



Bunkering Agreement

Terms and Conditions (“General Conditions”) for Supply of Marine Services

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NTPM has agreed to supply, and the Purchaser has agreed to purchase, the Fuel on the terms and conditions set out below:

1. Definitions and Interpretation

1.1 In this Agreement:

Agreement means the Fuel Request Form, these General Conditions and the Purchase Order.

Business Day means a day that is not:

- (a) a public holiday in the Northern Territory of Australia; or
- (b) Saturday or Sunday.

Consequential Loss means any loss of actual or anticipated profit or loss of production, losses caused by business interruption, loss of goodwill or reputation; any indirect, punitive, speculative, special or consequential cost, expense, loss or damage, even if such costs, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by NTPM or its supplier and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise.

Force Majeure Event means any event or circumstance beyond the control of the affected Party, which could not reasonably have been foreseen and as a result of which the affected Party is prevented from or delayed in performing its obligations under this Agreement and which includes the following events:

- (a) acts of God;
- (b) any Government requisition, control, intervention, requirement or interference, including without limit any governmental authority imposing any form of price control, rationing, allocation or other emergency measures on NTPM's sale of Fuel at the Port.
- (c) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;
- (d) riots, civil commotion, blockades or embargoes;
- (e) epidemics;
- (f) earthquakes, landslides, floods or other weather conditions;
- (g) strikes, lockouts or other industrial action;
- (h) fire, accident, explosion, breakdowns;
- (i) any circumstance whatsoever which is not within NTPM's control;
- (j) the interruption, unavailability or inadequacy of Fuel;
- (k) the curtailment, failure, termination or cessation in whole or in part of any of the existing or contemplated sources of NTPM's supply of Fuel, or the crude oil or petroleum from which such Fuel is derived;
- (l) compliance with any law, regulation or ordinance, or with any order, demand or request of any international, national, port, transportation, local or other authority or agency or of any body or person purporting to be or to act for such authority or agency or any corporation directly or indirectly controlled by any of them whether or not such order or request is later determined to be invalid;

Fuel means any fuel products whatsoever provided by NTPM.

Fuel Request Form means the Fuel Request Form attached to these General Conditions

General Conditions means these general conditions.

Insolvency Event means, in relation to a Party:

- (a) that Party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them; or
- (b) a liquidator or provisional liquidator is appointed to that Party or a receiver, a receiver and manager, trustee or similar person is appointed over any assets or undertakings of that Party; or
- (c) an application or order is made or a resolution is passed for the winding up of that Party.

NTPM means NT Port and Marine Pty Ltd

“Party” or “Parties” shall mean the parties to this Agreement and may be used inter-changeably.

Personnel means a Party’s employees, officers, servants, agents, consultants and subcontractors.

Port means NTPM’s Port Melville premises located at the South Barlow Point on Melville Island, 63 nautical miles north of Darwin Northern Territory.

PMSI means a “purchase money security interest” as defined in section 14 of the PPSA;

PPSA means the Personal Property Securities Act 2009 (Cth) (as amended);

Purchase Order means the purchase order issued by the Purchaser to NTPM in relation to the Fuel.

Purchaser means the Party described in the Fuel Request Form and shall include its principal, servants, agents and designated representatives and the registered owner of the Vessel to which the Fuel is being supplied, her master, owners, operators, charterers, and any party benefitting from consuming the Products, all of whom shall be jointly and severally liable as the Purchaser under each Agreement.

Security Agreement means a security agreement as defined in the PPSA

Security Interest means a security interest as defined in section 12 of the PPSA;

Vessel means the Vessel, ship or craft duly nominated to receive the Fuel as described in the Fuel Request Form.

1.2 In this Agreement, unless the context indicates otherwise:

- (a) a singular word includes the plural and vice versa;
- (b) a reference to a Party to this Agreement or any other document or agreement includes the Party’s successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a document or agreement (including a reference to this Agreement) is to that document or agreement as amended, supplemented, varied or replaced;
- (e) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (f) if any day on or by which a person shall do something under this Agreement is not a Business Day, then the person shall do it on or by the next Business Day;
- (g) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and

2. Agreement and Acceptance

2.1 This Agreement consists only of the terms and conditions expressly provided in:

- (a) the Fuel Request Form;
- (b) these General Conditions; and
- (c) the Purchase Order,

and forms the entire agreement between the Purchaser and NTPM concerning the sale and delivery of Fuel. This Agreement supersedes all other terms, conditions and communications relating to the sale of Fuel, including any terms and conditions provided by the Purchaser to NTPM, even if any of NTPM’s Personnel signs those terms and conditions or annexes the terms and conditions to this Agreement.

