

CASSAR FUELS LIMITED
(the Company)

Terms and Conditions of Sale

Marine Fuels

The following are the terms and conditions applicable to the sale of Marine Fuels by the Company, by whichever means of transport/delivery, whether by delivery barge or road tanker, and in the absence of any written agreement to the contrary in whole or in part, shall apply and be binding on the Company as seller and on the Buyer in respect of each and every such sale.

Article One - Contracting Parties.

- 1.1. The Company and the Buyer are the contracting parties in the sale of Marine Fuels;
- 1.2. In any event in which such sale is ordered from the Company not by the Buyer directly but by or through any agent or broker, then such agent or broker shall be and be deemed for all intents and purposes of Law to be bound by and liable for all obligations detailed herein *in toto* as if the agent or broker were themselves the Buyer, jointly and severally with the Buyer. This joint and several obligation shall apply irrespective of whether the Buyer is disclosed or otherwise, and of whether or not such agent or broker purports to contract as agent or broker only, as the case may be. In all such cases the said agent or broker shall not have any right against the Seller for the limitation or postponement of any action for payment or other such action as may be necessary further to the sale of Marine Fuels as stipulated herein.
- 1.3. The owner and / or manager/s of the vessel, and the vessel receiving delivery of Marine Fuels under these terms and conditions of sale, shall be likewise responsible for the performance of all of Buyer's obligations hereunder, jointly and severally with the Buyer. In consequence of the above, in any event in which the delivery of Marine Fuels by the Company is requested and contracted for by an agent or manager of the owner, or by the operator or charterer of the vessel, then such agent, manager, operator or charterer, as also the vessel concerned, shall be and be deemed for all intents and purposes of Law to be bound by and liable for all obligations detailed herein *in toto* as if the agent or manager of the owner, operator or charterer or the vessel were themselves the Buyer, jointly and severally with the Buyer.
- 1.4. In consequence of the above therefore, *inter alia*, any and all payments and balances of payments due to the Company in connection with any delivery of Marine Fuels in terms of these Terms and Conditions shall accordingly be due not only by the Buyer but also by any other third party mentioned above as is deemed to be jointly and severally responsible for the relative obligations with the Buyer, and shall also be deemed to be a debt of the vessel receiving delivery of Marine Fuel, and it is agreed and duly warranted that the Company will have and may assert a lien or special privilege against the receiving vessel for the amount of such payments or balances of payment.

Article Two - Quality and Warranty

- 2.1. The Marine Fuels to be delivered hereunder shall be Company's commercial grades of Marine Fuels generally offered to Company's customers at time and place of delivery, and as indicated to Buyer by the Company in writing. The Company makes no further warranties of quality, merchantability or fitness for any particular purpose and any implied warranties or conditions whether statutory, legal or otherwise are expressly excluded.
- 2.2. The Buyer shall have the sole responsibility for the selection of proper Marine Fuels for use in the vessel being supplied and the Company shall not under any circumstances bear or be obliged to bear any responsibility for any and all consequences of whatever nature of the use of the Marine Fuels supplied by it, in so far as the said Marine Fuels will be in accordance with these Terms and Conditions.
- 2.3. Irrespective of any obligations of the Company with respect to the quality and applicable warranties of the Marine Fuel supplied by it in terms of Article 2.1 above, it shall be the duty of the Buyer to take all reasonable actions, including retention and burning of fuel to eliminate or minimise any costs associated with an off-specification or suspected off-specification supply. In this respect and for this aim, the Buyer shall extend his fullest cooperation with the Company in the identification and giving effect of the most practical, cost-effective and damage-limiting solution to any relative problem that may from time to time arise. It is specifically agreed and covenanted that in any event the Company's obligations hereunder shall not exceed the direct expenses incurred for removal and replacement of fuel and shall not include any consequential or indirect damages, including without but not limited to demurrage claims, loss of contract or loss of profit. The Company retains the right to remove or direct the removal and replacement of any such Marine Fuel as may need such replacement and shall not be liable for any direct or other expenses in connection with such removal if such removal is effected by the Buyer without the express consent of the Company.

Article Three - Stems

Bunker stems shall be valid for a period of seven (7) days following the date of stemming by the Seller.

Article Four - Nominations and Deliveries.

