



HELIOSPETROLEUM

## GENERAL TERMS AND CONDITIONS

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These General Terms and Conditions (“GTC”) shall apply to all deliveries contracted where Helios Petroleum Pte Ltd or Helios Petroleum Sdn Bhd. act as seller, unless expressly stated otherwise in the Confirmation Note.

### 1. Definitions

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

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Singapore and (in relation only to any payment in US dollars) New York.

“**Buyer**” means the company(ies) named in the Confirmation Note buying the Products on their own behalf under a Contract with the Seller and shall include its servants, agents and designated representatives and the registered owner of the Vessel to which bunkers are being supplied, its charterers and/or managers and/or operators and/or the buyer of the Vessel on whose behalf the company(ies) named in the Sales Confirmation is acting;

“**Confirmation Note**” means the document (issued by the Seller unless otherwise mutually agreed by the parties) stating the agreement made between the Seller and the Buyer in respect of the supply of Products;

“**Contract**” means, in respect of each supply of Products by the Seller, the Confirmation Note, the GTC, the Supplier’s Terms and Conditions and any other documents referred to therein;

“**Due Date**” means the day payment shall be credited to the Seller’s account and the Seller receives interest from same date;

“**Product delivery receipt**” means the document where the Vessel’s representative signs as a confirmation of volumes/quantities received in respect of Products supplied under a Contract;

“**Products**” means bunkers, derived from crude oil and/or lubricants, i.e. lubricating oils, greases and other marine lubricating products, delivered or to be delivered to the Vessel;

“**Seller**” means the party contracting to sell the Products, i.e. Helios Petroleum Pte Ltd. Or Helios Petroleum Sdn Bhd;

“**Supplier**” means the party contracting to sell the Product to the Seller;

“**Supplier’s Terms and Conditions**” means the terms and conditions of the Supplier under which the Products are sold to the Seller (including their general terms and conditions and the Product delivery receipt); and

“**Vessel**” means the ship or vessel(s) nominated to take delivery or taking delivery or having taken delivery of the Products under a Contract on behalf of the Buyer for which Products are to be, have been or arranged to be delivered by the Seller.

### 2. Construction

All terms and conditions relating to the quality, quantity, risk, sampling, mode and time of delivery of the Products supplied hereunder (including but not limited to any provisions regarding cancellation



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and/or Buyer delay), liquidated damages and other claims from suppliers, environmental/safety issues and liabilities, force majeure and termination by default shall be in accordance with the Supplier's Terms and Conditions. All terms, conditions and warranties whether made by the Seller or its servants or agents or otherwise (other than those express warranties made by the Supplier's Terms and Conditions) relating to the matters referred to above in this clause 2 are excluded.

### 3. Supplier's Terms and Conditions

The Supplier's Terms and Conditions under which the Products supplied hereunder were sold and/or supplied to Seller are available for inspection at the head office of the Seller and the Seller undertakes to supply a true copy of the Supplier's Terms and Conditions upon the written request of the Buyer delivered by post, fax or e-mail to Seller's head office.

### 4. Price

4.1- The price of the Products supplied shall be in the amount per unit and currency expressed and stated in the Confirmation Note for each grade of the Products delivered. Delivery terms are as stated in the Confirmation Note. In the event the price is quoted in volume units, conversion to standard volume shall be calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.

4.2 – Any and all additional charges, if applicable, shall be for the Buyer's account including, without limitation, those specified in the Seller's quotation, the Confirmation Note and:

- Barging charges and other similar charges;
- Overtime, demurrage, port dues or mooring charges incurred by the Seller;
- Taxes, duties, charges or other costs in the country where the delivery takes place including those that are imposed on the Seller; and
- Any extra costs arising out of and/or incurred in connection with deliveries made on Saturdays, Sundays and Public Holidays, and outside of normal working hours.

### 5. Payment

5.1- Payment for the Products shall be made by the Buyer within 30 days and with value date not later than the Due Date or, if otherwise agreed, within the number of days stated in the Confirmation Note. In the event payment has been made in advance of the delivery, same shall be adjusted on the basis of the actual quantities of Products supplied and additional payment and/or refund shall be made within 30 days after the completion of the delivery. Payment shall be made in full without set-off, counterclaim, deduction and/or discount, free of bank charges.

