



## **ENDOFA GROUP GENERAL TERMS AND CONDITIONS**

**10 NOVEMBER 2020**

Our Offices:

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## **Introduction / validity**

**1.1** This is a statement of the Endofa group's general terms and conditions under which all entities in the Endofa group sells Marine Fuels (the "Terms and Conditions"). No variation of these general terms and conditions shall be valid unless confirmed in writing by the Seller prior to the transaction. These general terms and conditions shall be valid and binding for all offers, quotations, prices and deliveries made by the Seller and any associated company, representative or agent as of and after 18 January 2016.

**1.2** These general terms and conditions shall apply to all separate offers, quotations, orders, agreements, services or other contracts of any nature whatsoever which are entered into by the Seller unless otherwise specifically agreed in writing.

**1.3** If for any reason any part or clause of these general terms and conditions shall be deemed invalid, the other parts and clauses shall remain valid and in effect and shall remain binding between the Buyer and the Seller.

## **2 Definitions**

Throughout this document the following definitions shall apply:

**"SELLER"**: "Seller" means Endofa group and/or any office, branch office, affiliate or associate of these companies as identified in an order confirmation or other contract documents.

**"BUYER"**: "Buyer" means the Vessel supplied with Marine Fuels and jointly and severally her Master, Owner, managers/operators, disponent owners, time charterers, bareboat charterers and charterers or any party requesting offers or quotations for or ordering Marine Fuels and/or services and any party on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made. Buyer and Seller may be referred to herein as "party" or the "parties."

**"MARINE FUELS"**: "Marine Fuels" means products, derived from crude oil as generally offered by the Seller to the Seller's customers for similar use at the time and place of delivery and/or services connected thereto.

**"OWNER"**: "Owner" means the registered owner and/or the bareboat charterer of the vessel.

**"VESSEL"**: "Vessel" means the vessel, ship, barge or offshore unit that receives or is intended to receive the supply of Marine Fuels, either as end user or as a transfer unit to a third party.

## **3 Quality**

**3.1** The Seller warrants that the Marine Fuels to be delivered hereunder shall be the Seller's or the Seller's supplier's commercial grades of Marine Fuels as currently offered generally to its customers for similar use at the time and place of delivery.

**3.2** General information about the typical characteristics of the Marine Fuels at any delivery location shall only be indicative of the Marine Fuels that have been made available at that location and shall not form part of the specification of Marine Fuels to be delivered.

The Buyer shall have the sole responsibility for selection and fitness for any particular purpose of the Marine Fuels. The Seller assumes no responsibility whatsoever for the compliance by the Buyer with any requirement regarding the quality, sulphur content or other characteristics of the Marine Fuels.

**3.3** EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 3.1 ABOVE, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE MARINE FUELS DELIVERED TO THE BUYER, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURT OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

**3.4** The Buyer shall be responsible for keeping delivered Marine Fuels segregated from other fuel onboard the Vessel. The Seller shall be resolved from all liability regarding both quality and quantity of the Marine Fuels as soon as the delivered Marine Fuels are blended with other fuel onboard the Vessel.

## **4 Quantity**

**4.1** The quantity of the Marine Fuels delivered from the Seller to the Buyer shall be determined by the official meter or gauge of the tanker delivering the Marine Fuels. If the delivery is done from an onshore installation, the onshore measurements of the quantity shall be considered final and representative for the amounts delivered.

**4.2** The chief engineer of the Vessel or his representative shall have the right to be present along with the Seller's representative during measurements to assess the measurement of the quantity delivered. The Seller shall give sufficient information and access to the bunker tanker or onshore installation, and must present valid information regarding the quantities delivered.

**4.3** Should the chief engineer of the Vessel or his representative fail or decline to verify the measurements of quantities, then the measurements made by the Seller shall be final, conclusive and binding and the Buyer shall be deemed to have waived any and all claims regarding the quantities delivered.

