



## **TERMS AND CONDITIONS FOR SUPPLY OF STS TRANSFER SERVICES**

### **1. BACKGROUND AND INTENTION**

- 1.1. In furtherance of the Company's business activities, the Company has entered into commercial arrangements with its counter-parties, suppliers, and insurers to conduct marine transfers of Cargo involving a Tanker or Tankers. In order to execute these arrangements, the Company wishes to engage FCM or its relevant Affiliate as a specialist advisor to provide STS Transfer Services to the Company. Any such STS Transfer Services provided by FCM to the Company shall be governed by and incorporate these T&Cs.
- 1.2. The Effective Date of each and any Contract shall be the date upon which the Company Accepts FCM's STS Offer in accordance with the provisions of Clause 4.

### **2. OPERATIONS & SAFETY**

#### **General**

- 2.1. All STS Transfers under each and any Contract shall be conducted in accordance with the STS Transfer Guide. The Company shall provide that all Tankers nominated for STS Transfers have a copy of the STS Transfer Guide on board sufficiently in advance of actual STS Transfer operation(s) so that the Master, Officers and Crew may complete the necessary operational checklists outlined in the STS Transfer Guide and familiarise themselves with the procedures for the safe execution and completion of the STS Transfer including but not limited to the preparation of all necessary lines, equipment and appurtenances for the STS Transfer(s).
- 2.2. The completion of an STS Transfer shall be determined by the Tankers' Masters in consultation with the STS Superintendent. Having boarded one of the Tankers, the STS Superintendent shall advise the Masters, Officers and Crew in the procedures for a safe and efficient STS Transfer. If at any time the STS Superintendent decides that the STS Transfer operation(s) taking place are not safe, he shall so advise the Masters of the Tankers, and the Company shall procure that the Masters take appropriate actions to safely discontinue the Transfer. Such advice shall not preclude manoeuvres by the Masters of the Tankers, at their own discretion, to discontinue the Transfer, if possible, informing the STS Superintendent in advance of such discretionary actions to be taken. Notwithstanding the foregoing and without prejudice to Clause 10 hereto, the Company hereby warrants and represents that the respective Masters remains responsible and in control of their Tanker and the STS Transfer operation at all times during any STS Transfer.
- 2.3. With regard to fatigue management the parties agree that all STS Superintendents take adequate rest periods to meet not only the requirements of the latest versions of STCW A-V111.1 and also the Maritime Labour Convention (MLC).
- 2.4. All STS Transfer operations including embarkation, disembarkation, delivery and collection of equipment, mooring and Transfer, shall take place in areas designated by FCM, approved by local authorities if necessary, and deemed safe by the Masters of the Tanker(s).
- 2.5. The Master, Officers and crew of each Tanker involved in the STS Transfer shall be responsible for the safe monitoring, connection & disconnection, and subsequent handling of the cargo hose during cargo transfer, in accordance with the STS Transfer Guide and the STS Superintendent's advice.

- 2.6. In the event of an incident or emergency, if the Company requires any specific procedures to be followed then Company will provide to FCM a copy of any emergency plans and contact details 7 days prior to commencement of the STS Transfer. In all circumstances, the Master of each Tanker shall be responsible to respond effectively to any emergency situation. The Company will arrange that any FCM personnel attending on board the Tankers will be covered by the Company's and/or by the Tanker's (as may be appropriate) emergency evacuation procedures for the safe return of such personnel to shore in the event of serious injury or other serious health issues suffered by any such person and which require prompt evacuation to another facility.
- 2.7. The Master of the Tanker(s) shall be responsible for the quality of Cargo transferred and for the measurement of the quantity of Cargo transferred. The STS Superintendent shall have no responsibility for, and shall not be asked to undertake, any measurement of Cargo transferred/remaining or the completion of any Cargo or Tanker's documentation relating to a Transfer or relating to any Cargo on board a Tanker.
- 2.8. The Material Safety Data Sheet (MSDS) shall be supplied by the discharging Tanker to FCM. If the MSDS indicates that, due to the nature of the Cargo to be transferred, there is a requirement for specialised Personal Protective Equipment (PPE) to be worn by the STS Superintendents, the responsibility for providing the specialised PPE to the STS Superintendent is that of the Tanker master. The correct use and wearing of the PPE must be explained to the STS Superintendent as part of the Joint Plan of Operations (JPO).
- 2.9. At all times each and all members of FCM Group shall be entitled to rely on Company Group provided information and shall have no liability as a result of advice or recommendations given which is based on Company Group provided information which is subsequently proved to be incorrect or misleading.
- 2.10. Company shall arrange for transport of its own Group's stores, and equipment to any Tankers at the STS Location.

