



# ***Marine Fuels***

## **General Terms and Conditions - Sale of Marine Fuel(s)**

***March 2020 edition***



## General Terms & Conditions for Sale of Marine Fuel(s)

This is a statement of the terms and conditions in accordance with which Indian Oil Corporation Limited, a Company incorporated under the Companies Act, 1956 and having its registered office at G-9, Ali Yavar Jung Marg, Sandra (East), Mumbai - 400 051 (hereinafter called "IOC") offers to sell and sells Marine Fuel.

These terms and conditions apply without limitation to any offer, quotation, order, agreement, or contract of whatever nature made or entered into by IOC for the sale and supply of Marine Fuel.

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

### 1. Definitions

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

"Barge"	the oil tanker utilized by the Seller to deliver the Marine Fuel(s) to the receiving Vessel.
"Bunker Delivery Note"	the document or receipt confirmation, required under Annex VI of MARPOL 73/78, signed by the Seller as a supplier for Marine Fuel and the Master of the Vessel or its representative as the Buyer or a recipient of the Marine Fuel, issued in accordance with Clause 5.4 and 7 of this document, which contains information on fuel oil delivery: name of receiving vessel, port, date, data of a supplier, quantity and characteristics of fuel oil etc.
"Bunker Nomination"	the document sent by the Buyer confirming to purchase Marine Fuel(s) from the Seller, specifying the Name & IMO Number of the Vessel, type and quantity of Marine Bunker Fuel(s) required by the Buyer for the vessel, agreed price of Marine Fuel(s), date and place of delivery etc.
"Bunker Requisition Form"	a document where the Buyer or Master of the Vessel indicates the exact requirements of the Marine Bunker Fuels including inter alia, the manifold size, receiving rates etc. with other relevant information and the time the Vessel is ready to accept delivery.
"Buyer"	the Vessel to which Marine Fuel will be or is supplied, her Master, Owners, Managers and/or Operators, Disponent Owners, Bareboat Charterers, Time Charterers, and/or other Charterers, any party requesting offers or quotations for the purpose of ordering Marine Fuel from the Seller and any party by or on whose behalf any offers or quotations for the supply of Marine Fuel may be sought from the Seller and on whose behalf orders are placed or agreements or contracts for the purchase of Marine Fuel are made with the Seller.
"Coastal Run Vessel"	any Vessel, as defined under Section 3(1A) of the Merchant Shipping Act 1958, exclusively employed in trading between any port or place in Indian and any other port or place on the continent of India or between ports or places in India.
"Delivery Date"	the date or date range nominated by the Buyer for the delivery of the Marine Fuel to the Vessel and is accepted by the Seller.
"ETA"	the estimated date of arrival of the Buyer's vessel requiring the delivery of Marine Fuel(s).
"Foreign Run Vessel"	any Vessel, as defined under Section 2(21) of the Customs Act 1962 and Section 3(13) of the Merchant Shipping Act 1958, for the time being engaged in the carriage of goods or passengers between any port in India and any port outside India, whether touching any intermediate port in India or not, and includes - <ul style="list-style-type: none"> <li>i. any naval vessel of a foreign Government taking part in any naval exercises;</li> </ul>

	<ul style="list-style-type: none"> <li>ii. any vessel engaged in fishing or any other operations outside the territorial waters of India;</li> <li>iii. any vessel proceeding to a place outside India for any purpose whatsoever;</li> </ul>
"Marine Fuel"	products derived from crude oil ordered by the Buyer from the Seller and to be delivered and/or delivered to the Vessel.
"Owner"	In relation to a vessel, the person or a company to whom the vessel or a share in the vessel belongs or a person to whom the sailing vessel belongs.
"Place of Delivery"	the location in or outside the Port Limits of a Port within the territorial limits of India that has been nominated by the Buyer for the receipt by the Vessel of the Marine Fuel and confirmed by the Seller in the Bunker Nomination.
"Posted Price"	the Basic Price that IOC has announced, through periodic price circular revisions or website listing, that it will sell Marine Fuel(s).
"Pricing Date Range"	period commencing at 00:00 hrs on the 1 <sup>st</sup> day of accepted Delivery Date and ending at 23:59 hrs on the 10 <sup>th</sup> consecutive day thereafter.
"Public Holidays"	such days as have been declared as Public Holidays by the Government of India.
"Seller"	IOC, any of its offices or branch offices.
"Tank Truck"	a motor vehicle designed to carry liquefied loads on roads, and utilized by the Seller to deliver the Marine Fuel to the Receiving Vessel.
"Vessel"	the vessel, as defined under Section 3(55) of the Merchant Shipping Act 1958, includes any ship, boat, sailing vessel, or other description of vessel used in navigation that receives the Marine Fuel(s) either as end-user or as transfer unit to a third party.

**2. Grades/Quality**

- 2.1 The Buyer shall have the sole responsibility for the nomination of the grades of Marine Fuel(s) fit for use by the Vessel.
- 2.2 The Seller only warrants that the Marine Fuel(s) supplied or to be supplied by the Seller to the Buyer, shall be in conformity with the applicable subparagraph of regulation 14.1 or 14.4 and regulation 18.3 of Annex VI of MARPOL 73 / 78 and shall correspond with ISO Standard 8217:2012 edition or later as agreed by the Seller.
- 2.3 Save as provided in Clause 2.2 above, the Seller does not provide any warranties as to quality, merchantability, or fitness of the Marine Fuel(s) for any particular purpose and any implied warranties or conditions whether statutory, or otherwise are expressly excluded.