**4.4** In respect of the quantity agreed upon, the Seller shall be at liberty to provide, and the Buyer shall be obliged to accept a variation of 5 (five) per cent from the agreed quantity, with no other consequence than a similar variation to the corresponding invoice for the delivery.

**4.5** A representative of the Seller and the chief engineer of the Vessel or his representative shall each confirm the quantity by signing a corresponding bunker delivery receipt.

## **5 Delivery and transfer of title**

**5.1** The Seller shall not be required to deliver Marine Fuels into any of the tanks of the Vessel which are not regularly used for Marine Fuels and the Seller shall not be required to deliver any fuel for the export of which a government permit is required if such permit has not been obtained. The Seller shall at all times be entitled to perform a delivery contract in separate deliveries provided all deliveries are made within the originally agreed delivery period.

**5.2** The time of delivery given by the Seller shall only be deemed an approximate time of delivery unless otherwise agreed in writing between the parties. The Vessel shall be bunkered as promptly as prevailing circumstances permit having regard to congestion affecting the delivery facilities of the Seller, its suppliers or agents and to prior commitments of the delivery barges. The Seller shall not be liable for any consequences or any time lost due to the Vessel having to wait for berth for bunkering or for completion of bunkering.

**5.3** Delivery shall be made in bunker lots at wharf or at store terminals of the Seller or the Seller's supplier or by barge if barging facilities are available

**5.4** In the event of delivery by barge, the Buyer shall free of cost provide a clear and safe berth for the barge(s) alongside the Vessel's receiving lines.

**5.5** The Buyer shall make connection between the pipelines or delivery hoses and the Vessel's intake lines, and the Buyer shall render all other necessary assistance and provide sufficient tankage and equipment to promptly receive all deliveries hereunder.

**5.6** Delivery shall be deemed to take place when the Marine Fuels reach the flange connecting the pipelines or delivery hoses with the intake line of the Vessel, at which point the Seller's responsibility shall cease and the Buyer shall assume all risk in the Marine Fuels, including the risk of loss, damage, deterioration, depreciation, evaporation or shrinkage. Title to the Marine Fuels shall pass to the Buyer only upon receipt of full payment for the price of the Marine Fuels and ownership over the Marine Fuels shall, thus, remain with the Seller until such payment has been received.

**5.7** If the Buyer fails to receive or rejects any amount of the full quantity of Marine Fuels ordered and tendered, the Buyer shall be liable for all expenses and losses incurred by the Seller arising out of such failure or rejection by the Buyer including any loss incurred by having to transport the fuel back to storage or by having to sell the Marine Fuels in a degraded form at a price lower than that applicable to the grade originally nominated by the Buyer, without prejudice to other remedies of the Seller. In the event that the Buyer decides to cancel the order in full within 48 (forty-eight) hours before confirmed delivery, then Buyer shall pay a cancellation fee of 5 (five) percent of the order price.

**5.8** Work in connection with delivery outside normal working hours or on public holidays or Saturdays, or Sundays or outside normal harbor limits shall be at the sole expense of the Buyer at the rates then applicable for such work in addition to the price.

**5.9** The Buyer shall pay the Seller for delivery services at the rates applicable on the date of delivery and for all additional charges incurred in connection with the delivery, including but not limited to, port dues, wharfage, mooring and unmooring, barge hire, demurrage, provision of additional hose in excess of that normally available and the use of all oil pollution control equipment required to effect delivery. The Buyer further agrees to pay and indemnify and hold harmless the Seller and its supplier against all claims and expenses for any loss, damage or delay caused by the Vessel to the barge, all such indemnification and payment of expenses to be the subject of all terms and conditions of Section 13 below.

**5.10** If the Seller at any time for any reason believes that there will be a shortage of Marine Fuels at any place of delivery and that the Seller, as a consequence thereof, will not be able to meet the demands of all its customers, then the Seller shall be allowed at its own discretion to choose among its customers how supplies are to be allocated.