#### **Tankers**

- 2.11. The Company shall ensure that:
- (a) all Tankers that are nominated for STS Transfer operations are outfitted and capable of safely carrying out all procedures as set out in the STS Transfer Guide; and
  - (b) the owners of any Tanker(s) nominated by the Company for an STS Transfer under any Contract are members of the International Tanker Pollution Federation ("ITOPF"); and
  - (c) all Tankers are fully classed and certified by a reputable Classification Society; and
  - (d) all Tankers comply with the International Safety Management Code (ISM) by 1st July 1998 or at such time the code becomes mandatory if thereafter; and
  - (e) each receiving Tanker shall arrive with clean ballast but should it be required then the Company or its Affiliate shall make the necessary arrangements for the safe and environmentally-friendly disposal of all dirty ballast and slop ballast from each receiving Tanker in accordance with the requirements of the latest edition of MARPOL ; and
  - (f) all Tankers have been entered with a reputable P & I Club, and additionally that such Tanker(s) have full hull marine insurance cover including war risks coverage, for any and all Claims, arising directly and/or indirectly, in connection with the STS Transfer operation, including wreck and debris removal and oil pollution liability (or the threat thereof) in a sum of no less than USD 1 billion and the Company shall procure that each and all members of FCM Group, including the STS Superintendent, are endorsed as a co-assured on the owner's P&I and Hull and Machinery policies of any Tanker involved in the STS Transfer operation; and
  - (g) the charterers of all Tanker(s) nominated by the Company for an STS Transfer are entered with a reputable P & I Club or have other equivalent insurance cover for any and all Claims, arising directly and/or indirectly, in connection with the STS Transfer operation, including any oil pollution liability (or the threat thereof) in a sum of no less than USD 1 billion and the Company shall procure that each and all members of FCM Group, including the STS Superintendent, are endorsed as a co-assured on the charterers' P&I policy of any Tanker involved in

the STS Transfer operation; and

- (h) in respect of (f) and (g) above the Company shall on written request by FCM provide full proof of insurance and proof that the FCM Group, including the STS Superintendent, are endorsed as co-assured on the owner and or the charterers P&I policy.
- (i) each Tanker completes and returns to FCM all information requested including fully completed documentation prior to requested dates of the STS Transfer

2.12. In the event of any non-compliance with any of the provisions of clauses 2.1 to 2.11 inclusive then either party shall have the right to decline any STS Transfer operation and/or terminate and/or suspend any STS Transfer operation in progress. FCM may also decline to service any STS Transfer operation if any of the Tankers are found by FCM not to be suitable for STS Transfer under FCM's Tanker vetting processes and/or the STS Transfer Guide.

2.13. Unless specifically provided for in the STS Offer, no member of the FCM Group is obliged under the terms of this a Contract, nor do they have any liability for any Claims with regard thereto, to provide any service(s) or equipment or personnel or take any measures in connection with prevention, mitigation or removal of any oil pollution or any other pollution arising in, out of, or in connection with an STS Transfer operation. In the event that any member of FCM Group undertakes at their discretion any measures to either remove a potential threat of pollution or attempt to mitigate any pollution should it arise, then such measures are deemed to have been taken under the authority of the Company, free of any liability to the FCM Group, and any additional costs required shall be for the Company's account.

