

ACHIEVE BUNKER LIMITED



GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

1. APPLICATION

In these Terms and Conditions

"Buyer" means the party(ies) as described in the Sale Confirmation and shall include the Vessel, the Owners, her master, operators, charterers, any party benefiting from consuming the Marine Fuel, and any other party ordering the Marine Fuel, all of whom shall be jointly and severally liable as the Buyer under the Contract.

"Owners" means the registered owner(s), beneficial owner(s) and/or bareboat charterer(s) of the Vessel.

"Seller" means ACHIEVE BUNKER LIMITED.

"Contract" means the contract for the purchase and sale of the Marine Fuel between the Buyer and the Seller comprising of the Sale Confirmation and these Terms and Conditions.

"Sale Confirmation" means a confirmation in writing from the Seller to the Buyer setting forth the particular terms of each sale of the Marine Fuel.

"Marine Fuel" means the marine fuel(s) which the Seller is to supply in accordance with these Terms and Conditions.

"Supplying Company" means the party supplying the Marine Fuel for and on behalf of the Seller.

"Terms and Conditions" means the standard terms and conditions set out in this documents and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

"Vessel" means the vessel nominated by the Buyer to receive the Marine Fuel.

Unless the contents otherwise require, reference to the Seller or Buyer shall include their servants, agents or designated representatives.

2. BASIS OF SALE

2.1 The Contract shall be firm and binding upon the Buyer's acceptance of the price quoted by the Seller by way of fax, telex, electronic communication including but not limited to electronic mail, chat, information, submission or instant messenger communication, telephone, registered and reply-paid letter in writing or verbally.

2.2 Confirmation in writing by the Seller of the price may be provided to the Buyer, but the absence of such confirmation shall not void the agreement of sale.

3. PRICE

3.1 Prices shall be Seller's price as set forth in the Sale Confirmation and will be valid for only the expected time of arrival ("ETA") of the Vessel as advised by Buyer. Prices for delivery beyond this range are subject to amendment at Seller's option.

3.2 Unless where otherwise agreed, prices shall be deemed to be net in U.S. Dollars. All applicable taxes, levies, duties, fees and other costs including those imposed by Governments and local Authorities shall be for Buyer's account and will not ordinarily be included in the price quoted.

3.3 Unless otherwise expressly agreed in the Sale Confirmation, the Buyer shall pay any and all additional charges associated with the delivery, including, but not limited to, wharfage charges, barging charges, mooring charges, port dues, overtime charges incurred if delivery takes place outside of regular working days and hours at the relevant port of delivery.

4. QUALITY

4.1 The Marine Fuels to be delivered hereunder shall be Seller commercial grades of Marine Fuels as currently offered generally to its customers at the time and place of delivery. Save for the foregoing Seller gives no warranty of merchantability or fitness for purpose of Marine Fuels supplied under the Contract and any implied warranties or conditions whether statutory or otherwise are expressly excluded.

4.2 Buyer shall have the sole responsibility for the selection and acceptance of Marine Fuels, including determination of compatibility with marine fuels already on board the Vessel for use in the Vessel to which such Marine Fuel is delivered and the Seller shall not be under any obligation to check whether the grade of Marine Fuels is suitable for the Vessel.

4.3 Any certificate of quality ("COQ") possibly provided by the Seller shall only be indicative of the typical quality of the Marine Fuels and the Seller in no way guarantees that the Marine Fuels shall match the specifications stated in the COQ.

4.4 Where the Buyer nominates Marine Fuels above the sulphur limits set out in MARPOL Annex VI, the Buyer shall be fully responsible that the Vessel has working Abatement Technology (as defined in MARPOL Annex VI) installed in compliance with MARPOL Annex VI or must include a copy of a valid Fuel Oil Non-Availability Report (FONAR) and that the relevant authorization is granted to the Vessel for that specific delivery of Marine Fuels. The Buyer is under the obligation to provide relevant confirmation in writing upon Seller's request. The Buyer shall indemnify the Seller of all cost or losses incurred as a result of Seller's breach of this Clause.