**3. Prices**

- 3.1 The Basic Price of the Marine Fuel(s), applicable for Coastal Run Vessels shall be the "Posted Price" on the date of withdrawal of Marine Fuel(s) from the storage tanks facility of the Seller.
- 3.2 The Basic Price of the Marine Fuel(s) for Foreign Run Vessels shall have a "Pricing Date Range" for which the price mutually agreed by the Buyer and the Seller in the Bunker Nomination shall be valid.
  - 3.2.1 Basic Price applicable for invoicing purpose, for any specific Bunker delivery in USD/MT for overseas Buyers or in INR/MT for Indian Buyers, shall be the Basic Price prevailing on the date of receipt of Bunker Nomination by email from the marine customers.
  - 3.2.2 The pricing date range will be a period of ten (10) calendar days commencing on 00:00 hrs of the 1<sup>st</sup> day of Delivery Date of the vessel declared in the Buyer's Bunker Nomination and ending at 23:59 hrs on the tenth consecutive day thereafter.

- 3.2.3 Basic Price applicable for any bunker supply and delivery by the Seller after the end of "Pricing Date Range" would be the highest between the price agreed for the Pricing Date Range and the "Posted Price" of the Seller prevailing on the date of delivery of Marine Fuel(s).
- 3.2.4 Such pricing methodology shall be applicable only for those bunker enquiries having 1<sup>st</sup> day of bunker delivery date range falling within 15 days from the date of receipt of Bunker Enquiry.
- 3.3 Delivery, wharfage charges, any overtime charges incurred if delivery takes place outside of regular working days and hours at the relevant port of delivery, and other incidental charges as agreed mutually by the Buyer and the Seller at the time of placing Bunker Nomination shall be applicable in the invoice in addition to the Basic Price mentioned under sub-clauses 3.1 and 3.2.
- 3.4 Duties and Taxes prevailing on the date of product withdrawal from the Supplier's shore tanks warehousing facility for the intended bunker delivery purpose shall be applicable in the invoice in addition to the price elements mentioned under sub-clauses 3.1, 3.2 and 3.3.
- 3.5 USD/INR Exchange Rate (SBI TT Selling Rate) of the fortnight / week (as the case may be), prevailing on date of receipt of Bunker Nomination shall be applicable for currency conversion.
- 3.6 Buyer or the Owner of the Vessel shall bear any and all charges associated with the Vessel for the delivery of Marine Fuel(s).

#### **4. Nomination of Vessel**

- 4.1 Under the Term as well as Spot Agreement, Buyer shall send Bunker Nomination to the Seller on the email addresses of Seller's sales office handling Marine Fuel sales at the relevant port. The Bunker Nomination shall include the information such as the vessel name and IMO number, supply port, ETA of the vessel at the supply port, the quantity, grade and maximum sulphur content, the method of delivery, as well as any special conditions, difficulties, peculiarities, deficiencies or defects in respect of, and particular to, the vessel which might adversely affect the delivery of the Marine Fuels, shall be specified in the Bunker Nomination.
- 4.2 Under the Term Agreement, vessels requiring delivery of Marine Fuel(s) shall be nominated by the Buyer no later than seven (7) days prior to the arrival of the vessel at the place of delivery.

#### **5. Quantities/Measurements**

- 5.1 Delivery of Marine Fuel(s) shall be made by the Seller either by shore pipeline or by Barge or by Tank Trucks depending upon the available options of delivery modes. If available, the quantities of Marine Fuel(s) delivered by the Seller to the Buyer shall be determined by a flow meter. Else, the quantities of Marine Fuel(s) delivered by the Seller shall be determined by gauging the shore tanks or cargo tanks sounding of the Barge or tank trucks.
- 5.2 The Master of the Vessel, its Chief Engineer or a member of its Crew shall, together with the Seller's representative, measure and verify the quantities of Marine Fuel delivered from the Seller's Barge, Tank Truck or shore tank(s). Buyer may at his own expense appoint surveyor/representative during measurements to verify the same.
- 5.3 The quantities of Marine Fuel(s) to be delivered by the Seller to the Buyer shall be measured and calculated in accordance with the latest ASTM Petroleum Measurement Tables.
- 5.4 The Measurements/soundings taken in accordance with Clauses 5.1, 5.2 and 5.3 above shall be recorded on the Seller's Bunker Delivery Note and shall be signed on behalf of the Buyer by the Master or the Chief Engineer of the Vessel and the Seller or Seller's nominated representative.

Any disclaimer, remark or protest made by the Master or the Chief Engineer of the Vessel or a member of the Vessel's Crew on the Bunker Delivery Note will have no effect whatsoever on the Seller's rights and remedies under these terms and conditions. The Bunker Delivery Receipt signed by or on behalf of the Buyer and the Seller as provided herein shall be final conclusive and binding between the parties as to the quantity of Marine Fuel delivered to the Vessel.

- 5.5 If the Master or the Chief Engineer of the Vessel or a member of Vessel's Crew or any representative of the Vessel and/or Buyer or Buyer's representative fails or declines to verify the quantities of Marine Fuel delivered to the Vessel, the measurements made by or on behalf of the Seller shall be final, conclusive and binding on the parties and shall not be called in question by the Buyer, the Owner and/or any person claiming on their behalf.
- 5.6 The quantity of Marine Fuel delivered shall be the quantity specified in the Bunker Nomination with a tolerance at Seller's option of  $\pm 5\%$  or five (5) Metric Tonnes, whichever is higher.