2.14. FCM reserves the right to refuse any third party personnel of a non-contracted party from attending an STS Transfer operation unless by prior written agreement of FCM.

### **3. NOMINATION AND ATTENDANCE PROCESS**

- 3.1. Where the Company has identified a requirement for an STS Transfer, an e-mail or other written request will be sent by the Company to FCM at least 15 days prior to the anticipated commencement of STS Transfer operation. Such request will provide an expected laycan window for the Tankers of 5 days specifying the dates of such 5 day window.
- 3.2. The Company will provide such information as is necessary for FCM to prepare an STS Offer and FCM shall respond with its STS Offer within 48 hours of the necessary information being provided by the Company.
- 3.3. If, subsequent to receipt of the STS Offer, the Company decides to proceed with the STS Transfer operation it may do so through providing its Acceptance of the STS Offer in accordance with the provisions of Clause 4 below, which will form a Contract (as defined at section 16 below).
- 3.4. Following Acceptance then the Company will provide daily updates of Tanker ETAs and will, at least 7 days before the start of the actual laycan, confirm to FCM details of the precise laycan time and date which shall be within the original operational window. FCM shall make the necessary arrangements to attend the STS Transfer operation at that confirmed time.
- 3.5. Where the precise laycan time and date have been previously confirmed but the ETA of the Tanker(s) subsequently changes or a new Tanker is proposed, then the Company shall inform FCM of such any changes and provide revised ETAs and/or details for the Tankers and FCM shall confirm or otherwise its continued ability to be able to service the revised arrangements notified. Should FCM accept the revised timings and arrangements then it will either confirm the same terms as already provided in the STS Offer will apply or FCM will issue a new STS Offer for Company Acceptance in accordance with the provisions of Clause 4 below. Should FCM not accept the revised timings and arrangements and the Company is unable to and/or refuses to proceed with the Contract as originally agreed, then the Company must terminate the Contract in accordance with clause 5 below.

### **4. COMPANY ACCEPTANCE**

- 4.1. "Acceptance" and/or "Accept" shall be deemed to have occurred on the earlier of :
- (a) the Company giving their written confirmation of the STS Offer by email to FCM ; or
  - (b) the Company requesting (either verbally or in writing or by conduct) that FCM is to commence or continue with its mobilisation for the STS Transfer operation ; or
  - (c) the Company receiving all or any part of the STS Transfer Services from FCM, including without limit commencement of mobilisation.
- 4.2. In the event that multiple STS Offers are issued that relate to the same Transfer(s), then any Acceptance shall be against the last STS Offer(s) issued to the Company which shall or be deemed to supersede all previous STS Offers. If Acceptance by the Company occurs outside of the validity period stated in the STS Offer then it shall be at FCM's discretion whether or not to provide the STS Transfer Services.
- 4.3. Each and any Contract resulting from and including any Acceptance of a STS Offer shall be deemed to incorporate and be subject to the terms of these T&Cs to the exclusion of all other term(s) that and member(s) of the Company Group or any third party may seek to apply whether included in or as part of any RFQ, purchase order, acknowledgement or otherwise.
- 4.4. In the event of any conflict between the terms of the STS Offer and these T&Cs then the terms of the STS Offer shall prevail.