4.5 In the event of a quality complaint Buyer shall agree with Seller upon the appointment of an independent expert to be instructed with an examination of the quality of Marine Fuels. This quality examination shall be effected solely on the basis of the barge's sealed samples unless expressly stated in the Sale Confirmation, the result of which shall be binding upon both parties.

4.6 The costs of analysis shall be borne by Buyer, unless the complaint as to quality is shown to be justified.

4.7 Any test results resulting from analysis of representative sample shall be considered meeting the specification when they are within allowances for generally recognized industry standards of repeatability and reproducibility. All grades of Marine Fuels may contain petroleum industry allowed, bioderived components.

4.8 Where specifications designate a maximum value, no minimum value is guaranteed unless expressly stated in the Bunker Confirmation. Conversely, where minimum values are provided in a specification, no maximum values are guaranteed unless expressly stated in the Sale Confirmation.

5. QUANTITY

5.1 All quantities referred to in the Sale Confirmation are understood to be approximate with a margin of 5 per cent more or less (+/- 5%) at Seller's option however Seller's obligations to supply such quantities shall be subject to availability thereof from Seller's source of supply at the time and place of the requested delivery.

5.2 The quantity of Marine Fuels delivered shall be determined from the official gauge of the barge or truck effecting delivery or by gauging in Seller's shore tank or by Seller's oil meter at Seller's election. Except where Government regulations or local authorities determine otherwise, adjustment in volume owing to difference in temperature shall be made in accordance with API/ASTM-IP Petroleum measurements standards for generalized products.

5.3 In the measurements of Marine Fuels, Seller shall make allowances for all water and non-petroleum sediments in excess of one per cent (1%).

5.4 Buyer may be present or represented by properly accredited agent when such measurements are taken but Seller's determination of quantity shall be deemed to be correct and conclusive.

5.4 In the event the quantity of Marine Fuels delivered exceeds the quantity ordered, Buyer may refuse to accept delivery of the excess quantity, but if Buyer does not so refuse Buyer shall be obligated to pay for the entire quantity delivered at a price specified in the Sale Confirmation.

6. DELIVERIES

6.1 Buyer shall give Seller at least 72 hours notice (Saturday, Sunday and holidays excluded) of Vessel's readiness to receive delivery and exact required quantity to enable Seller to make necessary arrangement for the delivery. Buyer shall give Seller final notice at least 48 hours (Saturday, Sunday or holidays excluded) before loading Marine Fuels into barge or other methods of transportation.

6.2 Seller shall use due diligence in the timely delivery of Marine Fuels to Buyer's Receiving Vessel. However, Seller shall not be liable for any delays due to congestion at the loading terminal, prior commitments of available barges/trucks, or discretionary decisions of the local transportation provider as to the Vessel's order of placement. In the case of actual delays not caused by the above circumstances, and which can be attributed solely to the gross negligence of Seller, Seller will reimburse Buyer for reasonable port costs such as shifting, pilotage and berthing.

6.3 If Buyer causes delay to Seller's facilities in effecting deliveries, Buyer shall pay demurrage to the Seller on the basis of actual costs incurred, and reimburse Seller for all other losses and expenses arising therefrom.

6.4 Seller shall be at liberty to make arrangement with more than one supplier to supply the whole or any part of the Marine Fuels sold in each Transaction as well as to substitute the supplier initially appointed.

6.5 Buyer shall make all connections and disconnections between the pipelines or delivery hoses and Vessel's intake lines and shall render all other necessary assistance and provide sufficient tankage and equipment to receive promptly all deliveries hereunder.

6.6 If Buyer fails to take delivery of the Marine Fuels or any part thereof Seller shall be entitled to the reimbursement of all costs and damages caused and, at Buyer's risk and expense, to transport the Marine Fuel back and then restorage it or to sell at a degraded form at a lower price than applicable under the Contract without prejudice to the Seller's other rights under this contract for damage or otherwise.

7. SAMPLING

7.1 The Seller shall arrange for samples to be taken during delivery of the Marine Fuels and unless otherwise agreed in writing the samples shall be taken in accordance with the sampling procedures applied by the appointed supplier.