- 4.1 The Buyer shall nominate vessel at least five (5) working days in advance of expected date of arrival, and shall at such time specify the loading port, ETA, grades and quantities required. At the moment when such nomination is formally accepted by the Company, the indicated date of arrival shall become the accepted delivery date, and Company binds itself to deliver the Marine Fuel so ordered and specified within the day which has been accepted as the delivery date. The Company reserves the right to cancel any nomination without liability on the part of the Company and without prejudice to any rights the Company may have against the Buyer, if the nominated vessel does not arrive at delivery port and present itself for delivery within three (3) days of the accepted delivery date.
- 4.2 The Buyer or the vessel's local agent shall give the Company at least forty-eight (48) hours notice in advance, excluding Sundays and Public Holidays, of each delivery, confirming product and quantities and other delivery details. In any case in which such delivery date is different from original delivery date in terms of article 4.1 above, then such new delivery date would need to be formally accepted by the Company in writing in order to be duly binding in terms hereof. In any event in which such forty-eight (48) hour notice is not so given or in any event in which the Company does not accept the new proposed delivery date as stipulated herein, the Company shall in normal circumstances use reasonable endeavours to seek to accommodate such delivery in a timely manner.
- 4.3 In any event in which delivery is required otherwise than during regular business hours and where the Company is permitted to effect such delivery in terms of any laws, rules and regulations applying from time to time, the Buyer shall pay all overtime and extra expenses incurred.
- 4.4 In any case in which lighterage is employed, it is agreed that all lighterage charges including overtime and other associated charges shall be payable by the Buyer.
- 4.5 In any event in which the Buyer fails to take delivery, in whole or in part, of the quantities nominated, the Buyer shall be responsible for any costs resulting from the Buyer's failure to take delivery as well as for any losses incurred by the Company to downgrade the fuels, without prejudice to the Company's rights for damages under these terms of sale or otherwise.
- 4.6 The Company shall use its reasonable endeavours to adjust to any reasonable changes in the Buyer's schedule. It is in any event specifically agreed and covenanted that neither the Company nor the Company's supplier shall in any such event be liable for any demurrage paid or incurred by the Buyer due to delays in furnishing berth or to any delay in delivery of Marine Fuels where:-
- (a) The Company did not accept the delivery date in terms of Article 4.1 above;
 - (b) The Buyer fails to give the forty-eight (48) hour notice specified in Article 4.2 above;
 - (c) The Delivery barge arrived on accepted delivery date and performed properly;
 - (d) The occurrence of certain conditions and circumstances beyond the control of the Company, including but not limited to harbour congestion and dredging operations;
 - (e) Adverse weather conditions exist, which are determined to be such by the Master of the delivery barge;
 - (f) Delays were not the result of the Company's inability to perform;
- 4.7. Notwithstanding anything to the contrary contained in these Terms and Conditions, the Company reserves the right to reduce the quantities of product to be supplied to the Buyer where, on the basis of internal logistics and/or size of bunker barge available due to prior engagement, the Company in its sole discretion so determines. This clause shall override any previous exchange of written confirmation of bunker supply between the Company and Buyer. Provided that the Company will have given written notice of such reduced quantity to the Buyer not less than twenty-four (24) hours prior to vessel's estimated time of arrival.

Article Five - Risk and Title

At the moment when the Marine Fuels being delivered by the Company pass the flange of the receiving vessel's permanent hose connections, delivery shall be deemed completed and risk shall pass to Buyer.

In the case in which delivery is made to any barge, truck or coastal tanker nominated by Buyer, delivery shall be deemed completed and risk shall pass to Buyer at the last flange on the Company's or the Company's supplier's terminal property. The Buyer shall be responsible for connection to intake of Buyer's vessel, barge or truck, and pumping shall be performed under the direction of the receiving vessel, barge or truck. Legal title to the Marine Fuel shall only pass onto Buyer on full payment of the price, and until such full payment the Company shall have the right to recall the product or to indicate its place of delivery; in the event that the product perishes or is destroyed or is lost after delivery without the price having been paid in full, Buyer shall still be responsible towards the Company for the payment of the price or any unpaid portion thereof.

Article Six - Product and Order Inspection.