5.2- Payment shall be deemed to have been made on the date the payment is credited to the account in the bank designated by the Seller. If Due Date falls on a non-Business Day, then payment shall be made on or before the Business Day nearest to the Due Date. If the preceding and succeeding Business Day is equally near to the Due Date, then payment shall be made on or before the preceding Business Day. Any delay in payment and/or refund shall entitle either party to interest at the rate of 2 per cent per month pro rata. Such default interest shall be compounded on a monthly basis for so long as amounts remain outstanding. In the event of non-payment, the Seller reserves the right to pursue such legal remedies as may be available to them to recover the amount owed. If the Seller receives a payment that is insufficient to discharge all the amounts then due and payable by the Buyer under these GTCs, the Seller shall apply that payment in settlement of the obligations of the Buyer in the order determined by the Seller in its absolute discretion.

5.3- If the Buyer's credit is deemed by the Seller to be impaired or unsatisfactory, the Seller may (without prejudice to its other rights) require the Buyer at the Seller's option either to pay cash before



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delivery, or to provide security satisfactory to the Seller. In the event of failure by the Buyer to comply with the Seller's requirement, the Seller shall have no obligation to make delivery and may terminate the Contract by giving notice to this effect to the Buyer.

5.4- If:

(i) the Buyer is in default of any of its obligations under the Contract or any other contract between the Seller and the Buyer; or

(ii) any subsidiary, parent, associate, related or affiliate company or guarantor of or letter of credit ("L/C") issuer for the Buyer is in default of any of its obligations under any contract between the Seller and such subsidiary, parent, associate, related or affiliate company or guarantor of or L/C issuer for the Buyer; or

(iii) the Buyer's financial condition, or that of a subsidiary, parent, associate, related or affiliate company or guarantor of or L/C issuer for the Buyer, in the Seller's sole opinion becomes impaired; or

(iv) the Buyer or a subsidiary, parent, associate, related or affiliate company or guarantor of or L/C issuer for the Buyer is insolvent and/or is subject to debt negotiations, bankruptcy, liquidation, administration, dissolution and/or similar proceedings and/or is unable to or admits its inability to pay its debts as they fall due,

then any and all postponed or deferred payment obligations of the Buyer under this Contract (including, without limitation, those under Clause 5.1) including interest thereon, shall become immediately due and payable and all grace periods which applied to such payment obligations shall become null and void. Furthermore Buyer irrevocably authorizes Seller, at Seller's discretion, to set-off any payment obligations of the Buyer against any payment obligations due to the Buyer or its subsidiary, parent, associate, related or affiliate company, whether expressed in the same or different currencies (and, if different, at the spot rate of exchange available to the Seller on the set-off date) and irrespective of the respective maturity of such payment obligations and whether they are documented pursuant to a valid invoice or not. Within a reasonable time, Seller shall notify the Buyer of its exercise of such set-off right; provided, however, that the Seller's failure to provide such notice shall not affect the validity of the exercise of such set-off rights. Exercise of any such rights shall be without prejudice to the Seller's rights to recover damages or losses sustained and resulting from any default by the Buyer, or any such subsidiary, parent, associate, related or affiliate company or guarantor of or L/C issuer for the Buyer, and the Seller shall have the right to suspend and/or to cancel deliveries hereunder.

## 6. Title

6.1- The Seller warrants that it has good title to the Products supplied hereunder. Title to the Products supplied shall pass to the Buyer upon payment for the invoiced amount of the Products delivered, pursuant to the terms of the Payment clause hereof. Until such payment is made, on behalf of themselves and the Vessel, the Buyer agrees that they are in possession of the Products solely as Bailee for the Seller, as the Seller holds retention of title to the Products as purchase money security interest until full payment is received. If, prior to payment, the Seller's Products are commingled with other products on board the Vessel, title to the Products shall remain with the Seller corresponding to the quantity of the Products supplied.

6.2- Clause 6.1 is without prejudice to such rights as the Seller may have to enforce its right of lien against ships or to otherwise obtain security by seizure, attachment or arrest of assets under these GTC and the laws of the governing jurisdiction of these GTC against the Buyer or the Vessel in the event of non-payment.



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## 7. Collection

7.1- Deliveries of Products hereunder are made not only on the credit of the Buyer, but also on the faith and credit of the Vessel which uses the Products and it is agreed that Seller has and may assert a lien against such Vessel corresponding to the value of the supplied Products and all amounts outstanding under the relevant Contract. Additionally, the Seller will have and may assert a lien for the said value against such Vessel, should the laws applicable at the place of the Seller's address which is set forth in the end of these GTC and/or at the place of delivery of the Products and/or the place of seizure of such Vessel, grant or recognise a lien for Products delivered to the Vessel. Any and all attorneys' fees and expenses associated with seizure of the Vessel and its sale shall be for the Buyer's account. Any additional security measures taken by Seller shall not operate as a waiver of this provision.