7.2 Sampling shall be performed in the presence of the Buyer and Seller, or their representatives, but the failure of the Buyer to attend the sampling process shall not prejudice the validity of the samples.

7.3 All samples shall be sealed, labelled and signed by both the Buyer and Seller, or their representatives and two samples shall be retained by the Buyer one being the MARPOL compliant sample. The remaining samples shall be retained by the Seller or its representatives.

7.4 No samples drawn by the Buyer's personnel or samples subsequently taken shall be allowed as evidence of the quality of the Marine Fuels. If any seals have been removed or tampered with by an unauthorized person, such samples shall be deemed to have no value as evidence.

7.5 Where there is a complaint concerning the quality of the Marine Fuels, one of the aforesaid samples retained by the Seller shall be tested by an independent laboratory mutually agreed by the Buyer and Seller. Testing shall be limited to analysis of the disputed properties and the results shall be conclusive and binding evidence of the quality of the Marine Fuels supplied to the Vessel. In accordance with ISO 4259 tolerances in respect of reproducibility or repeatability in quality are accepted.

7.6 The Seller and the Buyer shall seek to agree on an independent laboratory to perform analysis, but if the Buyer fails to reply to the Seller's request to agree an appointment within 7 days from receipt of such notice or if the parties cannot agree then the Seller shall select the laboratory and such selection shall be final and binding for all parties involved.

8. PAYMENT

8.1 Payment shall be made by Buyer as directed by Seller and shall include the amount of any taxes payable by Seller in relation to the sale of Marine Fuels. Unless otherwise agreed, payment shall be made by bank transfer into Seller's bank account as stated in the Sale Confirmation and/or invoice within a period of thirty (30) days from the date of the delivery. Delivery documents may be provided to Buyer at its request, payment shall however not be conditional upon Buyer's receipt of such documents.

8.2 In the event the Buyer is requested to make payment to a bank account other than the one stated in the Bunker Confirmation and / or invoice, the Buyer shall obtain oral and written confirmation from its usual contact person within the Seller's organization prior to effecting any payment. If for any reason the Buyer receives payment information from anyone purporting to represent the Seller or purporting to be part of Seller's organization, which deviates from the account information previously received from the Seller, the Buyer must immediately contact its usual contact person within the Seller's organization both by telephone and e-mail to ensure that the new bank account information is correct. If payment is made to an account other than the one designated in the Bunker Confirmation not verified in accordance with this clause and the funds are not received in the Seller's account, payment has not occurred.

8.3 Overdue payments shall at Seller's sole discretion be subject to an interest charge running from the due date of payment at the rate of two per cent (2%) per thirty days (30) period compounded or the maximum rate permitted under applicable law, the Seller remaining entitled to the reimbursement of any other damage/cost including but not limited to the attorney fees, the costs and expenses which may be incurred by Seller with respect to collection, legal or other actions necessary at any time in Seller's opinion for the protection of its interest and the enforcement of its rights hereunder.

8.4 Should Marine Fuels be ordered by a broker or agent then such broker or agent as well as the Buyer shall be bound by and liable for all obligations as fully and as completely as if they were themselves the Buyer whether such principal shall be disclosed or undisclosed and whether or not such broker or agent purports to contract as brokers or agents only but in all such cases the said broker or agent shall not have any right against the Seller.

8.5 Any expenses incurred by SELLER, including but not limited to reasonable legal fees, court costs and collection agency fees, caused by delay or failure of payment by BUYER of the amount(s) due shall be for the account of BUYER/OWNERS and payable upon demand with supporting documentation.

9. RISK AND TITLE

9.1 Risk in the Marine Fuels shall pass to the Buyer as the Marine Fuels pass the last permanent flange connecting the Barge, Road Vehicle or other delivery facility manifold with the Vessel.

9.2 The Seller shall retain title to the Marine Fuels until the Seller has received full payment for the Marine Fuels and any other amounts and debts howsoever arising owed by the Buyer to the Seller. Until receipt of such payments the Buyer agrees that it is in possession of the Marine Fuels solely as bailee for the Seller, and shall not be entitled to use the Marine Fuels other than for the propulsion or operational maintenance of the Vessel or blend, encumber, pledge, alienate, or surrender the Marine Fuels to any third party or other vessel.