## **6 Sampling**

**6.1** The Seller shall arrange for 4 (four) identical representative samples of each grade of Marine Fuels delivered to the Vessel to be drawn throughout the entire bunkering operation. If practically possible such samples shall be drawn in the presence of both the Seller and the Buyer or their respective representatives.

**6.2** In the case that drip sampling is not available onboard the delivery barge, tank, truck or onshore tank, samples shall be taken as a composite of each tank divided with 1/3 (one third) from each the top/mid/bottom of the tanks.

**6.3** The samples shall be securely sealed and provided with labels showing the Vessel's name, identity of the delivery facility, product name, delivery date and place and seal number, authenticated with the Vessel's stamp and signed by the Seller's representative and the Master of the Vessel or his representative. The seal numbers shall be inserted into bunker delivery receipts, and by signing the bunker delivery receipts both the Seller and the Buyer agree to the fact that the samples referred to therein are deemed valid and taken in accordance with the requirements as specified in this clause.

**6.4** Two samples shall be retained by the Seller for 90 (ninety) days after delivery or, if so requested by the Buyer in writing, for as long as the Buyer reasonably requires. The other two samples shall be retained by the Vessel.

**6.5** In the event of a dispute regarding the quality of the Marine Fuels delivered, the samples drawn pursuant to clause 6.1 shall be deemed to be conclusive and final evidence of the quality of the Marine Fuels delivered. In case of a dispute, one of the samples retained by the Seller shall be forwarded to an independent laboratory, jointly chosen by the Seller and the Buyer, for final and binding analysis. The seal of the sample may only be breached in presence of representatives from both parties unless one or both in writing have declared that they will not be present. No samples subsequently taken shall be admissible as (additional) evidence in a dispute over the quality of the Marine Fuels. If any of the seals have been removed or tampered with, such samples shall be deemed to have no value as evidence.

## **7 Claims**

**7.1** Any dispute as to shortage in quantity must be notified at the time of delivery on the bunker delivery receipt or in a letter of protest. Any claims as to short delivery shall be presented by the Buyer in writing within 24 (twenty four) hours from the date of delivery, failing which any such claim shall be deemed to be waived and barred. Any changes by the Buyer or its representative to the quantity stated on the bunker delivery receipt shall have no effect.

**7.2** Any claim as to the quality of the Marine Fuels by the Buyer shall be notified to the Seller in writing promptly after the circumstances giving rise to such claim have been discovered. If the Buyer does not notify the Seller of any such claim within 15 (fifteen) days of delivery, such claim shall be deemed to be waived and barred.

**7.3** In the event a claim is raised pursuant to sub clause 7.2, the Seller and the Buyer shall have the quality of the Marine Fuels tested by a mutually agreed, qualified and independent test laboratory. The Seller shall provide the laboratory with one of the samples retained by the Seller pursuant to clause 6.5 for analysis, the result of which shall be conclusive of the quality of the Marine Fuels delivered. Unless otherwise agreed, the analysis shall be established by tests in accordance with current ISO Standard or, if tests in accordance with ISO Standard are not available or such standards have not been agreed upon by the Buyer and the Seller, any equivalent or prevailing local standard. In the absence of an agreement to the contrary the expense of the analysis shall be for the account of the party whose claim is found wrong by the analysis.

**7.4** Any claim the Buyer may allege as to the quality or quantity of the Marine Fuels delivered shall in any event be time-barred unless arbitration is commenced in accordance with clause 14 within 12 (twelve) months of delivery.

**7.5** Nothing in this clause shall relieve the Buyer of its obligation to make payments in full when due as provided herein.

## **8 Payment**

**8.1** Unless otherwise agreed in writing payment shall be made in cash on delivery.

**8.2** Failing payment on the due date, the Buyer shall be charged interest of 3 (three) percent per month on the invoice amount from the date of maturity to the date of full payment. Additionally, the Seller shall be entitled to charge an administration fee of USD 1.50 (one point fifty) per MT of Marine Fuels supplied, with a minimum fee of USD 350 (three-hundred fifty) for each delivery for which payment is late. The Buyer shall be required to pay on demand all costs of collection, including reasonable attorney fees, whether or not a lawsuit is commenced as part of the collection process in the event the Buyer does not make payment on or before the due date for payment, which unless otherwise agreed in writing will be the date of delivery.