## 5. DURATION, TERMINATION AND CANCELLATION

- 5.1. Each and any Contract shall come into force on the Effective Date and shall remain in force until terminated by either party in accordance with the provisions of these T&Cs.
- 5.2. Either party may terminate a Contract at any time by giving to the other [3] month's prior notice in writing.
- 5.3. Notwithstanding clause 5.2, either party may terminate a Contract with immediate effect for :
- (a) Material breaches of safety demonstrated by the other party or its Group; or
  - (b) Any breach of all or any part of clause 6 hereto by the other party of its Group; or
  - (c) Failure of the other party or its Group to meet payment obligations by the due date.
- 5.4. Consequences of termination:
- (a) On any termination of a Contract FCM shall complete any STS Transfer in progress at the effective date of termination and the Company shall pay all fees agreed under any Contract as at the effective date of termination.
  - (b) Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect including but not limited to clauses 4, 7, 8, 10, and 12 and any STS Offer and or Contract.
  - (c) Termination of a Contract shall not affect any rights, remedies, obligations or liabilities of the parties and its Group that have accrued up to the effective date of termination, including without limit the right to claim damages in respect of any breach of the Contract which existed at or before the effective date of termination.
- 5.5. Notwithstanding the clauses in this section above or elsewhere in the Contract, either party shall have the right to reject any proposed STS Transfer operation or terminate with immediate effect any STS Transfer operation in progress on the grounds of either the other party's or its Group's or any of the Tanker's non-compliance with:
- (a) any applicable law, rule or regulation made by any governmental or other authorities regulating handling or transfer of Cargo or Tanker safety, or
  - (b) with any provision of the Contract and or where such non-compliance materially affects the ability of FCM or the Company to safely perform STS Transfer Services.

5.6. If for whatever reason the Company, or FCM (where it exercises its right to receive, but does not receive returned, an completed FCM C1 pursuant to Clause 16.6), cancels an STS Transfer operation following Acceptance by the Company of such STS Transfer operation and FCM has started to mobilise personnel or equipment for the STS Transfer operation but the FCM support craft or personnel has/have not left the mobilisation port to attend the STS Transfer operation at the time of cancellation, then ninety per cent of the full fee stated in the STS Offer shall be payable. If the Company's, or FCM's (where it exercises its right to receive, but does not receive returned, an FCM C1 pursuant to Clause 16.6), cancellation arises after any FCM support craft or personnel had departed from the mobilisation port or any Transfer is terminated by FCM under the provisions of clause 5.5 above, then one hundred per cent of the full fee stated in the STS Offer shall be payable together, if applicable, with any overtime incurred.

## 6. BUSINESS ETHICS

### 6.1. Anti-Bribery

Each party and its Group shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of the Contract their own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with clause 6.1(a) and (b) and will enforce them where appropriate;
- (d) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by the receiving party and or its Group in connection with the performance of the Contract; and
- (e) immediately notify the other party in writing if a foreign public official becomes an officer or employee of the first party or its Group or acquires a direct or indirect interest in the either party or its respective Group as may be appropriate and the parties warrant that they have no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract.

### 6.2. Forced Labour

Each party and its Group shall:

- (a) comply, and shall procure that it shall comply, with all applicable laws, statutes regulations and codes relating to slavery, servitude, forced or compulsory labour and human trafficking including the Modern Slavery Act 2015;
- (b) undertake not to purchase any resource, materials or products from producers, suppliers or manufacturers using forced or compulsory labour in its operations or practices;
- (c) have and shall maintain in place throughout the term of the Contract their own policies and procedures to ensure its compliance with clauses 6.2 (a) and (b) and will enforce them where appropriate;
- (d) immediately notify the other party in writing if it becomes aware of any breach or alleged breach of this clause within its supply chain (and the parties warrant that they have not been convicted of any offence involving slavery and human trafficking and, having made reasonable enquiries, to the best of its knowledge none of the members of their Group or their direct or indirect owners at the date of the Contract have been or are the subject or any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding an offence or alleged offence of or in connection with slavery and human trafficking.

## 7. FEES FOR TRANSFER SERVICES

7.1. The fee for any given STS Transfer shall be as set out in the applicable STS Offer.

7.2. The amount of time allowed against any lump sum fee ("freetime") shall be specified in the STS Offer in question. Unless otherwise stated in the STS Offer, the freetime covered by the lump sum fee for any STS Transfer operation shall start to run from the time when the STS equipment commences mobilisation from the FCM base supporting

the STS Transfer in question and shall end when such equipment is demobilised at this same base. Time shall run continuously and shall not be affected by any weather delays or any other incident or event except for a breakdown of the STS Transfer System caused by FCM. If the freetime allowance for any given Transfer is exceeded then the Company shall pay FCM for this additional time at the hourly thereafter fee set out in the relevant STS Offer. Any additional fees for freetime shall be included in the invoice submitted in accordance with Clause 8.1.