- 6.1 The Marine Fuel delivered by the Company shall be assessed and measured, as to its quantity, in accordance with the ASTM Petroleum measurement tables of shore tanks and lighters, or meters at the Company's option, and the Buyer will be charged at the agreed rates of price on the basis of these measurements. The Buyer has a right to have its representative or, at his own expense, an independent inspector present during measurement, but determination of quantity shall be made solely by the Master of the delivery barge, and such determination shall be conclusive. Provided that in any event in which the Buyer proceeds to make the appointment of such an inspector, the Buyer shall pay the Company the additional charge of one thousand United States dollars (US\$ 1,000) by way of pre-liquidated damages.
- 6.2. All quantities subject of the delivery of the order accepted by the Company shall, in terms of these Terms and Conditions, be understood to be approximate with a margin of ten per cent (10%) more or less at the Company's option.
- 6.3. The Marine Fuels supplied by the Company shall be subject to sampling in accordance with the following procedure. Sampling by the Company or the Company's supplier shall be done prior to product leaving shore tanks, tank trucks or barges. The Buyer, at his own expense, shall have the right to appoint an approved petroleum inspector to witness the drawing of the sample and perform subsequent testing of product. Provided that in any event in which the Buyer proceeds to make the appointment of such an inspector, the Buyer shall pay the Company the additional charge of one thousand United States dollars (US\$ 1,000) by way of pre-liquidated damages. The Company or the Company's supplier shall take four (4) representative samples of each grade of Marine Fuel(s) to be delivered. Two (2) samples shall be given to the Master of the vessel receiving the Marine Fuel and two (2) samples shall be retained by the Company or the Company's supplier. These latter samples shall be retained by the Company for at least thirty (30) days from date of delivery in a safe place for verification of the quality thereof, if required. Any claim concerning the quality of the Marine Fuel is to be lodged formally and in writing by the Buyer within not later than ten (10) running days from the date of delivery. In the event of such a claim, one of the remaining samples held by the Company and one of the samples held by the Buyer shall be submitted for analysis to an independent laboratory in Malta. The analysis from the independent laboratory shall manifest the quality of the product delivered. The costs of analysis shall be borne by Buyer, unless the complaint as to the quality is shown to be justified.

Article Seven - Claims

- 7.1. Any claim as to any alleged difference in the quantity of Marine Fuels, being in excess of the margin indicated in Article 6.2 above, must be noted on the appropriate Notification of Bunker Supply form and signed by the Buyer or his representative/s at the time of delivery and presented by the Buyer in writing to the Company within not later than ten (10) running days thereafter.
- 7.2 Any other claim by the Buyer which does not fall within the ambit of Article 8.1 above, including but not limited to any claim concerning any alleged deficiency in quality of Marine Fuels delivered by the Company must be lodged at the earliest opportunity available and in any event must be made within not later than ten (10) running days from the date of delivery. It is clearly agreed and covenanted that the Company will not in any event be responsible for any claim lodged and notified to it at any time after ten (10) running days from date of delivery.
- 7.3 In the presentation and subsequent processing of his claim, the Buyer is bound to supply and furnish necessary promptly any and all details required by the Company to satisfactorily assess and evaluate any said claim.
- 7.4 The Company agrees to handle any such claim lodged by the Buyer efficiently and to respond to any such complaint or claim by Buyer with intent to settle any such claim, as the case may be, within a maximum of forty-five (45) days of receipt of such claim. In any event in which both parties are unsuccessful at having the claim settled amicably within a maximum of sixty (60) days from the receipt of the claim, either party can opt to proceed to Arbitration in terms of Article 16.2 hereof.
- 7.5 It is in any event agreed and covenanted that the Company shall not be responsible for any claim arising in any circumstances where there is or has been commingling to any extent or proportion whatsoever of fuel delivered by the Company with any other fuel aboard Buyer's vessel.

Article Eight - Prices

- 8.1 The price to be paid for Marine Fuels shall be Company's spot or posted price offered for a specific delivery. Spot prices offered by the Company are applicable for deliveries made on, before or within three (3) days subsequent to vessel's specified ETA as advised by the Buyer, if accepted by the Company at time of nomination. Prices for delivery beyond this range are subject to amendment at the Company's sole option and discretion.

- 8.2 Barge charges for the supply of bunkers shall be charged at rates determined by the Company and shall at all times be subject to alteration by the Company, at the Company's sole option and discretion, without the need of any prior notice to the Buyer.
- 8.3 The prices charged by the Company are exclusive of all and any such taxes, duties, levies, port dues, berthing charges, jetty dues and other costs and charges as are applicable from time to time, all of which shall be additional to the said prices and shall accordingly all be for account of the Buyer. The Company furthermore reserves the right to pass on to the Buyer's account any additional cost or other increase-factor imposed on the Company by any Government or governmental approved or authorised Entity or Authority subsequent to the date on which the Company's price is offered or delivery is made, whether on a retroactive basis or not and for this purpose the Buyer hereby expressly waives any applicable statute of limitations or prescriptive period relative to such claim raised by the Company in terms of this sub-Article.