## **6. Delivery**

- 6.1 Delivery of the Marine Fuel(s) shall be made day and night, (Saturdays, Sundays and Public/Port Holidays excluded), at the Place of Delivery, subject always to the weather conditions, Customs and Port permissions.
- 6.2 Notwithstanding that the accepted Delivery Date having been confirmed by the Seller, the Buyer or their agents at the port or place of delivery, shall give the Sellers or their representatives at the port or place of delivery, 72 and 48 hours approximate and 24 hours definite notice of the Vessel's arrival and the location and time at which deliveries are required. Such notice shall be given on e-mail addresses of the Seller's office responsible for Marine Fuel at the respective port(s).
- 6.3 Buyer shall inform the Seller, 48 hours prior to the accepted Delivery Date, the maximum allowable bunker pumping pressure rating of the Vessel, bunker delivery hose connection type & dimensions and any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Marine Fuels.
- 6.4 The Seller shall not be required to deliver any Marine Fuel to the Vessel, if any permit or approval of the statutory / port authorities that is required by the Buyer/Vessel for that purpose has not been obtained by the Buyer/Vessel before the accepted Delivery Date.
- 6.5 In case of the vessel failing to submit at least 48 hours before the 1<sup>st</sup> day of delivery date, Supplement to Air Pollution Prevention Certificate issued by vessel flag for the Exhaust Gas Scrubbers fitted on the ship, the Seller shall not be required to deliver Marine Fuel(s) exceeding the sulphur content 0.5% m/m to the Vessel from 1<sup>st</sup> January 2020.
- 6.6 The Buyer shall procure and be in possession of all certificates and/or permits required to comply with all relevant regulations to enable the Vessel to enter, remain and accept delivery of Marine Fuels (bonded or duty paid) at the Place of Delivery.
- 6.7 The seller shall not be required to deliver any Marine Fuel for bonded supply, in absence of any of the above documents. Marine fuels in bond will be delivered provided the Buyer qualifies to receive such fuels. Buyer shall reimburse seller for any tariff, tax, duty, penalty or other charges subsequently assessed for any reason including the failure of Buyer to furnish the necessary qualifying proof.
- 6.8 From 1<sup>st</sup> January 2020, Marine Fuel(s) with sulphur content more than 0.5% m/m shall be delivered by the Seller to the vessel (Indian & Foreign Flag ships not fitted with EGS) only with the prior approval obtained by the vessel operator / owner from the Directorate General of Shipping, Mumbai subject to Buyer submitting such approval to the Seller at least 48 hours before the 1<sup>st</sup> day of delivery date.
- 6.9 Upon Seller's Barge, Tank Trucks arriving alongside Buyer's vessel for the purpose of supplying the Marine Fuel(s), the Vessel and/or her Master and crew shall:
- 6.9.1 provide a free, safe and accessible side of the Vessel for the delivery of Marine Fuel and render all necessary assistance to enable the Seller to deliver the Marine Fuel.
- 6.9.2 whenever required by the Seller or the Seller's representative and at no cost whatsoever to the Seller, moor and unmoor the Barge, hoist and lower such supply hose(s) from and to the Barge, Tank Trucks and assist the Seller in any way requested to enable the smooth delivery of the Marine Fuel to the Vessel.

- 6.9.3 connect and disconnect the delivery hose(s) to the Vessel's marine fuel intake manifold/pipe. The Master of the Vessel and her crew shall ensure that the hose(s) are properly secured to the Vessel's marine fuel manifold prior to commencement of delivery of the Marine Fuel.
- 6.9.4 ensure that all pipes and manifolds and receiving tanks on the Vessel are completely checked and ready to receive the Marine Fuel. The Buyer's responsibilities include but are not limited to ensuring proper opening/closing of relevant valves and the vessel's scuppers (if any) are safely blocked to avoid risk of oil spillage during the delivery.
- 6.10 Buyer can opt for delivery Marine Fuel(s) to their nominated vessel through Buyer's nominated Barge and/or Tank Trucks subject to the Buyer either making advance payment or submitting the security in the form of a Bank Guarantee / Standby Letter of Credit of the invoice value amount for the marine fuel(s) intended to procure from the Seller and submitting Indemnity Bond, as per the format in Appendix-I, in favour of the Seller confirming to adhere to the conditions set out in the Indemnity. Buyer shall give definite notice of the Barge arrival on the e-mail addresses of the Seller's office responsible for Marine Fuel at the respective port(s). Marine Fuel(s) to the Buyer's nominated Tank Trucks shall be delivered only during the working hours of Seller's oil installation.
- 6.11 Marine Fuel(s) supplies to Indian as well as foreign Navy vessels shall always have paramount priority in the Seller's marine fuel(s) delivery schedule.
- 6.12 The Seller shall not be liable for any demurrage paid or incurred by the Buyer and/or the Vessel to any party or for any loss, damage or delay of the Vessel of any length or nature whatsoever that is beyond the control of the Seller including but not limited to the delays due to congestion in ports, at terminal installations or bunkering pier or delays caused by prior commitments of bunker Vehicles or delays caused due to priority deliveries to the Indian and foreign Navy vessels.