- 7.3. In the event that FCM has mobilised either the FCM Superintendent or the STS Transfer System for an accepted STS Transfer operation but the STS Transfer operation has been delayed and neither the FCM Superintendent nor the equipment have been mobilised onto the relevant STS support vessel then, in addition to any other fees, FCM shall be entitled to invoice the Company at the onshore standby rate set out in the STS Offer for the time spent on standby between the anticipated mobilisation time (based on the original timings agreed) and the actual mobilisation time of the relevant STS support vessel.
- 7.4. Where STS Superintendent services only are being provided, the day rate applicable in the STS Offer (plus any related expenses) shall apply from and including the time the STS Superintendent leaves their home location to the time of return to that location rounded up to the nearest day.
- 7.5. Unless specifically stated in the STS Offer any fees proposed exclude any amounts for Company or owners purposes including but not limited to any tugs required for berthing and/or unberthing or any port, agency, import/export duties, or similar charges. Also excluded from the fees are any costs required to clean Cargo hoses prior to or after Cargo transfer which if required will be invoiced separately.
- 7.6. The sums stated in the STS Offer represent the net sums due to FCM in respect of its fees for STS Transfer Services and they do not include any government fees, duties, levies, sales taxes or any withholding taxes on payments that may need to be applied by the Company. In the event such duties, taxes or levies may need to be applied then the price on any relevant invoice shall be adjusted as necessary to ensure the net sums set out in the STS Offer are received from the Company by FCM.
- 7.7. Unless otherwise specified in the STS Offer, all fee proposals are made on the basis of a normal commercial STS Transfer operation. If, in the event the STS Transfer operation is of a non-standard, emergency or salvage nature, separate proposals will be supplied upon request.

## **8. INVOICES AND PAYMENTS**

- 8.1. Unless otherwise specified in the STS Offer, FCM or its Affiliate shall submit to the Company an invoice once the transfer STS Transfer operation has been completed.
- 8.2. Payments for invoices submitted in accordance with the STS Offer and/or the provisions of the Contract shall be made in full by the Company without deduction or set-off within 15 days of the date of receipt of FCM's invoice by the Company. Any unpaid amounts that are more than 10 days overdue shall attract interest at the rate of one per cent one per cent (1%) per month calculated from the date when such payment falls due up to the date on which payment is made.
- 8.3. Any other sums incurred and/or expended by FCM or its Affiliates on behalf of the Company or any additional services provided by FCM or its Affiliate may be separately invoiced once the service has been performed or the cost incurred and payment of these amounts shall be made by the Company in accordance with 8.2 above.
- 8.4. All payments due to FCM hereunder shall be paid exclusively in either U.S. Dollars, G.B. Sterling, or Euros as specified in the STS Offer and shall be paid to the account set out on the invoice from FCM or its Affiliate. Neither party shall have the right to offset against invoices for work undertaken, any amounts that may be disputed or claimed between the parties either under a Contract or under any other contracts that may exist between the parties or their Affiliates.

## **9. FORCE MAJEURE AND CAPABILITY RESTRICTIONS**

- 9.1. Neither party shall be liable to the other for non-performance of its obligations under a Contract (other than an obligation to pay money), if and to the extent that such performance is or has been delayed, hindered, interfered with, curtailed or prevented by any circumstance beyond its control, or by fire, explosion, strikes or other labour

disputes, riots, or other civil disturbances, or compliance with any law, regulations, order or request of any governmental authority or person purporting to be or act for any such authority.

