

MANILDRA PARK PTY LTD

T/A Port Kembla Marine Fuels

PART II

GENERAL PROVISIONS

SPOT SALES OF BUNKER FUEL

Article 1. Definitions

1.1 In these General Provisions, unless the context otherwise requires:

“Agreement”	means the agreement between Buyer and seller for the spot sale of bunker fuel which agreement is contained in Part I and Part II;
“Ancillary Services”	means without limiting its generality, the provision of food, water, lubricating oil and such other services as may be provided by Seller to Buyer by agreement, other than services in connection with the sale, purchase and delivery of Fuel;
“Business Day”	means a weekday not being a public holiday in New South Wales Australia.
“Buyer”	means the person or company described as such in Part I who shall be deemed in the Agreement to be contracting jointly and severally on its own behalf and on behalf of the Vessel’s owner, charterer (demise or otherwise), manager and operator;
“Fuel”	means bunker fuel or marine fuel described and agreed to be sold under the Agreement;
“Incoterms”	means the 2000 edition of international rules for the interpretation of trade terms prepared by the International Chamber of Commerce, plus any latest revisions;
“Load Port”	means the port, place or location described as such in Part I in or at which the Loading Berth or Berth is situated;
“Loading Berth” or “Berth”	means any berth, dock, anchorage, sea terminal, single point or other mooring facility, submarine loading line or other place including alongside barge, lighters or other vessels at which the Fuel may be loaded onto the Vessel;
“Part I”	is any one or more telex, letter, facsimile or other telegraphic or electronic transmission from Seller to Buyer confirming the particular terms of the agreement between Buyer and Seller for the spot sale of the Fuel;
“Part II” or “this Part”	means these General Provisions;
“Seller”	means the person or company described as such in Part I, its authorised successors and assigns;
“Terminal”	means the barge, road vehicle, other storage, facilities or equipment at the Load Port from which or through which the Fuel is loaded by the Terminal Operator onto the Vessel for the purpose of the Agreement;
“Terminal Conditions”	means such conditions, directions, regulations or other form of guidelines, controlling or regulating the anchorage, pilotage, navigation, berthing, mooring, bunkering, loading or other operations of the Vessel, the offtake or other operations of storage and terminal facilities and equipment by the seller or Terminal Operator, or the provision of any goods and/or services at the Load Port or Berth;

“Terminal Operator”	means the person or company owning, managing, operating or controlling for the time being the Terminal;
“Vessel”	means the vessel arranged by Buyer to accept delivery of the Fuel at the Load Port.

- 1.2 Unless the context otherwise requires words denoting the singular include the plural and vice-versa and words denoting one gender include the other genders.
- 1.3 Headings of clauses are for convenience only and shall not form part of the Agreement or affect the construction thereof.
- 1.4 Unless otherwise stated in the Agreement, all prices and sums of money referred to in the Agreement are payable in the currency of the United States of America.

Article 2. General

- 2.1 Part I and Part II of the Agreement cover the entire agreement between the parties in respect of the subject matter thereof. The provisions of Part II shall be subordinate to the provisions of Part I to the extent of any inconsistency.
- 2.2 No other statement or agreement, oral or written, shall form any part of the terms hereof. Neither party shall claim any amendment, modification or release from any provision hereof unless there is an exchange in telexes, cables or similar transmissions between the parties or there is an instrument in writing signed by the consenting party stating the Agreement has been amended, modified or discharged.
- 2.3 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.

Article 3. Quality and Quantity Measurement

- 3.1 The quality and quantity of fuel shall be determined at the Load Port by Seller or Terminal Operator in accordance with normal practice at the Load Port at the time of fuelling, and, if required by Buyer under Part I, verified by an independent inspector. The quality and quantity so determined shall be duly noted on Seller's Bunker Delivery Receipts which shall be conclusive and binding on the parties unless and until any dispute is resolved pursuant to clause 3.4 of this Part. If an independent inspector is required as aforesaid he shall be mutually approved by the parties but shall be appointed by Buyer at Buyer's own cost and expense and in all respects shall be acting as agent for the Buyer.
- 3.2 Unless otherwise agreed in Part I of this Agreement, the Fuel sold here shall be representative of the grade of bunker fuel generally made available by Seller at the time and place of delivery. Buyer shall have the sole responsibility for selecting the proper bunker fuel for use in the Vessel. BUYER HERBY AGREES THAT WHERE PERMISSABLE BY LAW ALL REPRESENTATIONS OR WARRANTIES ON THE PART OF SELLER EXPRESSED 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 HERBY EXPRESSLY EXCLUDED FROM THIS AGREEMENT.
- 3.3 Subject to Terminal Operator's prior approval, Buyer may witness the measurement, sampling and testing of the Fuel at the Load Port or Berth. Seller shall use its reasonable endeavours to procure such approval.