**8.3** The Buyer shall not be entitled, without the consent of the Seller in writing, to offset or deduct any amounts for claims against the Seller.

**8.4** The Seller shall have the right to seek payment joint and several from any or all Owners, disponent owners, time charterers, bare boat charterers and charterers of the Vessel or any other party ordering Marine Fuel for the Vessel, in the event that the Buyer fails to make full payment on the due date.

**8.5** Any payment made by or on behalf of the Buyer to the Seller, including payments made before a supply is delivered, shall be allocated and credited in the following order: (1) costs of any kind or nature, including but not limited to legal costs and attorneys' fees, (2) interest and administrative fee, and (3) invoices in their order of age, or in the Seller's sole discretion to any outstanding claim or invoice as the Seller may choose. The Buyer shall not have any right to choose how payments are to be allocated.

## **9 Lien and financial responsibility**

**9.1** If bankruptcy, liquidation, composition or other similar proceedings are instigated against the Buyer or any entity affiliated with the Buyer, in court or out of court, or if there is a reason to believe that the Buyer will not be able to effect payment when due, the Seller shall have the right to receive immediate cash payment or immediate satisfactory security for any delivery to the Buyer, whether contracted or not and whether the Marine Fuels have been delivered or not. If the Seller does not receive such immediate cash payment or security, the Seller shall have the right to suspend deliveries regarding any sale contracted, which shall not relieve the Buyer of any of its obligations, or, at the Seller's option, to cancel any sale contracted, irrespective of whether delivery has been completed or not. The same shall apply if there, in the Seller's opinion, is uncertainty as to who is legally responsible as Buyer.

**9.2** If the Buyer defaults in making any payment when

due, the Seller shall have the right to suspend deliveries regarding any sale contracted, which shall not relieve the Buyer of any of the obligations of the Buyer, and the Seller shall have the right to receive immediate cash payment regarding any sale contracted or, at Seller's option, to cancel any sale contracted, irrespective of whether delivery has been completed or not.

**9.3** If the delivery is contracted for or by an agent of the Buyer on behalf of a principal, disclosed or undisclosed, such agent, as the case may be, shall be jointly and severally liable with such principal for the due and proper performance of the contract to the fullest extent permitted by applicable law.

**9.4** Deliveries of Marine Fuels hereunder are made not only on the credit of Buyer but also on the faith and credit of the Vessel which is intended to consume the Marine Fuel and it is agreed that the Seller will have and may assert a lien against the Vessel itself or any and all other vessels that are part of the same legal holding entity as the Vessel and the bunkers of such vessels for any amounts due to the Seller in respect of the Marine Fuels and all costs of collection of all sums due to the Seller, including reasonable attorney fees, related to the recovery of these amounts. All costs associated with arrest or seizure of any and all vessels or bunkers shall be for the account of the Buyer. If the Seller takes any additional security measures, these shall not be construed as a waiver of any other rights relating to security or payment in these general terms and conditions.

**9.5** No disclaimer stamp of any type or form will be accepted on the bunker receipt. If any stamp should be applied it will not alter, change or waive the lien of the Seller against the Vessel or the bunkers or waive the ultimate responsibility of the Vessel incurred through this transaction.

## **10 Nomination and final notice of requirement; Termination**

**10.1** The Buyer shall give the Seller final notice at least 48 (forty-eight) hours of the exact time when delivery is required. Failing such 48 (forty-eight) hours' notice, the Seller shall use reasonable efforts to deliver at the nominated delivery time.

**10.2** The Buyer shall reimburse the Seller for overtime and any other additional expenses incurred due to the failure of the Buyer, its servants or the Vessel's local agents to provide the Seller or supplier with sufficient prior notice of delivery time.