- 9.2. If for any reason beyond the reasonable control of FCM there is a loss of capability in the STS Transfer System for any Transfer and it is not possible, either temporarily or at all, to perform any Transfer, FCM shall make every endeavour to renew the capability as soon as possible but shall have no liability for any damages or delays arising as a result of this loss of capability.
- 9.3. The occurrence of an event associated with membership of the European Union or economic or monetary union in the European Union shall not have the effect of:
- i) terminating a Contract; or
  - ii) altering or invalidating any term of or discharging or excusing performance under a Contract; or
  - iii) giving any party a unilateral right to alter or terminate a Contract

For the purposes of this clause, an "event associated with membership of the European Union or economic or monetary union in the European Union" includes, without limitation, each (and any combination) of the following events:

- a. the withdrawal from the European Union by any one or more members of the European Union (Member States); or
- b. the withdrawal from legal tender of the Euro; or
- c. the withdrawal from the Euro by one or more Member State(s); or
- d. the replacement of the Euro by any alternative single or unified currency by two or more Member States (whether or not they remain members of the European Union) or the introduction of a new currency by a Member State (whether or not it remains a member of the European Union).

## 10. INDEMNITY, EXCLUSIONS, AND LIMITATION OF LIABILITY

### 10.1. Knock for knock on people and property

- (a) Subject to clause 10.3, a party and its Group ("the first parties") shall defend and indemnify and hold harmless the other party and its Group against all Claims which the other party and or its Group may suffer, incur or be put to in respect of:
- (i) loss or damage to any property (whether owned, hired, leased or chartered) of the first parties; and
  - (ii) personal injury, disease or death to any employee or agent of the first parties that directly or indirectly arises out of or in connection with performance of a Contract

regardless of whether the other party and/or its Group is claimed to be passively, concurrently or actively negligent or at fault or otherwise and regardless of whether or not liability may be imposed on them without fault.

### 10.2. Mutual exclusion of liability for Consequential Loss

- (a) Subject to clauses 10.1 and 10.3, a party and its Group ("the first parties") shall not under any circumstance be liable to the other party and or its Group for the Consequential Loss of the other party and or its Group howsoever and whatsoever such Consequential Loss may be caused when arising from or connected with any performance or non-performance under a Contract, including but not limited to where it is caused or occasioned by or attributable or contributed to by a breach of contract (including under an indemnity), warranty, representation, statement, guarantee, promise, statutory indemnity, tort (including without limit negligence, gross negligence and/or breach of statutory duty), strict liability, wilful misconduct or otherwise of the other party and or its Group.

### 10.3. Pollution Indemnity

- (a) The Company acknowledges that in entering into commercial arrangements with its counter-parties and insurers it has already assessed and addressed the pollution risk associated with these STS Transfer operation(s) including without limit STS Transfer Services, and the Company shall defend and indemnify and hold harmless each and all members of FCM Group against all Claims brought or sustained by each and/or all of Company Group (whether directly or by way of compensating others), and/or against all Claims brought or sustained by any third party claiming directly against each and/or all of FCM Group including without limit for:

- (i) personal injury or disease to or death of persons; or
- (ii) damage to or destruction of property; or
- (iii) loss of income or amenity; or
- (iv) natural resource damage

arising from or connected with a threatened or actual discharge of oil or other pollutant and/or the cost of clear up thereof from any Tanker or other vessel(s), machinery or equipment involved in a Transfer regardless of whether it is claimed that each and/or all members of FCM Group are passively, concurrently or actively negligent or at fault or otherwise, and regardless of whether or not liability may be imposed on them without fault.