7.2- If at any time the price provided under the Contract does not conform to the applicable laws, regulations or orders of a Government or other competent authority, appropriate price adjustments will be made. For the avoidance of doubt, the Buyer shall not be entitled to cancel the effect of the lien by wording on the Product delivery receipt or otherwise.

## 8. Claims

Any claim as to the quantity of the Products delivered must be presented by the Buyer in writing to the Seller in accordance with the Supplier's Terms and Conditions. Any claim as to the quality of the Products delivered must be presented by the Buyer in writing to the Seller within the number of days that is five (5) calendar days less than the relevant time period limit for presenting such claim under the Supplier's Terms and Conditions. If the Supplier's Terms and Conditions do not contain any time period limits in relation to quantity or quality claims either in terms of notice and/or provision of full supporting documentation, any claim as to the quantity of the Products delivered must be presented by the Buyer in writing to the Seller within twenty-four (24) hours from the time of delivery and any claim as to the quality of the Products delivered must be presented by the Buyer in writing to the Seller within fifteen (15) calendar days from the date of delivery. In the event the Supplier's Terms and Conditions do not contain any time limits with respect to providing full supporting information or documentation in respect of any claim, then the Buyer must, if requested, provide full supporting information or documentation within 15 days (from the date of such request) in respect of a claim as to the quantity of the Product or within 30 days (from the date of request) in respect of a claim as to the quality of the Product.

If the Buyer fails to present a quantity or quality claim or if the Buyer fails to provide satisfactory documentary evidence or relevant information to support a claim within the relevant time period limits set out in this clause 8, the Buyer shall be deemed to have waived and by this clause shall be forever barred from commencing any proceedings for such claim for damages and/or loss and/or costs of whatsoever nature and howsoever caused against the Seller.

Any claims against the Seller under the Contract (and if such claims related to quality or quantity of the Product, provided these claims have been initially notified to the Seller by the Buyer and the Buyer has provided the documentary evidence required to support any claim within the time bars noted above, failing which such quality or quantity claims are in any case waived and barred in accordance with the above) shall, unless otherwise stated in the Supplier's Terms and Conditions, be commenced by the Buyer in the relevant jurisdiction within ninety (90) calendar days after the date of delivery of the Products (or the date that delivery should have been made if the delivery was never made), failing which the Buyer shall be deemed to have waived and by this clause shall be forever barred from commencing any proceedings for such claim for damages and/or loss and/or costs of whatsoever nature and howsoever caused against the Seller.

## 9. Priority of Contract Documents



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In the event of any inconsistency or conflict between the provisions of any of the documents forming the Contract, the following priority order shall be applied:

1. Confirmation Note.
2. these GTCs.
3. Supplier's Terms and Conditions.
4. Any other document.

No supplement, amendment, or modification of these GTC's or the Contract shall be binding unless it is in writing and expressly mutually agreed by both parties.

### **10. Liability**

10.1- The Seller shall not be liable for damages of whatever nature, including but not limited to consequential damages, any damages to Vessel or her parts or machinery and delay of delivery of the Products, no matter whether such damages or delay has been caused by fault or negligence on the side of the Seller. The Seller shall furthermore not be liable for damages or delay as described above when such damages or delay has been caused by the fault or negligence of its personnel, representatives or sub-contractors.

10.2- Without prejudice to clause 10.1, the liability of the Seller under a Contract for a specific stem which is not excluded pursuant to clause 10.1 shall under no circumstances exceed the lower of (a) the price for the Products in respect of such stem and (b) two hundred and fifty thousand US dollars (USD 250,000). In any case, the Seller's liability for any alleged damage to the Vessel shall be strictly limited to repairing the damage or loss that was directly and solely caused by the negligence of the Seller and/or any alleged defect in the Product provided that where the repair requires replacement of a part of the Vessel, the Seller's liability for damage or loss shall be reduced by 20% of the invoice value of spare parts for each year or fraction thereof in which the replaced part has been in use.

10.3 Without prejudice to clauses 10.1 and 10.2, the Buyer shall take all reasonable action to mitigate any costs or losses from off-specification or suspected off-specification Products, including but not limited to (if the sampling of the Products performed in accordance with the Supplier's Terms and Conditions shows that no damage will likely be caused to the Vessel by burning the Products, notwithstanding any off-specification of the Products) burning the Products in accordance with the Seller's instructions or retaining the Products on board the Vessel pending Seller's further instructions. Seller shall, if it considers it appropriate, have the right to arrange for a de-bunkering operation in respect of any off-specification or suspected off-specification Products on board a Vessel, provided always that the costs of any de-bunkering of Products from a Vessel performed without Seller's prior written consent shall be for the Buyer's account.