The Seller shall take two representative samples of each grade of Marine Fuel Delivered. One sealed sample shall be handed to the vessel's representative and the other sample retained by the Seller. Seller's retained sample will be retained for 28 days after delivery. At the end of the said 28 day period, Seller sample may be discarded unless the Buyer has made a complaint or claim under Clause 3.5 within the said 28 days in which case Seller's sample shall be retained by the Seller for analysis by an expert referred to in Clause 3.4.

- 3.4 Any dispute as to the quality of Marine Fuels delivered, shall be determined finally and conclusively

by analysis of the Seller's retained sample of the Marine Fuel referred in Clause 3.3 by an expert appointed jointly by the Buyer and the Seller or if they cannot agree to such an appointment then an expert appointed by the Chairman for the time of the Australian Institute of Petroleum.

- 3.5 In the event the independent inspector referred to in Clause 3.1 of this Part fails to verify the determination and a dispute arises in respect of quantity and quality the party seeking redress shall notify the other party in writing of its claim as soon as possible. The right to any claim under this clause is conditional upon notice being given together with substantiating documentation within twenty-eight (28) days of completion of loading of the Fuel. Failure by Buyer to make a claim in writing within the time prescribed herein shall be deemed a waiver by the Buyer of the claim. The parties shall endeavour to resolve the dispute promptly and fairly. Buyer and Seller shall continue to be bound by the Agreement and payments shall be based on the quantity and quality determined by Seller or Terminal Operator pursuant to clause 3.1 until resolution of the dispute.

Article 4. Price and Payment

- 4.1 Buyer shall pay Seller for the quantity of Fuel measured in accordance with clause 3.1 at the price set out in Part I. Buyer shall pay Seller for the provision of any Ancillary Services at the price set out in Part I. Payments shall be made in accordance with this Article 4.
- 4.2 Notwithstanding confirmation of a sale in Part I by Seller, Seller reserves the right to cancel a confirmed sale prior to delivery, or at its sole option, negotiate with Buyer for an alternative price in the event:-
- a) Buyer increases or decreases the quantity confirmed by Seller in Part I by more than Ten percent (10%), or
 - b) Buyer's Vessel fails to take delivery within three (3) calendar days (inclusive) prior to or following the date of delivery date range, specified in Part I; or
 - c) the quality or specification of Fuel confirmed in Part I is changed by Buyer.
- 4.3 Unless otherwise agreed to in Part I, Buyer shall be responsible for any wharfage, dockage or quay charges, fees and costs in connection with lightering, barging and use of road vehicle, entrance or clearance fees, towing and tug charges, pilotage, mooring or unmooring charges, harbour dues, any applicable duties, taxes, assessments, port charges and any other charges applicable at the Load Port levied on or in respect of or by reference to the Vessel, Berth, Terminal or the Fuel.
- 4.4 Buyer shall be liable for all taxes, excise, assessments, duties and other charges (other than taxes on profits) levied on the Fuel irrespective of whether Buyer has been notified of the same. Buyer shall be responsible for obtaining all necessary export permits or authorities in connection with the sale of Fuel hereunder.
- 4.5 As an accommodation to Buyer, Seller may prepay any charge in clauses 4.3 and 4.4 above, and bill Buyer for the same on its invoice in respect of a delivery.
- 4.6 As soon as practicable following completion of delivery, Seller shall provide Buyer or Buyer's representative with a commercial invoice (which may be sent by telex or facsimile). Payment for the full invoiced amount shall be made by Buyer free of exchange, in full and without deduction or offset by the due date for payment specified in Part I, by direct payment or by telegraphic transfer of immediately available United States dollars or such other currency as may be specified by Seller in Part I, to a bank account nominated by Seller.
- 4.7 If the last day upon which payment is required hereunder falls on a day in which Seller's bank is closed then payment shall be made on or before the nearest day to date. If the preceding and succeeding banking days are equally near, payment shall be made on or before the preceding banking day. In this clause "banking day" means a day on which Seller's nominated bank account is held open for business.
- 4.8 Seller may at any time require by written notice to Buyer a letter or letters of credit at Buyer's expense in a form and from a bank acceptable to Seller or other forms of security to cover any or all deliveries of Fuel. If Buyer does not provide the letter of credit or other security required hereunder or if a letter of credit or other security is required under Part I and Buyer does not provide the same then Seller may terminate the Agreement forthwith. Notwithstanding anything to the contrary in the Agreement, Seller shall not be obliged to commence or complete the loading of the Fuel until the letter of credit or other security required under this

clause or under Part I is provided by Buyer and accepted by Seller.