## **7. Sampling**

- 7.1 The Seller shall arrange for a representative sample of each grade of Marine Fuel to be drawn throughout the entire bunkering operation and that sample shall be thoroughly mixed and carefully divided into four (4) identical samples of 1 litre quantity each. If practically possible, the sampling shall be performed in the presence of both the Sellers and the Buyers or their respective representatives. The absence of the Buyers or their representatives shall not prejudice the validity of the samples taken.
- 7.2 The sample shall be drawn at a point of delivery to the Vessel while supplying the Marine Fuel subject to the provisions in clause 7.3 below.
- 7.3 The sample shall be drawn using a drip sampler, which shall be constructed, secured and sealed in such a way so as to prevent the sampling device and the sample being tampered with throughout the transfer period.
- 7.4 The four (4) identical samples referred to in sub-clause 7.1 shall be securely sealed and provided with labels showing, inter alia, the Vessel's name, identity of delivery facility, product name, delivery date and place and point of sampling and seal number, authenticated with the Vessel's stamp and signed by the Sellers' representative and the Master of the Vessel or his authorized representative.
- 7.5 Two (2) samples shall be retained by the Seller for minimum forty five (45) days after delivery of the Marine Fuel(s) to the Vessel or, on being requested in writing by the Buyers, for as long as the Buyers may reasonably require, and the remaining two (2) samples shall be handed over to the Vessel.
- 7.6 If the quantity is delivered by more than one Barge, the sampling procedure shall be repeated as outlined in this Clause 7.
- 7.7 In the event of any dispute with regard to the quality of the Bunkers delivered, the samples drawn pursuant to clauses 7.1 to 7.6 above shall be deemed to be conclusive and final evidence of the quality of the product delivered. In case of any dispute, one of the samples retained by Seller shall be forwarded to the mutually agreed independent laboratory in India for analysis, result of which shall be final and binding to both Buyer and Seller. The seal of the relevant sample must be breached only in the presence of both parties unless one/both have declared in writing that they will not be present; and both parties shall have the right to appoint any independent person(s) or institute(s) to witness the breaking of the seal and testing of the sample. Samples

subsequently taken shall not be allowed as (additional) evidence. If any of the seals have been removed or tampered with by an unauthorized person, such sample(s) shall be deemed to have no value as evidence of the sample delivered pursuant to the terms and conditions.

## **8. Documentation**

- 8.1 Before commencement of delivery the Sellers shall present for written acknowledgement by the Master of the Vessel or his authorized representative, a Bunker Requisition Form or similar document, duly signed by the Sellers or their representative, which shall contain the quantities to be delivered and brief bunker delivery terms.
- 8.2 The Master of the Vessel, the Chief Engineer or a member of the Crew shall, together with the Seller's representative, measure and verify the quantities of Marine Fuel delivered from the Seller's Barge, Tank Trucks and/or shore tank(s) before commencement of delivery and shall sign and stamp the initial gauging / sounding report.
- 8.3 Once the delivery is completed and quantities measured, Seller's Barge, Tank Trucks and/or shore tank(s) gauging / soundings report after the delivery and a Bunker Delivery Note shall be signed and stamped by the Master of the Vessel or his authorized representative, and returned to the Sellers, or their representative, as acknowledgement of the actual volume and the actual delivery temperature only and a duplicate copy shall be retained by the Master of the Vessel. This receipt shall contain the following minimum information which is warranted by the Sellers:
  - Delivered quantity in Metric Tonnes
  - Density in kg/m<sup>3</sup> at 15°C
  - Sulphur content in % m/m
- 8.4 Additionally, Marine Fuel(s) End Use Declaration, Customs Shipping Bill and any other statutory documents are required to be signed and stamped by the Master of the Vessel or his authorized representative upon the completion of bunker delivery.
- 8.5 The seal numbers of samples drawn during the delivery of Marine Fuel(s) shall be inserted into the Bunker Delivery Note and by signing the Bunker Delivery Note the Buyer and the Seller are deemed to have agreed that the samples referred to therein are valid and taken in accordance with the requirements as set out in the clause 7.4.

## **9. Payment**

- 9.1 Payment for the Marine Fuel(s) shall be made by the Buyers to the Seller in advance or against the credit within the number of days after the completion of delivery, as mutually agreed by the Buyer and the Seller at the time of negotiating the Bunker Nomination.
- 9.2 Payment shall be made in full, without set-off, counterclaim, deduction and/or discount, free of bank charges to the bank account indicated by the Seller on its respective invoices.
- 9.3 In case of advance payment terms, the Seller is not required to proceed with the delivery if payment is not received in the Seller's bank account at least 1 bank working day before the bunker delivery date. In case of credit terms, if payment falls on a non-business day, Buyer shall make payment on the preceding business day.
- 9.4 Notwithstanding any agreement to the contrary, payment will be immediately due in case of bankruptcy, liquidation or suspension of payment or comparable situation of the Buyer, or arrest or assets and/or property of the Buyer, or in case of any other situation, which in the sole discretion of the Seller, is deemed to adversely affect the financial position of the Buyer.
- 9.5 Any delay in payment shall attract an interest equivalent to the prevailing penal interest rate, declared as a policy by the Seller, time to time along with applicable duties and taxes.

- 9.6 All costs borne by the Seller in connection with the collection of overdue payments, whether made in or out of court or arbitration proceedings and in general, all costs incurred by the Seller in connection with any breach of this agreement by the Buyer, shall be for the sole account of the Buyer.
- 9.7 Payments made by the Buyer shall at all times be credited by the Seller to meet outstanding amounts due from the Buyer in the following order: (1) costs, (2) interest and administration fee, and (3) invoices in their order of age.
- 9.8 The Seller shall at all times be entitled to require the Buyer to grant to the Seller what the Seller deems to be sufficient security for the performance of all its obligations under this Agreement. The failure of the Buyer to provide such security upon the request of the Seller shall entitle the Seller to stop any further execution of any agreement(s) between the Buyer and the Seller until such time as the Buyer has provided the required security. In the event of non-payment, the Sellers reserve the right to pursue such legal remedies as may be available to them to recover the amount owed.