10. LIEN

10.1 Marine Fuels delivered pursuant to the Contract are sold and delivered on the financial credit of the Vessel as well as on the promise of the Buyer to pay. The Buyer therefore expressly warrants and agrees that the Marine Fuels are delivered with the authorisation and on behalf of the Vessel, its registered owner, its Master, the charterers and/or agents of the Vessel and there is no provision contained in the applicable Vessel's charterparty (or similar contractual arrangement) which purports to limit the Vessel, its Master, the charterers and/or agents or representatives of the Vessel from incurring a maritime lien.

10.2 Until the Seller receives payment of the Marine Fuels in full, the Seller shall have a maritime lien, attachment and/or claim against the vessel and/or the Marine Fuels delivered. Such maritime lien, attachment and/or claim shall be without prejudice and in addition to any other remedy available to the Seller.

10.3 The Buyer shall not do anything nor enter into any agreement that will in any way prejudice the Seller's right or ability to assert or enforce any such maritime lien, attachment and/or claim. If the Marine Fuels have been commingled on board the Vessel, the Seller retains its right of maritime lien, attachment and/or claim against the Vessel and/or against such part of the commingled marine fuel as corresponds to the quantity of the Marine Fuels delivered.

10.4 "No-Lien" stamps (or any similar notification which could prejudice Seller's rights) on any document including to the BDN, whether used by the Buyer, the Vessel (or its representatives) or any third party shall not vary the terms of the Contract, and shall in no way prejudice any right of lien, attachment and/or claim the Seller has against the Buyer, the Vessel, the Vessel's registered owner or the Marine Fuels.

11. CLAIMS

11.1 The quantity of Marine Fuels delivered shall be determined in accordance with Article 5.1. Any claim regarding the quantity of the Marine Fuels delivered shall be notified by telephone as well as in writing by the Buyer or the master of the Vessel to the Seller immediately when the dispute occurs and while the delivery hoses are still connected. In the event immediate verbal as well as written notice is not made, such claim shall be deemed to be waived and time-barred. A notification inserted in the bunker delivery note or in a separate protest handed to the physical supplier of Marine Fuels shall not qualify as notice under this clause and the Seller shall under no circumstances be deemed to have accepted such notice or protest handed to the physical supplier.

11.2 Any claim regarding the quality of the Marine Fuels delivered shall be presented in writing to the Seller as soon as an alleged quality problem has occurred or the Buyer is notified of any alleged problem and in any event no later than within seven (7) days from the date of delivery to the Vessel. However, in the event that the appointed physical supplier (if any) grants to Seller a period longer than seven (7) days in the physical supplier's own terms and conditions, then the Seller at its own discretion might grant the Buyer with that same notice period granted by the physical supplier. The foregoing notice shall be followed by a formal written notice of claim to Seller, within thirty (30) calendar days from receipt of the product, containing all details necessary to allow evaluation of the claim. Should the Buyer fail to make timely notifications of any claim regarding the quality of the Marine Fuels the claim shall be deemed waived and time-barred.

11.3 A written claim for the purposes of clauses 11.1 and 11.2 must provide a complete and comprehensive explanation of the circumstances and basis of the claim, including where applicable the quantities short and/or the discrepancies in quality, and include a full test report for a test performed on one of the official samples mentioned in the bunker delivery note performed by an independent laboratory along with copies of all correspondence with the independent laboratory and include copies of all supporting documents including the vessel's logs evidencing the matters complained of.

11.4 To the extent that the Buyer's test report evidence that the components detected are within the allowed tolerances in respect of reproducibility or repeatability as set out in ISO 4259, the Marine Fuels shall be deemed to be compliant and the Buyer cannot require further testing of the Marine Fuels.

11.5 Buyer's submission of any claim does not relieve it of responsibility to make payment in full as required under Clause 8.

12. HEALTH, SAFETY AND ENVIRONMENT PROTECTION

12.1. Buyer shall be responsible for users' compliance with all health and safety requirements relating to Marine Fuels supplied and shall best assure that any user avoids frequent or prolonged contact with or exposure to the Marine Fuels both during and subsequent to delivery. Seller or Seller's supplier accepts no responsibility for any consequence arising from failure to comply such health and safety requirements or arising from such contact or exposure.