2.2 This Agreement comes into existence when NTPM accepts the Purchaser’s Purchase Order.

- 2.3 If any inconsistency, discrepancy or ambiguity arises between the Purchase Order and the General Conditions, this General Conditions shall take priority.
- 2.4 The application of all or any of the provisions of the United Nations Convention on Contracts for International Sale of Goods (Vienna Convention) to this Agreement or incorporation of such provisions into this Agreement at any time is expressly excluded in all respects.
- 2.5 Where Fuel is ordered by an agent for Purchaser, the agent as well as the principal, will be bound by, and liable for, all obligations as fully and completely as if the agent were itself the principal whether or not such agent purports to contract as agent only. Both the principal and the agent will be considered the Purchaser for the purposes of this Agreement.
- 3. Health, Safety and Environment**
- 3.1 It shall be the sole responsibility of the Purchaser to ensure that the Vessel, its crew and those responsible for its operation and management, observe and comply with all health, safety and environmental laws and regulations with regard to the receipt, handling and use of the Fuel.
- 3.2 The Purchaser warrants that the Vessel compliant with all national and international trading and pollution regulations and free of all conditions, deficiencies or defects. NTPM reserves the right not to commence delivery or to terminate delivery without recourse to the Purchaser in the event that they deem the environment for delivery of the Fuel to be unsafe.
- 3.3 The Purchaser shall be liable for and indemnifies NTPM for any liability, claim, demand, damage, action, proceeding or expense of any nature arising out of its failure to comply with any health, safety and environmental laws and regulations, including without limitation any pollution or contamination howsoever caused.
- 4. Changes**
- 4.1 In the event of cancellation, rescheduling, or any other change in relation to a delivery, the Purchaser shall be liable to pay to NTPM such charges, costs and expenses incurred by NTPM as a result of such cancellation, rescheduling or change as are notified by NTPM to the Purchaser.
- 4.2 The Purchaser shall be responsible for all consequences, costs and expenses, including but not limited to the Vessel's demurrage costs, arising from any changes in the Vessel's arrival or departure timing.
- 4.3 The Purchaser shall be responsible for any changes in the timing of the scheduled delivery of the Fuel to the Vessel which resulted from a decision, act or omission of the Purchaser, the Vessel, the master, agents or representatives. Any costs and expenses incurred by NTPM in this regard shall be borne by the Purchaser and reimbursed in full to NTPM.
- 5. Fuel Quantity and Quality**
- 5.1 NTPM shall have no responsibility or liability for the suitability of the Fuel for the Vessel, including compatibility with other Fuel products already on board. NTPM does not provide any guarantee nor warranty as to the satisfactory quality, fitness or suitability of the Fuel provided for use by the Vessel in question or any other receiving facility.
- 5.2 Purchaser hereby agrees that to the maximum extent permissible by law, all representations or warranties on the part of NTPM express or implied, whether made by virtue of the operation of any statute, regulation or otherwise, of merchantability, fitness or suitability of the Fuel for any particular purpose or in relation to the provision of ancillary services are hereby expressly excluded from this Agreement.
- 5.3 NTPM shall not be responsible for any claim as to quality arising from the co-mingling of the Fuel with other products or materials by the Purchaser on board the Vessel.
- 5.4 The quantity of Fuel delivered shall be measured by NTPM's shore meter and such measurements shall be conclusive evidence of the quantities delivered to the Purchaser.

5.5 The Purchaser shall have the sole responsibility for the nomination of the specification and grades of Fuel fit for use by the Vessel.