## **10. Claims**

- 10.1 Seller reserves its right to withdraw the supply Barge plied for the delivery of Marine Fuel(s) and recover demurrage and consequential liquidated damages along with applicable duties and taxes from the Buyer if,
- 10.1.1 vessel not being ready and/or unable to take delivery of the Marine Fuel, or
  - 10.1.2 vessel being not present at the place of delivery at the accepted delivery time, or
  - 10.1.3 vessel not arriving at the nominated at the place of delivery by the end of the accepted delivery period
- 10.2 Any claim with regard to the quantity delivered must be notified by the Master or Chief Engineer of the Vessel to the Seller or its representative immediately after the completion of delivery, failing which, any claims that the Buyer may have shall be deemed to have been waived and shall be permanently barred.
- 10.3 Claims concerning the quality of the Marine Fuel delivered shall be submitted to the Seller in writing within 30 (thirty) days from the date of marine fuel(s) delivery to the vessel, failing which the right to complain or claim any compensation whatsoever shall be deemed to have been waived and permanently barred.
- 10.4 In the event a claim is raised pursuant to sub-clause 10.3, the parties hereto shall have the quality of the Marine Fuel(s) analyzed by a mutually agreed, qualified and independent laboratory in India. The Sellers shall provide the laboratory with one of the samples retained by them as per sub-clause 7.5. If ISO grades have been specified the analysis shall be established by tests in accordance with the relevant edition of ISO Standard 8217 and ISO 4259:2017. If non-ISO grades have been agreed, tests will be made in accordance with standards corresponding to the aforementioned ISO standards. Unless otherwise agreed, the expenses of the analysis shall be for the account of the party whose claim is found wrong by the analysis.
- 10.5 The Seller shall not be responsible for any claim arising from commingling of Marine Fuels delivered by the Seller with other fuel(s) onboard the vessel.
- 10.6 In any event any claim by the Buyer shall be time barred unless legal proceedings have been initiated as set forth in Clause 0hereof within 6(six) months of the date of delivery.

## **11. Risk/Title**

- 11.1 Delivery shall be deemed to be completed and all risk including loss, damage, deterioration, depreciation, evaporation or shrinkage of the Marine Fuel(s) shall pass to the Vessel/Buyers once the Marine Fuel(s) have passed the Sellers' flange connecting the Vessel's bunker manifold with the delivery facilities provided by the Sellers.
- 11.2 In case of Marine Fuel(s) supplies by the Buyer's nominated Barge and/or Tank Trucks, all risks including product quality & quantity, loss, damage, deterioration, depreciation, evaporation or shrinkage of the Marine Fuel(s) shall pass to the Buyer the moment the marine fuel passes to the flange of Buyer's nominated Barge and/or Tank Trucks.
- 11.3 Notwithstanding anything to the contrary herein or in any documentation passing between the Seller and the Buyer, any Marine Fuel supplied by the Seller to a Vessel shall be on the credit of the Vessel to which the said



Marine Fuel is supplied. Title and/or property rights in and to the Marine Fuel delivered to any vessel shall remain vested in the Seller until full payment has been received by the Seller of all amounts due in connection with sale and delivery of such Marine Fuel. On the request of the Buyer and only after the receipt of 100% payment related to cost of the marine fuel(s) by the Seller, the Seller may issue "No claims" declaration in the format mentioned under Appendix-III.

- 11.4 In the event that the Marine Fuel is mixed with other Marine Fuel(s) onboard the Vessel, the Vessel/Buyer shall be deemed to have granted the Seller a lien over such part of the mixed Marine Fuel(s) as corresponds to the quantity or net value of Marine Fuel delivered. The Buyer further warrants to the Seller that it (the Buyer) is duly authorized by the Vessel and or the Owners to grant a lien over the Marine Fuel to the Buyer.
- 11.5 In the event the Marine Fuel, has been consumed by the Vessel in whole or in part or can no longer be identified or distinguished as the Marine Fuel supplied by the Seller, the Seller shall have the right without any prior notice to attach the Vessel and/or any sister ship and/or any other assets of the Owner of the Vessel or the Buyer wherever situate without prior notice as security for all the Seller's claim(s) against the Vessel/Buyer.

## **12. Cancellation**

- 12.1 In the event the Buyer cancels its Bunker Nomination of the foreign run vessels, the Buyer shall pay the Seller a Cancellation Charge, the difference between price agreed for the Pricing Date Range and the "Posted Price" of the Seller on the date of cancellation request multiplied by maximum quantity mentioned in the Bunker Nomination or USD 2500 along with applicable duties and taxes, whichever is higher.
- 12.2 Cancellation charge shall be waived in case of Bunker Nomination cancellation is due to cancellation of vessel's port call, due to force majeure situation or paucity of time in delivery of bunkers due to limited berth time of vessels, subject to Buyer notifying the Seller at least 48 hours prior to the 1<sup>st</sup> day of the delivery date.
- 12.3 If the Buyer or the vessel fails to take delivery within the delivery date, the Seller can choose to terminate the Contract and the Buyer shall pay to the Seller any costs resulting from the cancellation or failure to take delivery, including without limitation, the lost fuel value and costs to return the Marine Fuels back to storage including associated demurrage along with applicable duties and taxes.
- 12.4 Notwithstanding anything to the contrary in any agreement between the Buyer and the Seller, the Seller shall have the option to immediately cancel the agreement in full or in part, or to store the Marine Fuel in whole or in part for the account and risk of the Buyer and to charge the Buyer the expenses thereby incurred, or to hold the Buyer fully to the agreement, or take any other measures which the Seller deems appropriate, without prejudice to its rights of indemnification, without any liability of the Seller, in any (but not limited to) one of the following cases:
  - 12.4.1 if the Buyer, for whatever reason, fails to accept the Marine Fuel in part or in full at the place and time designated for delivery;
  - 12.4.2 if the Buyer fails in part or in full to comply with its obligations to pay any amount due to the Seller and/or provide security as set out herein;
  - 12.4.3 if, before the date of delivery, it appears in the opinion of the Seller that the financial position of the Buyer entails a risk for the Seller;
  - 12.4.4 any act being done or event occurring which, under the applicable law thereof, has a substantially similar effect to any of the said acts or events described above.