12.2. In the event of any leakage spillage, overflow of bunkers causing or likely to cause pollution occurring at any stage, the Buyer and the Vessel shall, regardless as to whether Buyer or Seller is responsible, immediately take such action as is necessary to effect clean up and failing prompt action Buyer (which hereby warrants that it has been authorized by Vessel's Owners) authorizes Seller to take whatever measures Seller deems fit to effect clean up at Buyer's expenses. Buyer warrants that the Vessel at all material times will be in compliance with all national and international regulations. It shall be the responsibility of the Master of the Vessel to notify Seller of any special conditions, difficulties, peculiarities, deficiencies or defects with respect to the Vessel or any part thereof which might adversely affect the delivery of Marine Fuels. Seller has the right to refuse to deliver of Marine Fuels to the Vessel if it is probable that such delivery will result in adverse consequences of any kind whatsoever.

13. INDEMNITY AND LIMITATION OF LIABILITY

13.1 The buyer will indemnify the seller or seller's suppliers against any claims, demands, suits, liabilities, fines, penalties and expenses incurred or sustained arising out of or in connection with the act, omission, neglect or default of the buyer, its servants or agents in the receipt, use, storage or transportation of the Marine Fuel delivered hereunder.

13.2 Notwithstanding anything contained herein, seller shall not be liable to buyer, whether in contract or in tort or otherwise, for any consequential, indirect, special or economic loss or damage including but not limited to loss of profit or business, demurrage, loss of time or hire, cost of overheads thrown away, costs of substituted vessel, physical loss or damage (in whole or in part) of or to vessel or cargo due to delay or by reason of shutdown, non availability of supply of Marine Fuel, non operation or the like.

13.3 Any loss of or damage to Marine Fuel or to property of seller or its suppliers or any other party caused by buyer's designated vessel shall as between parties hereto, be borne by buyer and buyer shall to such extent indemnify seller or its suppliers for the same.

13.4 Seller's total liability under this Agreement whether in contract or in tort or otherwise (which shall include but not be limited to claims in respect of any breach of this Agreement, any deficiency in the quality and specification of the Marine Fuel or for failure to supply or delay in supplying any quantity of Marine Fuel for which seller is responsible, or any liability/duty owed to buyer in connection to this Agreement) shall not under any circumstances whatsoever exceed the agreed selling price of the Marine Fuel under the Confirmation of Order.

13.5 A Contract provided for the supply of two grades or above of Marine Fuels and liability arises from one grade being off-specification then only the Price for the off-specification Marine Fuels shall be taken into account in calculating the limit of the Seller's liability. In any case, the Seller shall have no liability unless and until the Seller has received full payment from the Buyer of all sums due under the Contract.

13.6 The Seller and the Buyer recognize the risks inherent in ship-to-ship operations and that the decision to proceed with such operations is in the sound discretion of the masters of the vessels involved.

14. CANCELLATION

14.1 If subsequent to the Sale Confirmation, the Buyer cancels the order, even in part, for any reason whatsoever including circumstances entirely outside of Buyer's control, then Seller without prejudice to any other rights it may have, shall be entitled to recover any cancellation fees imposed by the Physical Supplier or by the other local suppliers; a fee of US\$ 6,00 per metric ton of Marine Fuels to which cancellation refers and any difference between the contract price of the undelivered Marine Fuels and the amount received by the Seller upon resale to another party (or, if another buyer cannot be found, any market diminution in the value of the Marine Fuels as reasonably determined from available market indexes) whichever is greater; as well as all costs and damages arising from any underlying physical or derivative paper contracts which Seller has entered into in order to effect supply. Buyer agrees that cancellation fee as well as the associated costs are an inherent part of Seller's provision and necessary to operation of the Vessel and is secured by an in rem maritime lien against the Vessel, and accept to pay these amounts within 7 days from the issue date of Seller's invoice.