6. Fuel Order and Delivery

- 6.1 All deliveries shall be made ex-wharf in accordance with the instructions given by the Purchaser or the master of the Vessel, subject to NTPM's agreement to such instructions, which agreement shall be reached before the delivery is commenced by NTPM pursuant to the Agreement.
- 6.2 Purchaser warrants that it has the actual authority to order the Fuel for the Vessel and to enter into this Agreement not only on its own behalf but also on behalf of the Vessel's owner, charterer(s), manager and operator, and shall be deemed to have entered into this Agreement in such capacities. Purchaser indemnifies NTPM against all or any liabilities, obligations, losses, damages, costs or expenses suffered, sustained or incurred as a consequence of any breach by Purchaser.
- 6.3 The Purchaser warrants that the Vessel is fit and ready in all respects to load the Fuel and that the Vessel is in possession of all certificates required to comply with NTPM's requirements and that all technical aspects of the Vessel that may be relevant to the delivery of the Fuel by NTPM to the Vessel have been disclosed in writing by the Purchaser to NTPM.
- 6.4 The Purchaser shall complete the relevant section of the Fuel Request Form ("**FRF**") and submit to NTPM at least five (5) Business Days' advance notice of the requested date of delivery, providing all details of the delivery.
- 6.5 Within two (2) Business Days from receipt of the FRF, NTPM shall complete the relevant portion and re-return to the Purchaser:
- 6.6 Within two (2) Business Days from receipt of the completed FRF the Purchaser shall execute the FRF and return to NTPM along with a Purchase Order confirming acceptance of the Agreement.
- 6.7 The Purchaser shall make all necessary connections and disconnections between the delivery hose(s) and the Vessel's intake pipe and ensure that the delivery hose(s) are properly connected to the Vessel's intake pipe prior to the commencement of delivery. The Purchaser shall render all other necessary assistance and provide sufficient tankage and equipment to receive all the delivery promptly under the Agreement. The Purchaser shall promptly receive the delivery and withdraw the Vessel from the Port once the delivery has been completed.
- 6.8 The delivery date shall be deemed to be the date of completion of delivery as stated on the relevant FRF ("**Delivery Date**").
- 6.9 The Purchaser shall ensure that the Vessel is in possession of all certificates, permits and licenses required to comply with all relevant regulations pertaining to delivery of the Fuel at the Port and that the master of the Vessel shall render all necessary assistance required and provide safe access to the Vessel, in compliance with all applicable laws and regulations so as to allow for smooth delivery of the Fuel.
- 6.10 The Purchaser shall be responsible for any and all demurrage, detention or additional expenses incurred by NTPM if the Purchaser or the Vessel fails to receive the Fuel at the time for delivery. In addition, if the Vessel fails to take delivery of the Fuel or any part thereof for whatever reason, the Purchaser shall compensate NTPM for any loss or damage which NTPM may suffer as a result of such failure.
- 6.11 In case of delay or failure to deliver the Fuel, NTPM shall not be liable to the Purchaser or any other entity for any claim, loss, demurrage or damage. Further, NTPM shall not be liable to the Purchaser for any claim, loss, demurrage or damage due to congestion at the Port, shortage of fuel, Force Majeure Event, prior commitments of the available barges, or any conditions beyond NTPM's control.
- 6.12 NTPM's obligation to deliver the Fuel is conditional upon Parties having obtained such certificates, permits and licences, and NTPM shall not be required to deliver or arrange to deliver (and shall bear

no liability hereunder for failure to deliver) the Fuel where any required certificate, permit or licence has not been obtained.

- 6.13 The Purchaser shall advise NTPM in writing prior to delivery of Fuel of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of the Fuel.
- 6.14 The Purchaser shall notify NTPM in writing prior to delivery of the Fuel of the maximum allowable pumping rate and pressure and agree on communication and emergency shut-down procedures.

7. Fuel Sampling

- 7.1 NTPM shall take four representative samples at the Bunker Tank sampler location of the Fuel delivered to the Vessel. Two sealed samples shall be handed to the Purchaser and the other two sealed samples retained by NTPM. Upon completion of sampling, all samples are to be sealed, labelled and signed by both NTPM and the Purchaser.
- 7.2 NTPM's retained samples will be retained for twenty-eight (28) days after the date of completion of delivery as stated on the relevant FRF. After twenty-eight (28) days, NTPM may discard such samples, unless Purchaser has lodged a Dispute Notice pursuant to clause 14.1 within the said twenty-eight (28) days, in which case NTPM's samples shall be retained for analysis by an independent expert inspector in accordance with clause 14.
- 7.3 The Purchaser has the right to witness the sampling, however the Purchaser's absence during all or any part of the sampling process shall not prejudice the validity of the samples.