**10.3** The Seller reserves the right to cancel any contract for the sale of Marine Fuels without liability on the part of the Seller if the Vessel fails to take delivery of the Marine Fuels at the latest by 23:59 on the day occurring two days after the nominated delivery date. Upon such termination the Buyer shall compensate the Seller for all costs and additional expenses and losses, including loss of profit, resulting from the Buyer's failure to take delivery.

**10.4** The Buyer shall at the time of ordering, designate a range of dates for the delivery of the Marine Fuels, which will be confirmed in the order confirmation. In the event that the Vessel arrives more than 24 (twenty-four) hours earlier or later than the agreed date, the Seller shall have the right to adjust the price of the Marine Fuels to reflect any increase in the relevant publications, and to increase the price for the Marine Fuels with any other documented costs incurred as a result of the changed time of delivery.

## **11 Force Majeure**

**11.1** The Seller shall not be liable for any loss or damage of whatever nature resulting from any delay or failure in performance under the delivery contract (i) caused by any circumstance beyond the Seller's direct control or (ii) if the supply of source of the Marine Fuels from any facility or production, distribution, storage, transportation or delivery contemplated or intended by the Seller's supplier is disrupted, unavailable or inadequate due to war or war-like situations, riots, quarantine, pandemics, strikes, lock-out, arrest, piracy, congestion, acts of terrorism, governmental order or intervention, unavailability of barges or other means of transport or stem, weather, acts of God, changed market conditions or similar situations.

**11.2** In the event of a failure of performance as provided in section 11.1, the Seller may, but is not obligated to, source, procure or obtain alternative Marine Fuels, and in such case the Seller shall be entitled to receive from the Buyer payment of any additional costs of performance.

## **12 Safety environmental protection**

**12.1** The Buyer shall be responsible for providing safe reception of the Marine Fuels to be delivered. If an escape spillage or discharge of Marine Fuels (hereinafter referred to as a "Spill") occurs during a delivery, the Buyer will promptly take such action as is reasonably necessary to remove the Marine Fuels and mitigate the effects of such Spill. However, notwithstanding the cause of such Spill, the Seller is hereby authorized at its own option upon notice to; the Buyer, or the Buyer's operator of, or the agent for the Vessel, to take such measures and incur such expenses as are reasonably necessary to remove the Marine Fuels and mitigate the effects of the Spill. If the Seller has exercised its option to remove the Marine Fuels and mitigate the effect of the Spill, the Buyer agrees to co-operate and render such assistance as is required by the Seller in the course of such action.

**12.2** The Buyer shall pay and indemnify Seller for any expenses, damages, costs, fines, and penalties arising from a Spill unless the Spill was caused due to gross negligence of the Seller. The Buyer shall procure and give to the Seller all documents and other information concerning any Spill or any program for the prevention of pollution, which are at any time requested by the Seller from the Buyer, or required by law or regulation applicable at the time and place where the Seller delivers Marine Fuels to the Buyer.

**12.3** The Buyer shall be responsible for users' compliance with all health and safety requirements related to the Marine Fuels supplied and will ensure that any user avoids frequent or prolonged contact with or exposure to the Marine Fuels both during and after delivery. The Seller and the supplier of the Seller accept no responsibility for any consequence arising from failure to comply with such health and safety requirements or arising from such contact or exposure.

## **13 LIABILITY AND INDEMNITY**

**13.1** . IN NO EVENT SHALL SELLER BE LIABLE TO THE BUYER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES (INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR BUSINESS INTERRUPTION OR DIMINUTION IN VALUE, AND INCLUDING BUT NOT LIMITED TO LOSS OF TIME, LOSS OF CARGO, LOSS OF INCOME, LOSS OF CHARTER CANCELLING DATE, ETC.) ARISING OUT OF , RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT THE SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. THE AGGREGATE LIABILITY OF THE SELLER WITH RESPECT TO ANY DISPUTE REGARDING THE QUALITY OR QUANTITY OF MARINE FUELS DELIVERED SHALL IN ANY EVENT BE LIMITED TO THE INVOICE VALUE OF THE MARINE IN DISPUTE.