## **13. Force Majeure**

The Seller or the Seller's supplier shall not be liable for any loss, damage or demurrage due to any delay or failure in performance,

- (a) because of compliance with any order or request of any government authority, or person purporting to act therefor, or
- (b) when supply of the Marine Fuel or any facility of production, manufacture, storage, transportation, distribution or delivery by the Seller is interrupted, unavailable or inadequate for any cause whatsoever that is not within the immediate control of the Seller, including (without limitation) if such is caused by labour disputes, strikes,

governmental intervention, wars, civil commotion, fire flood, earthquake, accident, storm, swell, ice, adverse weather, pandemic, epidemic or any act of God.

- (c) termination of bunkering business by the Seller.

#### **14. Dispute Resolution**

- 14.1 The dispute or difference shall be referred to a Sole Arbitrator and the arbitration shall be through Indian council of Arbitration, Mumbai. The Rules of the Institutional Arbitration Forum shall be applicable to the arbitral proceedings.
- 14.2 The Indian Arbitration and Conciliation Act 1996 and Arbitration and Conciliation (Amendment) Act 2015 or any statutory modification or re-enactment thereof and the rules made there under for the time being in force shall apply to the arbitration proceedings under this clause.
- 14.3 The seat of arbitration shall be at Mumbai. The proceedings shall be conducted in English language.
- 14.4 The cost of the proceedings shall be equally borne by the parties, unless otherwise directed by the sole arbitrator.
- 14.5 Disputes having financial claims less than INR 5 lakhs shall not be referred to arbitration.
- 14.6 Notwithstanding anything contained herein above (except clause 14.5 above), upon arising of dispute the parties may agree to refer the same to arbitration of mutually acceptable sole arbitrator including employee of Indian Oil Corporation Ltd.
- 14.7 Any decision or award of the Institutional Arbitration Forum appointed shall be final and binding upon the Parties.

#### **15. Liability**

- 15.1 The liability of the Seller howsoever arising in respect of any supply of Marine Fuel shall not exceed the total value of the products supplied under the relevant Bunker Delivery Note.
- 15.2 Liabilities of the Seller for consequential damages are excluded. In any event and notwithstanding anything to the contrary herein, liability of the Seller shall under no circumstances exceed the invoice value of the Marine Fuel supplied by the Seller under the relevant agreement to the relevant Vessel.
- 15.3 The Buyer shall be liable towards the Seller and herewith undertakes to indemnify the Seller and/or the Owner of the Seller's Barge for any and all damages and/or costs suffered or otherwise incurred by the Seller due to a breach of contract and/or fault or neglect of the Buyers, its subsidiaries, agents, servants, (sub) contractors, representatives, employees and the officers, crews and/or other people whether or not onboard of the respective vessel(s). The Buyer furthermore undertakes to hold the Seller harmless in case any third-party institutes a claim of whatever kind against the Seller on account of any fault or neglect of the Buyer directly or indirectly connected to any agreement regulated by these terms and conditions. Third party shall mean any physical or legal person/company other than the Buyer.
- 15.4 The Seller shall have no obligation to make any payment to the Buyer for the claims under Clause 10 unless and until the Seller has received full payment from the Buyer of all sums due in accordance with Clause 9.
- 15.5 In the event of a collision between the Vessel and the Seller's Barge, any dispute arising from such collision shall be resolved between the Owner/ charterer of the Vessel and the owner of the Barge.

#### **16. Health, Safety and Environment**

The Seller shall provide the receiving vessel with Safety Data Sheets ("SDS") appropriate to the grade of Marine Fuels delivered. The Buyer shall provide its employees, users and customers with health, safety and environmental information, such information together with the SDS shall hereinafter be referred to as the "HSE Data". The Buyer shall ensure that its employees comply fully with all requirements, obligations and recommendations relating to the handling and use of the Marine Fuels delivered hereunder and shall impose upon all of its customers to whom the Marine Fuels are to be supplied the same obligation to comply fully with the requirements, obligations and

recommendations of HSE Data. Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of any Marine Fuels.

### **17. Sanctions and Boycotts**

Neither party shall be obliged to perform any obligation otherwise required by the Contract (including without limitation an obligation to -

- (a) perform, deliver, accept, sell, purchase, pay or receive monies to, from, or through a person or entity, or
- (b) engage in any other acts) if this would be in violation of, inconsistent with, or expose such party to punitive measure under, any laws, regulations, decrees, ordinances, orders, demands, requests, rules or requirements of the European Union, any EU member state, the United Nations or the United States of America applicable to the parties relating to trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism and similar laws.