8. Pricing and Payment

- 8.1 The price of the Fuel as specified in the Fuel Quote is exclusive of any applicable taxes, GST or other duties, unless otherwise agreed.
- 8.2 In addition to the price, the Purchaser shall also pay to NTPM:
- i. all and any duties, levies, expenses, taxes, impositions, delivery charges, barging fees, wharfage fees, towing and tug charges, pilotage, premiums, overtime and other costs incurred by NTPM, or for which NTPM is accountable for in respect of delivery and arranging delivery of the Fuel to the Purchaser;
 - ii. all and any losses, costs and expenses incurred by NTPM by reason of the master of the Vessel rejecting the whole or any part of the delivery of the Fuel for any reason whatsoever;
 - iii. any and all additional fees, costs and charges identified in the relevant port guide applicable to the delivery port; and
 - iv. all applicable barging charges together with transportation taxes.
- 8.3 NTPM reserves the right to increase the price charged for the Fuel if there is any increase in the costs incurred or to be incurred by NTPM in making the relevant supply due to factors beyond NTPM's control, including but not limited to, any increase in taxes or duties, the making of any law, order, by-law or other regulation, the occurrence of any currency fluctuation affecting the cost of any imported items and any increase in costs charged by the supplier for any reason whatsoever.
- 8.4 Payment shall be made by the Purchaser in the agreed currency before pumping of the Fuel commences. Payment shall be made in full, without set-off, counterclaim, deduction or discount and free of all bank charges.
- 8.5 Payment shall be made by the Purchaser to NTPM by bank transfer, according to the payment instructions contained in the relevant invoice. Any delay in payment by the Purchaser shall entitle NTPM to interest at the rate of two (2) percent per month or any part thereof.
- 8.6 In case the agreed purchase price including any additional costs or accrued interest is not paid when due, any fees, costs and expenses incurred in debt collection or legal action for recovery shall be paid for in full by the Purchaser.

- 8.7 If at any time NTPM is of the opinion that the financial ability of the Purchaser is impaired or unsatisfactory, NTPM may, in its sole and absolute discretion, refuse delivery of Fuel until the Purchaser;
- i. Pay's cash in advance;
 - ii. Puts up security in a format and from an Australian bank acceptable to NTPM, at Purchaser's cost; or
 - iii. Establishes letter(s) of credit at Purchaser's expense from an Australian bank acceptable to NTPM.
- 8.8 Deliveries of Fuel, if sold on a credit basis, are delivered not only on the credit of the Purchaser, but also on credit of the Vessel receiving delivery of the Fuel and the Purchaser agrees and warrants that NTPM shall have and may assert a general maritime claim against the Vessel for the amount of the purchase of Fuel.
9. **Goods and Services Tax**
- 9.1 Terms used in this Clause which are defined in the GST Act have the same meaning in this Clause.
- 9.2 Each Party acknowledges and agrees that:
- i. at the time of entering into this Agreement, it is registered for GST;
 - ii. it shall promptly provide written evidence of its GST registration if so requested by the other Party;
 - iii. it shall indemnify the other Party against any loss that may arise from it not being registered for GST; and
 - iv. it shall promptly notify the other Party in writing if it ceases to be registered for GST.
- 9.3 In respect of payments to be calculated under or in connection with this Agreement:
- i. when calculating the amount payable or other consideration to be provided for a supply, the amounts used in the calculation shall exclude any GST component; and
 - ii. if the amount payable by a Party is increased or reduced by an amount calculated by reference to a loss, cost or expense incurred by a Party, then the amount will be reduced by any input tax credit to which that Party is entitled in respect of that loss, cost or expense.
- 9.4 For each supply made by Party (Supplier) under or in connection with this Agreement on which GST is imposed:
- i. the consideration payable or to be provided for that supply under this Agreement but for the application of this Clause shall be increased by and the recipient of the supply (Recipient) must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST; and
 - ii. the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided, subject to a valid tax invoice (Tax Invoice) being provided in respect of the GST exclusive consideration.
- 9.5 A Tax Invoice shall be provided by the Supplier to the Recipient prior to the due date for payment of the supply.
- 9.6 If and to the extent that an adjustment event arises in respect of a supply made under or in connection with this Agreement:
- i. if the Suppliers corrected GST amount is less than the previously attributed GST amount, the Recipient shall refund the difference to the Recipient; and
 - ii. if the Suppliers corrected GST amount is greater than the previously attributed GST amount, the Recipient shall pay the difference to the Supplier; and
 - iii. the Supplier shall issue an adjustment note to the Recipient.
- 9.7 In this Clause:

- i. GST has the meaning given in the GST Act; and
- ii. GST Act means A New Tax System (Goods & Services) Act, 1991 (Cth).