Article Nine – Payment.

- 9.1 Unless otherwise formally agreed to between the parties, all payments shall be made by the Buyer in United States Dollars (U.S.\$), without discount, setoff or deduction, upon receipt by the Buyer of written, telegraphic or other notification of quantities delivered and amounts due. Subsequent adjustments, if any, will be made upon receipt by the Company of the relative Marine Fuel delivery receipt. Any deduction for claims related to such delivery shall be deemed to constitute a serious and material breach of the Buyer's obligation hereunder and any and all discussions, settlement communications and attempts and/or reviews on or related to such claims shall be suspended until the Buyer makes payment in full for the quantity delivered as notified by the Company, without prejudice to any other action which the Company may decide to take in respect of such default. The Company may immediately recover any amount withheld from the full payment and the Buyer agrees that any claims related to the delivery do not constitute a valid defence against the Company's claim to the withheld amount, without prejudice to any subsequent right of the Buyer.
- 9.2 Unless otherwise specifically agreed to between the parties, all payments shall be made by Buyer by means of an electronic or telegraphic transfer to a bank designated by the Company in the individual Contract of Sale for Marine Fuels concluded between the Company and the Buyer.
- 9.3 A payment shall be considered overdue if not received by the Company within a maximum of thirty (30) days from date delivery commences. Overdue payments shall be subject to interest at a rate of three per cent (3%) per month, or to the maximum rate of interest permitted under applicable law, whichever is the higher.
- 9.4 The Company may, at its sole discretion, in any event in which it has reasonable grounds of concern as to the Buyer's financial condition and/or as to his legal and/or factual ability to honour its obligations arising herefrom, request a cash payment in advance or such other security in such form and to such value as it establishes, prior to any delivery and the Company may, in the same circumstances, declare any amount then outstanding from the Buyer to be immediately due and payable, and accordingly demand payment thereof even prior to the expiry of any term for payment stipulated herein.
- 9.5 In any event in which parties will have agreed to the payment of any payment or part thereof, by instalments, upon the default of the Buyer to honour in whole or in part, any one (1) such instalment as and when due, and upon such default continuing for a period of seven (7) running days, then the Buyer will be deemed to have lost the benefit of payment by instalments and any remaining balance shall in its entirety become immediately due and payable.

Article Ten - Health and Safety.

- 10.1 The Buyer declares that he is, and is for all intents and purposes hereof fully presumed to be, familiar with the known health effects related to the Marine Fuels supplied hereunder and with all the appropriate protective health and safety procedures required and indicated for the handling and use of such Marine Fuels. The Buyer undertakes to adhere strictly to all such health and safety procedures throughout all the stages of use and/or handling of the Company's Marine Fuels. The Buyer shall also be solely responsible for the adequate and required process of information of all applicable health and safety information, rules and regulations to all employees, users and other third parties likely or liable to be exposed to the Marine Fuels sold hereunder. The Buyer shall be solely responsible for the strict compliance by all its employees, agents and other users with all health and safety laws, rules, regulations, requirements or recommendations related to the Marine Fuels supplied hereunder, and shall be responsible to assure that any of its employees or agents, users and other third parties likely or liable to be exposed to avoid frequent or prolonged contact with or exposure to Marine Fuel, both during and subsequent to delivery. Neither the Company or the Company's supplier shall bear or be deemed to bear or accept any responsibility of whatever nature, whether direct or indirect, for any direct or indirect consequence arising from or attributable to any failure by Buyer, its employees or agents, any users or other third party to comply with such health and safety laws, rules, regulations, requirements or recommendations or arising from such contact or exposure.