### **18. Termination or Liquidation**

18.1 Without prejudice to any other rights and remedies, the Seller may by notice to the Buyer terminate any commitment with immediate effect if:

- (a) the Buyer commits a breach of the Contract;
- (b) the Buyer should go into liquidation or should do or suffer any similar act or thing under any applicable law, such as:
  - (i) the making of a general assignment for the benefit of creditors by the Buyer; or
  - (ii) the institution by the Buyer of proceedings seeking to adjudicate the Buyer as bankrupt or insolvent, or seeking protection or relief from creditors, or seeking liquidation, winding up, or rearrangement, reorganization or adjustment of the Buyer or its debts, or seeking the entry of an order for the appointment of an administrator, a receiver, trustee or other similar official for the Buyer or for all or a substantial part of the Buyer's assets; or
  - (iii) the institution of any proceeding of the type described in (ii) above against the Buyer
- (c) there is a Change of Control of the Buyer;  
"Control" for the purposes of this Section means the ability to direct the activity of a corporation or an entity, excluding an ability deriving merely from holding an office of director or another office in the corporate or entity, and a person shall be presumed to control a corporation or entity if that person holds half or more of a certain type of means of control of that corporation or entity.

18.2 In case of change of Control of the Buyer occurs, always without prejudice to Seller's other rights at law and under the Contract including, without limitation, Seller's rights under clause 9 for already made bunker deliveries shall remain payable to the Seller even after change of Control.

18.3 On termination of any Commitment all sums owed to the Seller shall become immediately due and payable.

### **19. Notice**

19.1 Any notice or other communication (including, without limitation, invoices) by either Party to the other shall, unless otherwise provided in the Contract, be sufficiently made if sent by post (by airmail where airmail is possible), postage paid, by facsimile transmission or by courier to the address of the other Party.

19.2 Any notice or communication given in accordance with Clause 19.1 shall, unless otherwise provided herein, be deemed to have been given on the day on which such communications ought to have been delivered in due course of postal communication and in the case of communication by facsimile transmission or by courier on the day of transmission or delivery. Any notice delivered after 16:00 hours on any business day in the place of delivery shall be deemed to be given on the next business day.

19.3 Parties may exchange messages with respect to the performance of the Contract by email. Any message sent by email shall be sent to the address of the other Party specified for this purpose in the Fuels Agreement or communicated in writing. Email messages are only valid if and when actually received and the sender bears the risk of a failure in transmission.

DRAFT FOR IDEMNITY BOND

(On a Stamp Paper of applicable value)

THIS DEED OF INDEMNITY executed at \_\_\_\_\_ (inset city of IOC office) this \_\_\_\_\_ (inset day) day of \_\_\_\_\_ (inset month) 20\_\_ (inset year) by \_\_\_\_\_ (inset name of the Customer), a company duly incorporated under the provisions of the Companies Act 1956, having its registered office at \_\_\_\_\_ (inset address) hereinafter referred to as the "Customer" (which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns) OR \_\_\_\_\_ (inset name of Customer) a Proprietorship / Partnership firm having their place of business at \_\_\_\_\_ (inset address) hereinafter called the "Customer" (which expression shall be deemed to include legal heirs and executors of the present constituents in case of firm) of the FIRST PART

IN FAVOR OF

INDIAN OIL CORPORATION LIMITED, a company duly incorporated under the provisions of the Companies Act 1956, having its registered office at G-9, Ali Yavar Jung Marg, Bandra (East) Mumbai 400 051, hereinafter referred to as the "IOCL" (which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the SECOND PART.

WHEREAS;

1. The Customer is engaged in the business of procurement and delivery of marine fuels namely IFO 380 cSt, IFO 180 cSt, Marine Fuel 0.5%, Low Sulphur High Flash HSD or any other fuel (hereinafter referred as "bunker fuels") to the foreign going as well as coastal run vessels (hereinafter referred as "vessels") regularly calling at Indian Ports;
2. The Customer has represented that they shall approach IOCL vide separate purchase order / letter / communication for supply of bunker fuel, through either Bunker Barges or through Tank Trucks or through both Bunker Barges and Tank Trucks (hereinafter called "Bunker Vehicles"), nominated by the Customer for transporting the same for supply to vessels;
3. The Customer has represented that the specifications of bunker fuels would be mentioned in the individual purchase order / letter / communication for supply of bunkers;
4. The Customer has represented that this Indemnity Bond would cover and govern all the purchase orders / letters / communications for supply of bunkers made for a period of ..... months from the date of this Indemnity Bond i.e. from ..... till .....
5. The Customer has represented to IOCL regarding the genuineness of the nomination & Bunker Vehicles Owners, nominated by them;
6. The customer has represented that the Bunker Vehicles nominated by them are having valid registration and license for transporting and supplying bunkers to vessels;
7. The Customer has represented that the Bunker Vehicles nominated by them will always adhere to guidelines issued time to time by MARPOL, Directorate General of Shipping, Marine Mercantile Department and other trade regulatory authorities in executing the Bunker supplies;