10. Risk and Title

- 10.1 Delivery of Fuel shall be deemed to be complete and risk in the Fuel shall pass from NTPM to the Purchaser once the Fuel passes the flange connecting the Port to the Vessel.
- 10.2 Title to the Fuel shall pass to the Purchaser upon full payment of the Fuel delivered pursuant to the Agreement. Until such time as payment is made in full the Purchaser agrees that it is in possession of the Fuel solely as Bailee for NTPM and NTPM retains all property, title and interest in the Fuel.
- 10.3 In the event NTPM's Fuel has been commingled with other fuels on board the Vessel, NTPM shall have a right of lien to such part of the commingled fuels as corresponds to the quantity delivered to the Vessel. The above is without prejudice to such other rights as NTPM may have under the laws of the governing jurisdiction or the Vessel in the event of non-payment.

11. Liability and Indemnity and Australian Consumer Law

- 11.1 The Purchaser shall defend, indemnify and hold NTPM harmless against any claims, losses, costs, damages, liabilities, fines, penalties and expenses incurred or sustained, arising out of or in connection with the Agreement.
- 11.2 Notwithstanding anything herein contained NTPM shall continue to be subject to any implied conditions and warranties or guarantees provided by the Australian Consumer Law pursuant to the Competition & Consumer Act, 2010 (Cwth) (as amended) ("the Australian Consumer Law") if and to the extent that the Australian Consumer Law is applicable to the value of the fuel/bunkers delivered by NTPM to the Purchaser.
- 11.3 Notwithstanding any other clause of this Agreement, NTPM's liability for any losses or damages that may be suffered by the Purchaser or the Vessel or any third party whatsoever under all circumstances, whether based in tort or contract or otherwise, shall be limited to the value of the Fuel contracted to be delivered.
- 11.4 In the event that the NTPM is liable for breach of a condition or warranty or guarantee implied by the Australian Consumer Law the liability of the NTPM for a breach of such condition or warranty or guarantee shall be limited to the value of the fuel/bunkers contracted to be delivered.
- 11.5 NTPM shall have no liability to the Purchaser, whether in contract, tort, under statute or otherwise, under or in connection with this Agreement for:
 - i. any loss of hire or loss of freight;
 - ii. demurrage;
 - iii. any act or omission of NTPM; and
 - iv. any Consequential Loss.
- 11.6 In any event and without limitation the period of limitation for any action against NTPM arising out of this Agreement is one (1) year after the date of delivery, of the Fuel in connection with which the action is brought. NTPM shall be discharged from all liability whatsoever unless an action is brought within this period.
- 11.7 This clause survives the termination or expiry of this Agreement.

12. Pollution

- 12.1 The Purchaser shall be liable for and shall indemnify, keep indemnified and hold harmless NTPM for any liability, claim, demand, damage, action, proceeding or expense of any nature arising out of or in connection with escape, spill or discharge of Fuel occurring before, during or after the delivery of the Fuel as well as any other contamination or pollution.