10.4 The Buyer shall be liable towards the Seller and herewith undertakes to indemnify the Seller for any and all losses, damages and/or costs (including but not limited to attorneys' fees) suffered or otherwise incurred by the Seller due to a breach of contract and/or fault or negligence of the Buyer, its agents, servants, subcontractors, 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 with direct or indirect relation to any agreement regulated by these GTC. Third party shall mean any (physical or legal) person/company (other than the Buyer) or any governmental or regulatory authority.

10.5 No servant or agent of the Seller (including independent sub-contractors from time to time employed by the Seller) shall be liable to the Buyer for loss, damage or delay, while acting in the course of or in connection with its employment and/or agency for the Seller. Without prejudice to the above every exemption, limitation, condition and liberty herein contained, and every right, exemption from liability, defense or immunity of whatever nature applicable to the Seller or to which it is entitled



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hereunder shall also be available and shall extend to protect every such servant, representative or agent of the Seller acting as aforesaid.

## **11. Deliveries to Newbuildings**

This Clause 11 shall apply to all deliveries of Products to a Vessel that is a newbuild vessel delivered from the builder's shipyard.

11.1 Buyer and Seller acknowledge and agree that:

(i) any quantity survey based on vessel soundings will not be considered in determining the quantity of Products supplied by Seller;

(ii) irrespective of whether the Vessel has previously taken bunkers to complete sea trials, quantity shortages may occur if the Vessel's fuel tanks are measured for quantity and compared to barge supplied figures; and

(iii) the quantity of Products supplied by Seller will be determined based upon the barge before and barge after, or, shore tank before and shore tank after, ullage or innage figures, using the barge or shore tank ullage or innage tables, (dependent upon the type of delivery) and not upon any vessel tank soundings.

11.2 Buyer may elect, at its own cost, to appoint Vessel staff or any independent inspection service to take or witness barge or shore tank soundings (dependent upon the type of delivery), before and after the delivery, to accurately verify the quantity of Products supplied by Seller. Buyer shall advise Vessel staff and/or any independent inspection service of Seller's terms and conditions in this Clause 11 accordingly.

## **12. Sanctions**

12.1 The Buyer represents and warrants to the Seller that they are fully aware of all current and applicable sanctions or prohibitions imposed by all States and Supranational or International Governmental Organisations, including but not limited to, United Kingdom, the European Union, United States of America and the United Nations (together "Sanctions") and of all other relevant laws applicable to the Buyer relating to money laundering, bribery, trade controls, export controls, embargoes or international boycotts, including but not limited to those in relation to the trading and transportation of cargoes emanating from Iran and those in relation to dealings with blacklisted entities ("Applicable Laws").

12.2 The Seller shall not be obliged to undertake or omit any action under this Contract which, in the reasonable judgement of the Seller, will expose the Seller or their insurers, their banks or persons acting under the instructions of the Seller to any breach of Sanctions or of any Applicable Laws

12.3 The Buyer further represents and warrants to the Seller that neither it nor its receivers, consignees, owners, managers and anyone else in the charter chain; (i) is listed on any Sanctions blacklist imposed by the United Kingdom, the European Union, United States of America or the United Nations, including but not limited to the "Specially Designated Nationals and Blocked Persons List" (each a "Sanctions Blacklist"); (ii) contracts with any entity appearing on any Sanctions Blacklist; (iii) owns or transports any cargo subject to the Applicable Laws or any Sanctions; (iv) is facilitating trade subject to any Sanctions or Applicable Laws in any way; and (v) is not otherwise in compliance with all Applicable Laws ((i)-(v) together the "Sanctions Policy").

12.4 The Buyer further represents and warrants to the Seller that due diligence is carried out on every transaction it conducts to ensure compliance with the Sanctions Policy. Notwithstanding that due



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diligence, if at any time during the performance of a transaction the Buyer becomes aware of a breach or suspected breach of the Sanctions Policy, it will immediately notify the Seller.