**13.2** THE SELLER SHALL NOT BE RESPONSIBLE FOR ANY ACTS OR OMISSIONS OF ITS SUPPLIERS OR SUBCONTRACTORS.

**13.3** THE BUYER SHALL INDEMNIFY AND HOLD HARMLESS THE SELLER IN ACCORDANCE WITH SECTION 13.5 BELOW FOR ANY AND ALL LOSSES, DAMAGES AND COSTS INCURRED BY SELLER AS A RESULT OF ANY BREACH OF CONTRACT AND/OR FAULT OR NEGLIGENCE OF THE BUYER, ITS SUPPLIERS, AGENTS, SERVANTS, REPRESENTATIVES, CREWS OR EMPLOYEES.

**13.4** THE SUPPLIERS OF MARINE FUELS UNDER THIS AGREEMENT AND ALL EMPLOYEES, REPRESENTATIVES OR AGENTS OF THE SELLER SHALL HAVE THE BENEFIT OF ANY AND ALL RIGHTS STIPULATED FOR SELLER UNDER THESE TERMS AND CONDITIONS WITH RESPECT TO LIMITATION OF LIABILITY AND INDEMNIFICATION FROM THE BUYER.



**13.5** IN ALL CASES THE BUYER SHALL INDEMNIFY AND HOLD HARMLESS SELLER AGAINST ALL LOSSES TO THE EXTENT ARISING OUT OF OR IN ANY WAY RELATED TO SHIPMENT, DELIVERY, AND ACCEPTANCE OF MARINE FUELS FROM SELLER TO BUYER EXCEPT TO THE EXTENT ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT TO THE SELLER, INCLUDING LOSSES, DAMAGES AND COSTS FROM CLAIMS AND ACTIONS FROM ANY THIRD PARTY, AND INCLUDING REASONABLE LEGAL FEES AND EXPENSES INCURRED BY SELLER IN DEFENSE OF ANY SUCH CLAIMS AND ACTIONS, WHICH FEES AND EXPENSES SHALL BE ADVANCED TO SELLER BY BUYER UPON SELLER'S WRITTEN REQUEST UPON SELLER'S DELIVERY TO BUYER OF AN UNDERTAKING BY SELLER TO REPAY AMOUNTS EXPENDED IN DEFENSE OF THE RELEVANT CLAIM OR ACTION TO THE COURT OR ARBITRATOR OF COMPETENT JURISDICTION THAT SUCH LOSSES, DAMAGES OR EXPENSES ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE SELLER, AS USED IN THIS AGREEMENT, THE TERM "WILLFUL MISCONDUCT" MEANS ACTUAL, SUBJECTIVE AWARENESS ON THE PART OF THE SELLER THAT ITS CONDUCT WOULD CREATE AN UNREASONABLY DANGEROUS CONDITION.

#### **14 Arbitration and Governing law**

**14.1** This Contract shall be governed by and construed in accordance with Title 9 of the United States Code, and the Maritime Law of the United States, and the laws of the State of Texas.