- 4.9 If Buyer fails to make payment of any amount when due under the Agreement, then Buyer shall be liable for interest on the amount outstanding until payment. This liability is in addition to any other right and remedy available to Seller hereunder or by law. The interest payable shall be at the Citibank New York branch prime rate ruling on the last day upon which payment is required hereunder, plus two percent (2%) or the maximum rate allowed by applicable law, whichever is less.
- 4.10 In determining price, fractions of a cent less than 0.5 shall be rounded down to the nearest whole cent, and fractions of 0.5 or more shall be rounded up to the nearest whole cent.

Article 5. Title and Risk

- 5.1 The fuel shall be delivered by Seller and accepted by Buyer on the delivery terms specified on Part I at the Load Port. Title and risk in the Fuel or any part of it shall pass from Seller to Buyer at the point where the vessel's permanent hose connection connects to the loading facilities of the Loading Berth unless the Loading Berth is a barge or other vessel in which case title and risk shall pass from Seller to Buyer at the point where the barge's or other vessel's permanent hose connection connects to the loading facilities transferring the Fuel onto the barge or other vessel.
- 5.2 Seller warrants that it is able to pass good title to the Fuel and that title will pass to Buyer free from any security interests, royalties, liens and encumbrances.

Article 6. Order

- 6.1 Buyer shall reconfirm the delivery date, the estimated time of arrival, the grade and quantity of Fuel, the Vessel nominated, delivery location and delivery terms specified in Part I at least two (2) Business Days prior to the said delivery date.
- 6.2 Without affecting Seller's rights under clause 4.2, if Buyer decreases the quantity specified in Part I Buyer shall be liable for and shall indemnify Seller against any costs and expenses incurred by Seller as the result of Buyer rejecting or failing to take delivery of any part of said quantity.
- 6.3 Buyer warrants that it has the authority to order the Fuel for the Vessel and to enter into this agreement on its own behalf and on behalf of the Vessel's owner, charterer, manager and operator, and shall be deemed to have entered into this Agreement in such capacities. Buyer agrees to indemnify Seller against all or any liabilities, obligations, losses, damages, costs or expenses suffered, sustained or incurred directly or indirectly as a consequence of any breach by Buyer of Buyer's obligations herein.
- 6.4 No disclaimer or any type or form will be accepted on the Bunker Delivery Receipt, and if any words of disclaimer are applied, they will not alter, impair or waive Seller's maritime lien against the vessel's ultimate responsibility for the debt incurred through this transaction.

Article 7. Delivery

- 7.1 Buyer shall be responsible for providing and enabling clear and safe reception for the full quantity of Fuel ordered and confirmed in Part I, without risk to Seller's supplier, servants or agents, or their property. Buyer shall make, or with Seller's consent Seller may make, all connections and disconnection's between the delivery hose and the Vessel's intake pipe, and shall render all other necessary assistance and provide sufficient tankage and equipment at its expense, to receive promptly all deliveries hereunder. Any provision of services in connection with the reception of Fuel by Seller's supplier, servants or agents is on the basis that in so providing or performing each is a servant of Buyer in every respect and not the servant or contractor of Seller. The provision of such services by Seller shall in no way relieve Buyer from an obligation or liability in this clause.
- 7.2 Where a time of delivery is indicated the obligation of Seller shall be to deliver as soon thereafter as is practicable having regard to availability at and any congestion affecting the Terminal or Loading Berth. Seller shall not be liable for any loss, damage, delay or demurrage whatsoever which may be suffered by Buyer as the result of any delay.
- 7.3 Where Buyer requires delivery by barge, Seller undertakes to provide this service only within normal harbour limits, and in conditions suitable by Seller. The Vessel shall provide a free side if required to effect such delivery and Buyer shall pay Seller all costs incurred in connection with such barging, including but not limited to chartering costs, mooring and unmooring costs, port dues and demurrage including demurrage incurred as the result of an event of Force Majeure affecting either party.