15. TERMINATION

15.1 Notwithstanding anything to the contrary expressed or implied elsewhere herein, the Seller, without prejudice to its other rights, may at its sole discretion terminate the Contract forthwith on notifying the Buyer either orally (confirming such notification in writing) or by notice in writing in the event that a liquidator, trustee in bankruptcy, receiver, manager or other similar entity is appointed in respect of the assets and/or undertaking of the Buyer or any of its associated companies, or the Buyer or any such associated company enters into an arrangement or composition with its creditor, or any similar appointment, arrangement or composition is made under any applicable Law or if the Seller has a reason to anticipate any such appointment, arrangement or composition.

15.2 Seller may terminate this Contract in whole or in part, at its own discretion upon the breach of any provision hereof by Buyer.

15.3 Seller reserves the right to recover from Buyer all damages and costs (including but not limited to loss of profit) resulting from any breach of them of the Contract.

15.4 In case the Buyer fails to effect payment at the time and in the manner prescribed under these General Terms and Conditions of Sale and Delivery, Seller, without incurring in any liability, shall have the right to terminate any other Contracts subject to these Conditions entered with Buyer.

16. FORCE MAJEURE

16.1 In the case of extraordinary events which are beyond the control of the Seller and which are unforeseeable in spite of the necessary care and which do not allow the Seller, with due consideration of its other delivery obligations, to make contractual deliveries or which would allow the Seller to make such deliveries only at economically unreasonable conditions, Seller shall be entitled for the duration of such obstruction to restrict or discontinue the deliveries -or in the case of prolonged obstruction- to withdraw from the Contract or terminate it without notice. This shall apply without limitation for instance in the case of war or warlike conditions and their consequences, unrest, sabotage, operational disturbances, labor dispute, measures by Law or order of the authorities, obstructions or delay in transportation, disturbance in the supply of Seller with crude oils, in particular by events in the area of the crude oil producing Countries. The same shall also apply if Seller is forced by market conditions to change its source of resources in such a way that Seller can no longer reasonably be expected to continue deliveries.

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

16.3 Under no circumstances, however, shall Buyer be excused under this paragraph of Buyer's obligation to make payment for all amounts due on account of Marine Fuels previously delivered hereunder.

17. WAIVER

17.1 Failure by either party at any time to enforce any of these conditions shall not be considered as a waiver by such party of such provisions or in any way affect the validity of these conditions.

18. MISCELLANEOUS

18.1 The supply by Seller of Marine Fuels and every quotation, pro-forma invoice, sale confirmation, price list or other similar document relating to Marine Fuels are made or issued solely subject to these conditions and no representation or warranty collateral or otherwise shall bind Seller and no statement made by any representative by or on behalf of Seller shall vary these Conditions unless such representation warranty or statement shall be made in writing and signed by a Director of Seller and shall be stated to be made specifically in pursuance of this clause 18.

18.2 Seller's offers and estimates of costs are to be understood as being conditional and subject to availability and alteration and shall include only such services as are expressly specified.

18.3 The Contract shall be deemed to be made with effect from the date that Seller provides to Buyer notice or reconfirmation of Buyer's order for Marine Fuels. This same provision shall also apply with regard to additions and alterations to the Contract.

19. GOVERNING LAW AND JURISDICTION

19.1 The Contract and all claims and disputes arising under or in connection with the Contract shall be governed by the laws of Hong Kong.

19.2 The General Maritime Law of the United States shall always apply to any determination of the existence of a maritime lien, attachment or any other maritime claim, regardless of the country in which the Contract is made, where the Marine Fuels are delivered or where the Company commences any legal action against the Buyer.

19.3 Any dispute arising out of or in connection with this Agreement or any documents hereof shall be referred to the non-exclusive jurisdiction of the Hong Kong International Arbitration Center ("HKIAC") in accordance with its Arbitration Rules for the time being in force. The place of arbitration shall be in Hong Kong unless agreed elsewhere. The reasoned arbitration award shall be final and binding upon both parties without recourse to any courts. Any costs related to arbitration, including reasonable attorney's fees, shall be borne by the losing party. Judgement upon any award rendered under this Section 14 may be enforced in any court of competent jurisdiction.