12.5 If at any time the Buyer breaches the Sanctions Policy (or in any other way puts the Seller in breach of Sanctions or the Applicable Laws) then the Buyer agrees to be liable for any and all losses and/or claims whatsoever arising from such breach by Buyer. Additionally the Buyer agrees that should it breach the Sanctions Policy, the Seller shall have the right of unilateral full or partial termination or suspension of any transaction or service entered into with the Buyer. Such unilateral full or partial termination or suspension shall not give rise to any liability, compensation or indemnity of any kind. In particular but without limitation to the foregoing, the Seller shall be at liberty to withhold, reduce or suspend deliveries under this Contract to such extent as the Seller may in its absolute discretion think fit and the Seller shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers. Any additional quantities which the Seller does acquire from other suppliers or from alternative sources may be used by the Seller at its complete discretion and need not to be taken into account by the Seller for the purpose of determining the extent to which it is to withhold, reduce or suspend deliveries under this Contract. The Buyer shall be free to purchase from other suppliers any deficiencies of deliveries of Products caused by the operation of this Clause 12 but the Seller shall not be responsible for any additional cost thereby incurred by the Buyer. The Seller further reserves the right to increase the price charged for any Products if there is any increase in the costs incurred or to be incurred by the Seller as a result of acquiring by purchase or otherwise additional quantities of Products from other suppliers in order to avoid exposure to any Applicable Laws or Sanctions.

### 13. Law and Jurisdiction

13.1- Any dispute arising under, in connection with or incidental to this Contract shall be heard and decided at New York City, New York State, by three persons, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final and, for the purpose of enforcing any award, this Contract may be made a rule of the court. Should a party fail to appoint an arbitrator within ten days of notice of demand for arbitration, the demanding party may appoint the second arbitrator with the same force and effect as if appointed by the second party. Should the two arbitrators be unable to agree on the appointment of a third arbitrator within 10 days after appointment of the second arbitrator, the President of the Society of Maritime Arbitrators, Inc. shall make the appointment upon the request of either party without further notice. The proceedings shall be conducted in accordance with the Rules of the Society of Maritime Arbitrators, Inc., including paragraph 2 "Consolidation." This Contract shall be deemed to have been executed and fully performed in the State of New York, and shall be interpreted and construed in accordance with and subject to the federal maritime law of the United States or, should no such law exist on any particular issue, the laws of the State of New York (excluding otherwise applicable statutory limitation periods and conflict of laws principles), to the exclusion of the laws of any other state or country. The arbitrators shall award reasonable attorneys fees and costs to the prevailing party.

13.2 The parties irrevocably consent to the jurisdiction of the United States District Court for the Southern District of New York for purposes of compelling arbitration or confirming an arbitration award and the prevailing party in any such legal action shall be awarded reasonable attorneys fees and costs. With regard to petitions to compel arbitration or to confirm an arbitration award, the parties consent to service of process by e-mail, certified mail, certified international mail, Federal Express, or DHL courier service, and irrevocably waive their right to personal service of these documents.

13.3 A party that brings enforcement proceedings to enforce any arbitration award or judgment obtained under this clause likewise shall be awarded reasonable attorneys fees and costs incurred in enforcing such award or judgment.

13.4 Clauses 13.1 to 13.3 (inclusive) above are for the benefit of the Seller only. As a result, the Seller shall not be prevented from taking proceedings relating to a dispute under this Agreement in any



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other courts with jurisdiction. To the extent allowed by law, the Seller may take concurrent proceedings in any number of jurisdictions.

#### **14. Notices**

14.1- Any communication relating to a claim or proceedings in connection with this Contract shall be made in English, in writing by e-mail, certified mail, certified international mail, Federal Express, or DHL courier service, and parties irrevocably waive their right to personal service. Subject to Clause 8, if the Supplier's Terms and Conditions require a different method of notifying a Seller's claim to the Supplier, such requirement shall in addition apply mutatis mutandis as between the Seller and the Buyer, in connection with any claim by the Buyer.

14.2 The address and e-mail address of each party for any communication under Clause 14.1 is: (i) in the case of the Seller, Helios Petroleum Pte Ltd, Vision Exchange, 2 Venture Drive, Level #24-01 Singapore 608526, e-mail: sales@heliospetroleum.com, attn.: Directors; and (ii) in the case of the Buyer, its registered office address and any e-mail address to which the Seller sends the Confirmation Note or any other e-mail address of an actual or ostensible representative of the Buyer, or (in each case) any other address or functioning e-mail address a party may notify for these purposes to the other before the date of this Contract or otherwise by not less than five Business Days' notice.

14.3 A communication under this Contract by a party is deemed made or delivered: (i) if by way of letter, when left at the other party's address or, if earlier, on the third Business Day after depositing in the post or with the courier, postage prepaid and addressed to that party; or (ii) if by e-mail, when actually received in readable form. An email transmitted after midnight but at or before 9.30 a.m. on a Business Day shall be deemed to be given at 9.30 a.m. on that Business Day. An email transmitted after 5.30 p.m. but on or before midnight on any Business Day and an email transmitted on a non-Business Day shall be deemed to be given at 9.30 a.m. on the following Business Day. A reference in this Clause 14.3 to a time of day is a reference to Singapore time.