- 7.4 In the event of any Vessel requiring delivery by road vehicle, Seller shall not be obliged to deliver over roadways which in the opinion of Seller are unsafe for its vehicles. Buyer shall provide safe and prompt passage for such vehicles between the public roadway and the actual point of loading of the Fuel and shall take prompt delivery of the Fuel. The cost of any delay to Seller's vehicle not caused by Seller shall be for the account of Buyer. In the case of bulk deliveries by road vehicle additional charges incurred for the necessary provision of additional hose in excess of that normally carried by the road vehicle shall be borne by the Buyer.
- 7.5 Work in connection with delivery outside normal working hours at the Load Port (normal working hours being 7.00am to 3.30pm Mondays to Fridays inclusive) including customary or dock holidays, or on Sunday or Saturdays, or outside normal harbour limits shall be paid for by Buyer as an extra cost at the rate then applicable for such work. Seller shall not be liable to Buyer for its inability to deliver Fuel, notwithstanding confirmation of delivery dates in Part II, if such inability is the consequence of agreement with employee's organisations which prevent Seller from delivering Fuel on public, customary or dock holidays.

Article 8. Loading

- 8.1 The Vessel shall be loaded at any Berth that Seller or Terminal Operator may direct.
- 8.2 Notwithstanding clause 8.1, Seller does not warrant the safety of any Berth and shall be under no liability in respect thereof except to the extent such loss or damage is caused by its failure to exercise reasonable care and provided such loss or damage could not have been avoided by the exercise of due care on the part of the master or other servant of the Vessel or its owner.
- 8.3 Seller or Terminal Operator shall have the right to require Buyer to shift the Vessel at the Load Port from one location to another at Buyers cost.
- 8.4 Buyer shall ensure that the Vessel accepts and loads the Fuel at the maximum rate consistent with safe practice and vessel design and vacate the Berth as soon as practicable.
- 8.5 Buyer shall accept, observe, perform and comply with or cause the owners, operators, charterers (demise or otherwise), agents, employees (including master and crew) and contractors of the Vessel to accept, observe, perform and comply with the Terminal Conditions applicable at the Load Port.
- 8.6 Buyer warrants its authority and the authority of the persons referred to in clause 8.5 to accept, observe, perform and comply with any Terminal Conditions.
- 8.7 Buyer shall indemnify and at all times keep fully and effectually indemnified the Seller against all or any obligations, liabilities, losses, damages, costs or expenses suffered, sustained or incurred directly or indirectly as a consequence of any suspension of loading operations by Terminal Operator, non-compliance with Terminal Conditions, any failure by Buyer to comply with clause 8.5 above, or a consequence of a breach of the warranty contained in clause 8.6.

Article 9. Health, Safety and the Environment

- 9.1 Buyer shall be responsible for ensuring that its employees, users and customers comply with all obligations, requirements or recommendations in respect of health, safety and the environment relating to the Fuel sold hereunder are complied with.

Article 10. Force Majeure

- 10.1 If either party is rendered unable wholly or in part by Force Majeure to observe or perform any of its obligations under the Agreement, other than the obligation to pay money, upon such party giving notice and reasonably full particulars of the Force Majeure to the other party within a reasonable time after the occurrence of the Force Majeure, the obligations of the party giving the said notice, so far as they are affected by the Force Majeure, shall be suspended, and any time limits or requirements imposed on the party, so far as they are affected by the Force Majeure, shall be extended, but for no longer than the continuance of the Force Majeure and such further period thereafter as shall be reasonable in the circumstances provided always that the cause of the Force Majeure as far as possible shall be remedied with all reasonable dispatch by the party whose performance hereunder is adversely affected.
- 10.2 In this Agreement the term "Force Majeure" shall mean act of God, act of the public enemy, war, perils of the sea, sabotage, blockade, riot, civil commotion, pirates or assailing thieves, arrest or

restraint of or by princes, rulers or peoples, lightning, fire, storm, flood, tidal wave, tsunami, explosion, governmental restraint, seizure of the Vessel or cargo under legal process provided a bond is promptly furnished to release the Vessel or cargo, breakdown of barge or road vehicle or their equipment, shortage or unavailability of the Fuel, equipment or supplies, temporary or permanent interruptions to production, processing, storage or transportation of supply of bunker fuel intended to be delivered as Fuel to Buyer under the Agreement, revocation of or material variation to governmental export approvals, exercise by any authority, agency body or person, any action or direction pursuant to the Agreement on International Energy Program, strike, lock-out, ban and limitation of work or other industrial disturbance and any other cause, whether of a kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension of its obligations.