**14.2** (a) Any claim, dispute, or controversy of whatever nature arising out of or relating to any shipment, delivery, and acceptance of marine fuels from Seller to Buyer, including any action or claim based on tort, contract, or statute (including any claims of breach), or concerning the interpretation, effect, termination, validity, performance and/or breach of this Agreement shall be resolved solely and exclusively by final and binding arbitration ("Arbitration") before a tripartite panel of arbitrators (each an "Arbitrator") selected from and administered by JAMS Inc. (formerly known as Judicial Arbitration and Mediation Services, Inc., the "Administrator") in accordance with its then existing arbitration rules or procedures regarding commercial or business disputes. Except to the extent as may be required by applicable law, (w) Arbitration shall be the sole and exclusive forum for resolving any claim, dispute or similar controversy arising out of or relating to any shipment, delivery, and acceptance of marine fuels from Seller to Buyer or any other aspect of the process for any such claim, dispute or controversy, (x) the parties agree that they will not make any filing or assert any claim in any local, state or federal court, agency or similar forum, (y) the parties agree that all aspects of any claim, disputes or controversies shall be strictly confidential and that no fact, document, evidence, claim or assertion may be disclosed to any third party or otherwise made publicly available unless otherwise required by applicable law, and (z) the breach of this Section 14.2 shall, to the extent permitted by applicable law, subject any party breaching this provision to monetary damages for such breach. Any Arbitration shall be held in Houston, Texas. Notwithstanding the foregoing, in the event of a threatened or actual breach of this Agreement, an application for injunctive or similar relief may be brought in a state or federal court of competent jurisdiction in the city of Houston, Texas.

(b) Subject to the confidentiality provisions reflected in subsection (a) above, depositions may be taken and full discovery may be obtained in any Arbitration commenced under this provision. An Arbitration shall be carried out with such stenographic or other record as is necessary for any appeal pursuant to subsection (e) below.

(c) The Arbitrator(s) shall, reasonably promptly, but in any event within sixty (60) calendar days after the conclusion of the Arbitration hearing, issue a confidential written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The Arbitrator(s) shall not be authorized to reform, modify or materially change this Agreement or any other agreements contemplated hereunder. The Arbitrator(s) also shall be authorized to grant any temporary, preliminary or permanent equitable remedy, injunctive relief or similar relief he or she deems just and equitable and within the scope of this Agreement, including an injunction or order for specific performance.

(d) Each party shall, subject to the indemnity and hold harmless obligations of the Buyer to the Seller as set forth in these Terms and Conditions, bear its own attorney's fees, costs, and disbursements arising out of the arbitration, and shall pay an equal share of the fees and costs of the Administrator and the Arbitrator(s); provided, however, that the Arbitrator(s) shall be authorized to determine whether an action was brought in bad faith or for an improper purpose, and if so, to award to the prevailing party reimbursement for its reasonable attorneys' fees, costs and disbursements (including, for example, expert witness fees and expenses, photocopy charges, travel expenses, etc.), and/or the fees and costs of the Administrator and the Arbitrator(s). Absent the filing of an appeal pursuant to subsection (e) below, each party shall fully perform and satisfy the arbitration award within fifteen (15) calendar days of the service of the award.

(e) The parties agree that any party to an Arbitration may appeal the award thereunder by appealing pursuant to the appeal procedures of the Administrator in effect at such time, and each party agrees to execute any instrument affirming its adherence to such appeal procedures as the Administrator may require prior to the completion of any Arbitration.

BY AGREEING TO THIS BINDING ARBITRATION PROVISION, THE PARTIES UNDERSTAND THAT THEY ARE WAIVING CERTAIN RIGHTS AND PROTECTIONS WHICH MAY OTHERWISE BE AVAILABLE IF A CLAIM BETWEEN THE PARTIES WERE DETERMINED BY LITIGATION IN COURT, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO SEEK OR OBTAIN CERTAIN TYPES OF DAMAGES THAT MAY BE PRECLUDED BY THIS AGREEMENT, THE RIGHT TO A JURY TRIAL, CERTAIN RIGHTS OF APPEAL, AND A RIGHT TO INVOKE FORMAL RULES OF PROCEDURE AND EVIDENCE.

**14.3** The provisions contained in this clause are without prejudice to the Seller's right to assert its right of lien or attachment or other rights in law, equity or otherwise in any jurisdiction where the Vessel may be found. If the Seller arrests the Vessel or vessels, the Seller shall be entitled to rely on the substantive and procedural rules of the jurisdiction of the arrest and proceed with the merits of the matter before the courts of such jurisdiction.