- 12.2 The Purchaser shall do all things necessary to prevent or minimise the escape, spill or discharge of Fuel occurring before, during or after the delivery of the Fuel and all costs incurred by NTPM preventing or minimising the escape, spill or discharge of Fuel shall be borne by the Purchaser.
- 12.3 In the event of any escape, spill or discharge occurring before, during or after the delivery of the Fuel, the Purchaser shall, in addition to any other obligations imposed by law, immediately notify the appropriate governmental authorities and take or arrange whatever action is necessary to respond and clean up such spill or discharge, and pay all costs and expenses in connection therewith.
- 12.4 This clause survives the termination or expiry of this Agreement.
- 13. Force Majeure**
- 13.1 NTPM shall not be liable for any loss, damage, demurrage, breach, delay failure or non-performance of its obligations under the Agreement if it is prevented or hindered from doing so by any Force Majeure Event.
- 13.2 In the event of any Force Majeure Event NTPM shall have the right to take the following action without recourse to the Purchaser:
- i. Suspend delivery of any Fuel under the Agreement for such periods as NTPM may, in its absolute discretion determine; or
 - ii. Cancel Fuel delivery;
 - iii. Terminate the Agreement; or
 - iv. Allocate such quantities of Fuel to the Purchaser as NTPM may determine to be appropriate in its absolute discretion.
- 13.3 Where NTPM exercises the right to cancel or suspend any further delivery of such shortfall, the Purchaser shall only be liable to pay for the quantity delivered and if full payment has already been made by the Purchaser in respect of the contractual quantity, NTPM shall refund the Purchaser the value of such shortfall within 30 calendar days.
- 14. Termination**
- 14.1 Notwithstanding any clause to the contrary NTPM shall be entitled to terminate this Agreement or refuse to provide Fuel in the case of:
- i. Insolvency Event;
 - ii. arrest or threatened arrest of assets of the Purchaser;
 - iii. arrest or threatened arrest of the Vessel;
 - iv. if the Purchaser fails to pay any invoice due to NTPM in accordance with clause 8.4;
 - v. if the Purchaser fails to comply with any other obligation to be observed or performed pursuant to the Agreement; and
 - vi. any situation, which in the opinion of NTPM could adversely affect the financial position of the Purchaser.
- 15. Dispute**
- 15.1 In the event of a dispute concerning the quality of the Fuel the Purchaser must serve a notice on NTPM within twenty-eight (28) days from the date the sample was extracted pursuant to clause 7.1. ("**Dispute Notice**")
- 15.2 Within 7 days from receipt of the Dispute Notice NTPM shall nominate an independent laboratory to perform analysis of the Fuel samples. ("**Nomination Notice**")
- 15.3 Within seven (7) days from receipt of the Nomination Notice the Purchaser shall reply to NTPM, otherwise the Purchaser shall be deemed to have accepted NTPM's proposal and the independent laboratory proposed by NTPM will be appointed.
- 15.4 Both NTPM and the Purchaser agree to be bound by the results of the tests performed by the independent laboratory so appointed, which shall be final.

- 15.5 If NTPM and the Purchaser cannot agree on an independent laboratory to perform mutual analysis, or if the Purchaser fails to reply to NTPM's notice hereof within seven (7) days from receipt of such notice, NTPM may at its sole discretion decide which laboratory to perform the analysis, the results of which shall be final and binding on all Parties involved.
- 15.6 The costs and expenses incurred in conducting such tests and analysis shall be borne by NTPM if the results are in favour of the Purchaser, or borne by the Purchaser if the results are in favour of NTPM.
- 15.7 In the event of any claim as to the quality of the Fuel delivered under the Agreement, NTPM shall be entitled to and the Purchaser shall permit and allow NTPM to attend on board the Vessel to carry out all necessary inspections and investigations, including but not limited to the inspection of the master's logs and the Vessel's engine records. NTPM has the right to take copies of all documents and to have unrestricted access to the Vessel's engine spaces and take samples. In the event that NTPM is denied any permit or access, NTPM shall be deemed to have a complete defence against such claim and the Purchaser shall have no recourse against NTPM.
- 16. PPSA**
- 16.1 The Parties agree that for the purposes of the PPSA, this Agreement constitutes a Security Agreement to secure payment of all monies owing by the Purchaser to NTPM pursuant to this Agreement and that a security interest exists in the Fuel.
- 16.2 Purchaser acknowledges and agrees that:
- i. NTPM has a first ranking PMSI Security Interest in the Fuel supplied by NTPM and will not be extinguished notwithstanding that the Fuel is commingled or processed and Purchaser must not jeopardise such ranking (whether by act or omission);
 - ii. Purchaser must co-operate with NTPM to the extent necessary to enable NTPM to complete and maintain any PPSA registration;
 - iii. the rights NTPM may have under PPSA are supplementary and in addition to those set out in this Agreement and do not derogate from the rights and remedies of NTPM under this Agreement or under any other statute or at law.
 - iv. Purchaser will not to sell, lease, mortgage, deal with, dispose of or create or attempt to create any other Security Interest in or affecting the Fuel; and
 - v. Purchaser has not granted and will not grant any other person a Security Interest in respect of the Fuel.
- 17. General**
- 17.1 This Agreement may only be amended by written agreement between the Purchaser and NTPM, signed by both Parties.
- 17.2 No waiver by a Party of any breach of a provision of this Agreement is a waiver of any subsequent breach of that provision or any other provision. A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not effective unless it is in writing.
- 17.3 The rights and obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.
- 17.4 Each Party shall do all things reasonably necessary to give effect to this Agreement and the transactions contemplated by it.
- 17.5 Each Party shall pay its own legal and other costs and expenses relating to the negotiation, preparation and execution of this Agreement.
- 17.6 The failure of a Party to require full or partial performance of a provision of this document does not affect the right of that Party to require the performance subsequently.