- 10.2 In the event of any spill occasioned during the fuelling process, the Buyer shall immediately take and/or shall immediately assist and co-operate with the Company or the Company's supplier in taking any necessary action to remedy or mitigate the consequences thereof. Any of the actions and measures taken by the Company or its representative shall be deemed taken on the Buyer's authority, and shall be at the Buyer's expense except to the extent that such escape or discharge was caused or contributed to by Company or Company's supplier, provided that if Buyer considers that such measures should be discontinued, and any Governmental authorities having due jurisdiction so concur, the Buyer shall so formally notify the Company, and thereafter neither the Company nor its representative shall have any right to continue such measures under the provisions of this Article.
- 10.3 The Buyer shall promptly supply Company with all such documents and information concerning any escape or spillage or any programme for the prevention thereof as are required by the Company or are required by law or regulations applicable to the contract port.
- 10.4 The Buyer warrants that the Marine Fuel purchased hereunder is intended solely and strictly for the operation of the nominated vessel, and that vessel only.
- 10.5 The Buyer warrants that the vessel nominated is in full compliance with all national regulations. The vessel to be bunkered is subject to the Company's acceptance and will not be moored at wharf or alongside other marine loading facilities of the Company or the Company's supplier unless free of all conditions, difficulties, peculiarities, deficiencies or defects which might impose hazard in connection with the mooring, unmooring or bunkering of vessel. The Company reserves the right to refuse to effect delivery to the vessel if, at the Company's sole discretion, it is probable that such delivery will result in adverse consequences of any kind whatsoever.

Article Eleven - Indemnity

The Buyer shall indemnify and hold and maintain the Company and the Company's representative at all times harmless from and against any and all claims, demands, suits, action, or liability for damage to property, for injury or death of any person or for non-compliance with any requirement of any Government or other appointed or authorised Entity or Authority, such damage being of any nature whatsoever and being of any entity whatsoever, arising directly or indirectly out of or in any way connected with any act or omission, fault or default, contractual breach being material or otherwise of Buyer or its agents or servants or third parties in receiving, using, storing or transporting Marine Fuels delivered hereunder or due to exposure thereto.

Article Twelve - Force Majeure

- 12.1 Both parties will be excused from all their respective obligations herein to the extent that performance is delayed or prevented by circumstances beyond their control or force majeure including but not limited to acts of God, weather, fire, explosions, mechanical breakdown, strikes, plant shutdowns, civil disturbances and government regulations.
- 12.2 It is agreed that such circumstances and/or force majeure shall not affect or include Buyer's obligation to make payment for products received.
- 12.3 The Company shall not be liable for any demurrage or other costs resulting from any such delay or failure to perform on part of the Buyer, even if occasioned by such circumstances or force majeure.
- 12.4 In case of force majeure the Company shall be released from its obligations under contract. The Company shall be so released throughout the actual duration of the period during which such force majeure lasts or shall be released forever therefrom, at its sole option and discretion.
- 12.5 In any event in which the Company's capacity to perform becomes impracticable for any reason, including but not limited to requests, directives and/or suggestions by any Government or other official body, entity or authority relating to supplies, priorities, rationing or allocations of any product, the Company may reduce or stop deliveries in such a manner as it may in its sole discretion determine and shall be relieved of its obligation and incur no responsibility of whatsoever nature to perform hereunder. The Company's right to require strict performance by the Buyer of any and / or all obligations imposed upon the Buyer by its agreement shall not in any way be affected by any previous waiver, forbearance, or cause of delaying.

Article Thirteen - Duty-free Bunkers

Any duty-free bunker supplies shall only be used by the Buyer in strict accordance with the current relevant Maltese Customs regulations.

Article Fourteen – Termination

The Company may terminate the contract of sale concluded with the Buyer in whole or in part, at its own discretion, upon the breach of any provision hereof by the Buyer. This termination will be without prejudice to the Company's right to recover from the Buyer all damages and costs resulting from any breach of these terms by the Buyer, including but not limited to loss of profit.

Article Fifteen - Changes in terms of sale

The Company reserves the right to review or otherwise change these terms of sale as it deems necessary from time to time.

Article Sixteen - Jurisdiction

- 16.1 These Terms and Conditions and the relative agreement of sale shall be governed and construed by and in accordance with the Laws of Malta.
- 16.2 Any claim arising in terms of Article 8.4 shall be referred to resolution through arbitration through the offices and methods contemplated by the Malta International Arbitration Centre in terms of the Arbitration Act 1996. Each party undertakes to nominate an Arbiter within fifteen (15) days from receipt of the relative request and the Arbiters shall nominate an independent Chairman, being a person of legal qualifications and experience. The Arbiters shall decide according to law and equity.
- 16.3 Any other dispute arising from any matter connected with or ancillary to these terms and Conditions and the relative agreement of sale between The Company and the Buyer, not being a dispute in terms of Article 8.4 above shall be referred for resolution to the sole and exclusive jurisdiction of the Maltese courts.