8. The Customer has represented and agreed that they are responsible and liable for any en-route Quality and Quantity issues, oil spills/accidents;
9. The Customer has represented that they are fully liable and responsible for the supply of bunkers on board the vessels through the Bunker Vehicles nominated by them;
10. The Customer has represented that the test certificate issued by IOCL or independent surveyor (*strike off whichever is not applicable*) will be treated as final;
11. The Customer has agreed / undertaken that two samples for the batch shall be collected before loading onto the Bunker Vehicles. Both the samples will be sealed and jointly signed by representatives of the Customer and IOCL respectively and one sample each for the batch shall be retained by both the parties, for settling any dispute regarding the quality of the bunkers supplied;
12. The Customer has agreed that they have no objection to the supervision of loading operation of Bunker Vehicles by IOCL's authorised representative / surveyor;
13. The Customer further agrees and confirms that the liability and responsibility of IOCL is only to supply the bunkers to the Bunker Vehicles nominated by the Customer and that it is responsibility and liability of the Customer alone to supply the bunkers to the vessels;
14. The Customer has further undertaken to adhere to all excise, customs, port and other relevant statutory formalities including validity of Applicable Licenses of the Bunker Vehicles, MARPOL procedures, Safety and Security procedures of the Port, Tank Truck Registration Certificate, Barge Registration Certificate, calibration of the tank along with valid tank calibration chart/table, license issued in the name of the driver of the Tank Truck, pilot license issued in the name of the Master of the Barge/cargo boat license issued by the Customs Dept., license for Carriage of Petroleum Products in Bulk by Water issued by Mercantile Marine Dept., Certificate of Survey, license for Carriage of Petroleum Products in Bulk by Road issued by Petroleum & Explosives Safety Organization for Tank Trucks;
15. The Customer confirms that they will submit the following documents within five (5) days from the date of Bunker Delivering Note to certify the end use and complete Excise/Customs formalities – MARPOL checklist including per-bunkering, pre-bunkering safety, post-bunkering checklists, sampling procedure, customer feedback, MSDS and QC certificate duly endorsed by the Vessel Owner to IOCL's Loading Terminal. Further, one (1) MARPOL sample along with one more sample to be submitted to IOCL duly signed by the Vessel and Barge representative;
16. The Customer will ensure that there is no product diversion and the quantity supplied to the Bunker Vehicles is entirely supplied to their nominated vessels and that the quantity mentioned in the invoice will be treated as final;
17. In pursuance thereof, IOCL has agreed to release the bunkers to the Bunker Vehicles nominated by the Customer for supply of the same to vessels.

**NOW THIS DEED OF INDEMNITY WITNESSETH;**

1. In consideration of the understanding and arrangement between the parties as hereinabove recited, the Customer, with an intent to bind itself and its successors and assigns, does hereby unconditionally and irrevocably indemnify and agree to keep indemnified for all times hereafter IOCL, including its successors and assigns, of, from and against (i) all claims, demands, suits, actions, proceedings that may be instituted against IOCL and / or IOCL or any other person or party whomsoever (ii) all damages, losses, costs, charges, expenses, injuries, fines, penalties, sufferings, prejudices and consequences that may be incurred, suffered or sustained by IOCL either directly or indirectly on account of or in connection with the said transfer / supply of bunkers to the Bunker Vehicles nominated by the Customer for supply to vessels.

- 2. AND FURTHER, the Customer, with intent to bind itself and its successors and assigns, does hereby unconditionally and irrevocably indemnify and agree to keep indemnified for all times hereafter IOCL, including its successors and assigns, of, from and against (i) all claims, demands, suits, actions, proceedings that may be instituted by the Bunker Vehicles Owner(s) or the Owner / Agent of the vessels or any other person or party for any loss of product, product shortage, malpractice/ contamination of product, spillage while supplying onto to the vessels, which will be effectively opposed and / or defended by IOCL as well as from and against (ii) all damages, losses, costs, charges, expenses, injuries, fines penalties, tax dues, sufferings, prejudices and consequences incurred, suffered or sustained by IOCL either directly or indirectly on account of or in connection with loss of product, product shortage, malpractice / contamination of product, spillage while supplying onto to the vessels, including but not limited to any discrepancy relating to the bunkers supplied by IOCL to the Barge.
  
- 3. AND FURHTER, the Customer, does hereby unconditionally and irrevocably indemnify and agree to keep indemnified for all times hereafter IOCL, including its successors and assigns from and against all claims or actions from any authority, party or person whatsoever for any violation of any law or convention in connection with the transfer of bunkers in the Customer nominated Bunker Vehicles and the supply of the same to vessels by such Bunker Vehicles nominated by the Customer.
  
- 4. AND FURHTER, the Customer, does hereby unconditionally and irrevocably state that all and any dispute in connection with this Indemnity Bond and the individual purchase order/letter/communication for supply of bunkers would be dealt with as per the laws of India and that the Courts in \_\_\_\_\_, \_\_\_\_\_ (*insert City & State of jurisdiction*), India would have the sole and exclusive jurisdiction to try and decide such disputes.
  
- 5. This Indemnity Bond is irrevocable. The recitals of this Deed of Indemnity shall form an integral part of this Bond.

**IN WITNESS WHEREOF**, the Parties have hereunto set and subscribed their signatures and official stamp to this Indemnity the day and the year first hereinabove mentioned.

SIGNED SEALED AND DELIVERED by the                    }  
Within named Indemnifying Party,                            }  
  
\_\_\_\_\_(Insert name of Customer)                                    }

By its Authorised Signatory                                    }  
In the presence of.....    }

SIGNED SEALED AND DELIVERED by the                    }  
Within named Indemnified Party,                            }  
  
Indian Oil Corporation Limited                                    }  
  
By its Authorised Signatory                                    }  
  
In the presence of.....    }

**IndianOil Letterhead**

Ref:

Date:

**To whomsoever it may concern**

Indian Oil Corporation Ltd had supplied [*quantity*] MT of marine bunker fuel [*product name*] to the vessel MV [*name of the vessel*] vide Bunker Delivery Note Ref. [*BDN Number*] dated [*Date of BDM*]. Entire payment against this marine bunker fuel supply has been received and IndianOil does not have any claim on the Buyer or the Vessel related to the cost of the marine bunker fuel.

This declaration has been issued on the request of the Buyer [*name & address of the Buyer*] solely for the purpose of confirmation of payment receipt from the Buyer for the bunker fuel(s) procured from Indian Oil Corporation Ltd.

Indian Oil Corporation Ltd does not undertake any liability whatsoever arising out from issuance of this declaration.

Yours sincerely  
for IndianOil Corporation Limited

[*Name & Signature of Authorized signatory*]