- 17.7 This Agreement is governed by the law of the Western Australia. The Purchaser and NTPM irrevocably submit to the exclusive jurisdiction of the Courts of Western Australia and the Federal Court of Australia and Courts competent to hear appeals from them.
- 17.8 No rule of construction applies to the disadvantage of NTPM because NTPM was responsible for the preparation of, or seeks to rely on, this Agreement.
- 17.9 A clause or part of a clause of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining clauses or parts of the clause will continue in force.
- 17.10 If the Purchaser comprises two or more persons (whether as a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons) the obligations and liabilities of those persons is joint and several.
- 18. Sanctions**
- 18.1 In this Agreement the following provisions shall apply where any sanction, prohibition or restriction is imposed on any specified persons, entities or bodies including the designation of any specified vessels or fleets under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union or the United States of America.
- 18.2 The Purchaser warrants that at the date of entering in this Agreement and continuing until delivery of the Fuel and payment by the Purchaser to NTPM in full that it is not subject to any of the sanctions, prohibitions, restrictions or designation referred to in Sub-Clause 18.1 which prohibit or render unlawful any performance under this Agreement.
- 18.3 The Purchaser further warrants that the Vessel is not and will not be chartered to any entity or transport any cargo contrary to the restrictions or prohibitions in Sub-Clause 18.1 hereof;
- 18.4 If at any time during the performance of this Agreement the Purchaser is in breach of any warranty as aforesaid, NTPM may terminate this Agreement forthwith.
- 18.5 The Purchaser shall be liable to indemnify NTPM against any and all claims, including losses, damage, costs and fines whatsoever suffered by NTPM resulting from any breach of warranty as aforesaid.
- 19. Confidentiality**
- 19.1 Neither Party shall disclose to any third parties any confidential information relating to pre-contractual discussions and/or the terms and conditions of this Agreement, except with the prior written consent of the other Party, or to the extent required by law.
- 19.2 The Parties shall take reasonable precautions to ensure that no unauthorised disclosure of confidential information takes place.
- 19.3 If a Party is uncertain as to whether information is confidential, the Purchaser or NTPM (as the case may be) shall consult with the other Party.
- 19.4 Should either Party be required by law to disclose confidential information, the disclosing Party will notify the other Party and shall disclose only the minimum confidential information required to satisfy legal requirements.
- 19.5 Information is not confidential for the purposes of this Clause if it was in the possession of the Party prior to receipt from the other Party; becomes publicly available other than as a result of a breach of this Agreement by one of the Parties; or is lawfully received from a third party.
- 19.6 This Clause shall survive termination of this Agreement.

FUEL REQUEST FORM

Purchaser to Complete on own behalf and warranted as agent for and on behalf of vessel owner/operator as bareboat charter:

Purchaser	
Purchaser's Representative Details	Name: Position: Email Address:
Vessel	Name: Registered No:
Date of Arrival	
Current location of Vessel	
Quantity of Fuel required	
Quality of Fuel Required	
Allowable pumping Rate and Pressure	
Special conditions, difficulties, peculiarities, deficiencies or defects in respect of the particular Vessel	

NTPM to complete:

NTPM's Representative Details	Name: Position: Email Address:
Price and currency of the Fuel (excluding any applicable taxes, VAT and other excise and duties)	
Quality of Fuel	
Quantity of Fuel available	
Pumping rate and pressure at the Port	
Any additional fees, charges and costs applicable to the special conditions, difficulties, peculiarities, deficiencies or defects in respect of the particular Vessel	

Signed for and on behalf of the Purchaser and vessel Owner/Bareboat Charterer as evidenced by Master signature as acceptance of the above details and the Agreement:

Signed for and on behalf of NTPM Conditions:

Signature of Authorised Representative

Signature of Authorised Representative

Signed by Master of Vessel _____
for and on behalf of Owner/Bareboat Charterer

Name of Authorised Representative

Delivery Date (To be dated upon the completion of Fuel delivery)	
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