- 10.3 The requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require settlement of a strike, lock-out, ban and limitation of work or other industrial disturbance by either party involved therein on terms not acceptable to it.
- 10.4 If by reason of Force Majeure Seller's availability of bunker fuel is insufficient to supply Buyer with the quantity of Fuel set out in Part I of the Agreement, Seller may withhold, reduce or suspend the supply of bunker fuel to such an extent and on such a basis as Seller reasonably thinks fit even while Seller maintains supply of bunker fuel in full to some of its other customers, whether for delivery at the Load Port or otherwise and Seller shall not be liable to Buyer in any way as a result of the shortage other than to reimburse Buyer any amount paid for any quantity of the Fuel not supplied.
- 10.5 Notwithstanding the provisions of this Article Buyer shall not be relieved of its obligations under the Agreement due to failure by any person to discharge contractual or other obligations in favour of Buyer with respect to the Fuel.

Article 11. Default

- 11.1 If Buyer should at any time:
- A. fail to perform or observe any of the obligations or conditions on its part to be performed and observed hereunder (other than a default set out in paragraph (b) hereof) and in the case of a breach capable of being remedied without Seller incurring any or further loss, damage, obligation or liability, fail to remedy such breach within such time as Seller may permit after written notice from Seller;
 - B. fail to make nay of the payments in accordance with Article 4; or
 - C. cease or threaten to cease carrying on its business or become insolvent or compound with its creditors or if an order is made, resolution passed or other action taken for the winding up or protection from creditors of Buyer, voluntarily or otherwise, or if Buyer has a receiver appointed for the whole pr any part of its assets;

Seller shall be entitled in its absolute discretion and in addition to and without prejudice to its right to claim damages and any other remedy available to Seller forthwith to demand and promptly be paid all sums the accrued, due and payable by Buyer under the Agreement and further to treat all obligations, duties and responsibilities of Seller as terminated.

Article 12. Liability and Indemnity.

- 12.1 Buyer shall be liable for loss and damage including consequential loss and damage caused by Buyer, the Vessel, its owners, charterers or operators (and their employees, agents, contractors and borrowed servants) whilst the Vessel is at the Load Port including, without limiting the generality of the foregoing;
- a) loss, escape, contamination or degradation of Fuel;
 - b) loss or damage to any property of Seller, Terminal Operator or any person having an interest in the terminal or Fuel,
 - c) death, injury or illness to any person;
 - d) contamination, degradation or pollution of the environment; or

- e) delay in loading the Fuel onto the Vessel.
- 12.2 Buyer shall indemnify and forever keep indemnified, defend and hold harmless Seller from all actions, proceedings, suits, claims, demands, damages, losses, costs, charges, expenses and demurrage whatsoever and howsoever arising from:-
- a) Buyer's failure to observe or perform any of its obligation under the Agreement; or
- b) the liability accepted by Buyer under clause 12.1
- 12.3 Unless otherwise provided in the Agreement no claim in respect of the supply of Fuel under the Agreement shall be made in contract or torts by either party for indirect or consequential loss or damage including, without limiting the generality of the foregoing, loss of income or profits.
- 12.4 The provision of any Ancillary Services by Seller shall be carried out at Buyer's cost and risk. Seller shall not be responsible for or liable to (whether in contract tort by Statute or otherwise) Buyer or any other person in respect of any loss or damage whatsoever to any property of any person, or in respect of any personal injury, illness or death of any person, or delay of any description, arising directly or indirectly (and whether recklessly negligently or otherwise) in consequence of the provision or performance of (or failure to provide or perform) any Ancillary Services, and Buyer shall defend, indemnify and hold harmless Seller from the same.

Article 13. General Provisions

13.1 Waiver

No waiver of any breach of the Agreement or of the terms hereof shall be effective unless such waiver is in writing and signed or otherwise accepted unconditionally by the party against whom such waiver is claimed. No waiver of any breach of the Agreement shall be deemed to be a waiver of any other or subsequent breach.

13.2 Governing Law

The Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia and the parties hereto submit to the non-exclusive jurisdiction of and agree to be bound by decisions of the Courts of the said State at Sydney and any Courts competent to hear appeals there from.

13.3 Assignment

Seller may assign all or any of its rights and obligation without notice to Buyer. Buyer consents, irrespective of notice, to be bound to the assignee. Delivery of the Marine Fuels by the assignee shall constitute its consent to be bound to Buyer under the terms set out herein. Any assignment by Buyer without Seller's written consent shall be void.

13.4 Notices

All notices required or permitted to be given under the Agreement shall, except where otherwise Expressly provided, be in writing and be sent by prepaid post, cable, telex, facsimile or other electronic or telegraphic transmission to the addresses of the parties set out in Part I of the Agreement. Any notice so given shall be deemed to have been received on the day on which in the normal course it would have been delivered. Either party may by notice to the other change its Address or the address of its representatives for the service of notices.

