of Origin.
- 16.5** Seller warrants that to the best of its knowledge the Products to be supplied to the Vessel are not (i) sourced by any country or countries that are on any sanctions lists issued by the United Nations, United States, and/or European Union and (ii) owned or controlled by any person or entity registered in or operating from Iran or designated in any sanctions issued by the United Nations, United States, and/or European Union
- 16.6** To the best of Seller's knowledge, without prejudice, Seller understands from its usual Suppliers and/or ex-wharf sellers that their source of oil which Seller has requested to load out from their nominated terminals are not of Iranian Origin nor that they have been exported from Iran.
- 16.7** Seller has an internal company policy where it does not knowingly or deliberately deal with Iranian origin product, and Seller has informed its suppliers accordingly. Seller exercises all necessary due diligence to ensure that the any Products it supplies will not directly or indirectly originate from Iran, and Seller also does not deal with Iranian counterparties or their counterparties under any circumstances.

## **17. ADDITIONAL PROVISIONS**

- 17.1** Claims, notices and other communications hereunder shall be in writing and shall be mailed via certified or registered mail or by overnight courier to the attention of F.Ili Cosulich Spa.
- 17.2** No waiver of any of the provisions of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted, and any such waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver of any breach.
- 17.3** A failure or delay of the Seller in exercising any right, power or privilege in respect of the General Terms and Conditions will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- 17.4** The Buyer shall not assign any right or delegate any obligation arising under a Transaction without the prior written consent of the Seller.



- 17.5** If any part of the General Terms and Conditions is deemed invalid, all other conditions and provisions hereof shall remain in full force as if the invalid portion had never been part of the original agreement.
- 17.6** The headings used herein are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting the General Terms and Conditions.
- 17.7** Neither the General Terms and Conditions, nor any Bunker Confirmation, shall be altered or amended except by an instrument in writing signed by or on behalf of the Seller. Seller may amend the General Terms and Conditions from time to time without advance notice to Buyer. Any such amendment shall be effective and apply with respect to all Transactions for which a Bunker Confirmation is sent after the effective date of the altered or amended General Terms and Conditions.
- 17.8** No ambiguity in any provision of the General Terms and Conditions or any Bunker Confirmation shall be construed against a party by reason of the fact it was drafted by such party or its counsel. Acceptance of, or acquiescence in, a course of performance rendered under the General Terms and Conditions or any Bunker Confirmation shall not be relevant or admissible to determine the meaning of the General Terms and Conditions or any Bunker Confirmation, even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. The General Terms and Conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, legal representatives, and successors.

## **18. TERMINATION**

- 18.1** Notwithstanding anything contrary expressed or implied elsewhere herein, the Seller, without prejudice to its other rights, may, at its sole discretion, terminate the Transaction forthwith on notifying the Buyer either orally (confirming such notification in writing) or by notice in writing in the event that a liquidator (other than for the purpose of amalgamation or reconstruction) trustee in bankruptcy, receiver and manager is appointed in respect of the assets and/or undertaking of the Buyer or any of its associated companies, or the Buyer or any such associated company enters into an arrangement or composition with its creditor, or any similar appointment, arrangement or composition is made under any applicable Law or if the Seller has a reason to anticipate any such appointment, arrangement or composition.
- 18.2** Seller may terminate the Transaction in whole or in part, at its own discretion upon the breach of any provision hereof by Buyer.
- 18.3** Seller reserves the right to recover from the Buyer all damages and costs (including but not limited to loss of profit) resulting from any breach of the Transaction.
- 18.4** In case the Buyer fails to effect payment at the time and in the manner prescribed under these General Terms and Conditions of Sale and Delivery, Seller, without incurring in any liability, shall have the right to terminate any other Transaction subject to these Conditions entered with Buyer.

## **19. FORCE MAJEURE**

- 19.1** In the case of extraordinary events which are beyond the control of the Seller and which are unforeseeable in spite of the necessary care and which do not allow the Seller, with due consideration of its other delivery obligations, to make contractual deliveries or which would allow the Seller to make such deliveries only at economically unreasonable conditions, Seller shall be entitled for the duration of such obstruction to restrict or discontinue the deliveries -or in the case of prolonged obstruction- to withdraw from the Transaction or terminate it without notice. This shall apply without limitation for instance in the case of war or warlike conditions and their consequences, unrest, sabotage, operational disturbances, labour dispute, measures by Law or order of the authorities, obstructions or delay in transportation, disturbance in the supply of Seller with crude oils, in particular by events in the area of the crude oil producing Countries The same shall also apply if Seiler is forced by market conditions to change its source of resources in such a way that Seller can no longer reasonably be expected to continue deliveries The quantity of Products which has not been delivered for the reasons stated in this clause shall be deducted from the quantity of Products to be sold and purchased under this contract.
- 19.2** Seller shall be entitled to recover from the Buyer all additional costs including, but not limited to acquisition and transportation costs as a result either direct or indirect from the consequences of such extraordinary events.
- 19.3** Under no circumstances, however, shall Buyer be excused under this paragraph of Buyer's obligation to make payment for all amounts due on account of the Products previously delivered hereunder.

## **20. WAIVER OF IMMUNITIES**

- 20.1** Buyer expressly and irrevocably waives and agrees not to assert such a defense in any action or proceeding, which may be commenced or asserted against the Buyer or Buyer's revenues and/or assets in connection with a Transaction to the fullest extent permitted by applicable law, with respect to Buyer and Buyer's revenues and/or assets (irrespective of their use or intended use), all immunity on the grounds of sovereign immunity or other similar grounds, where Buyer is a State or Government owned or controlled entity, whether in whole or in part or otherwise, which status would otherwise entitle the Buyer to assert or allege the defense of sovereign immunity in any claim against it from:
- i) Suit;
  - ii) Jurisdiction of any court;



- iii) Relief by way of injunction, order for specific performance or for recovery of property;
- iv) Attachment of Buyer's assets (whether before or after judgment); and
- v) Execution or enforcement of any judgment to which Buyer or Buyer's revenues and/or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any proceedings.

## **21. LAW AND JURISDICTION**

**21.1** This is construed in accordance with and shall be governed in all matters by the Italian Law.

**21.2** Any dispute arising out of or in connection with any Transaction entered between the Seller and the Buyer on the basis of these General Terms and Conditions shall be subject to the exclusive jurisdiction of the Court of Genoa, Italy.