#### 10.4. Limitation of Liability

- (a) Subject to clause 10.4(b), the parties including their Affiliates hereby waive any rights to limit their liability that may exist in respect of all and any cause of action, including without limit any indemnities that they are respectively providing in this Clause 10.
- (b) Notwithstanding anything else in a Contract to the contrary but subject to clause 10.5, and excluding clauses 10.2 and 10.3 and 16.6 in each case unless found to be unenforceable by any arbitral body or otherwise at law, each and all members of FCM Group's total cumulative liability arising under or in connection with the Contract, including liability for all Claims shall not in the aggregate exceed twice the fee for the Transfer in respect of which the liability arose ("FCM Limitation of Liability").
- (c) Subject to clause 10.3, over and above the FCM Limitation of Liability, the Company shall be responsible for and defend and indemnify and hold harmless each and all members of FCM Group and each of them for all and any Claim(s) brought or sustained by the Company Group (whether directly or by way of compensating others), and/or for all and any Claim(s) brought or sustained by any third party claiming directly against any member(s) of FCM Group regardless of whether it is claimed that FCM, any Affiliate and or any FCM Personnel are passively, concurrently or actively negligent or at fault or otherwise and regardless of whether or not liability may or may not be imposed upon them without fault.

#### 10.5. No Exclusion or Limitation of Claims Not Permitted By Law

- (a) (a) Notwithstanding any other provision in the Contract, nothing in the Contract is intended or deemed to exclude or limit either party's and or its Group's liability for:
- (i) death or personal injury caused by the negligence of a party and/or by the negligence of any of their respective employees or agents; or for
  - (ii) fraud or fraudulent misrepresentation; or for
  - (iii) any other Claims which the law does not permit a party to exclude or limit.

## 11. ENTIRE AGREEMENTS AND CONTRACT AMENDMENTS

11.1. Each party on behalf of itself or its Affiliates, acknowledges and agrees with the other party or its Affiliates that:

- (a) the Contract together with any documents referred to in it including any STS Offer issued for STS Transfer Services comprises the entire agreement between the parties and supersedes and extinguishes all prior representations (except those that are expressly set out in the Contract), agreements and understandings



between the parties whether written or oral concerning the subject matter of the Contract in question, or in consideration hereof, except that any prior representations, promises, assurance, warranty (whether made innocently or negligently), statements, agreements, Contracts and or understandings between the parties under which a party owes any debt to the other party shall remain legally enforceable notwithstanding the existence of the Contract up to and including the date that the owed party is in full receipt of the outstanding payment that credits and extinguishes such debt; and

- (b) in entering into each and any Contract neither party has relied on any pre-contractual statement that is not expressly set out in the Contract; and
- (c) the only rights and remedies available to it or arising out of or in connection with any pre-contractual statement shall be for breach of warranty except where any representation is expressly set out in the Contract.

11.2. This Contract shall only be altered or varied in writing signed by both parties.

## **12. LAW AND ARBITRATION**

12.1. The Contract including all disputes (whether contractual or non-contractual) shall be subject to English law and jurisdiction subject to and in accordance with the descending order of precedence set out in the following dispute resolution process: Any contractual and non-contractual dispute(s) arising out of or in connection with the Contract including the interpretation thereof shall be resolved:

- (a) initially by informal negotiations between the Directors of the parties in dispute; and
- (b) if, pursuant to Clause 12.1(a), the parties fail to resolve any such dispute(s) by such informal negotiations within a period of 60 days (or any extended period of informal negotiations as the parties may agree to in writing in advance of expiry of such initial 60 day period) from the date that either party initially gives notice of dispute to the other party by arbitration in London under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The decision of the arbitrators shall be final and without appeal to the courts provided always that either party may seek to enforce an arbitral award through the courts.

## **13. ADDRESSES FOR REQUESTS FOR STS TRANSFER SERVICE AND OTHER NOTICES**

13.1. Any request by the Company or its Affiliates for STS Transfer Services and any notices or other communications to FCM or its Affiliates shall be sent to the contact details shown in the STS Offer.

13.2. Any notices or other communications from FCM to the Company or their respective Affiliates shall be to any contact of the Company or its Affiliates who has communicated with FCM with regard to the details set out in the relevant STS Offer or to other responsible people within the Company who have liaised with FCM or its Affiliates with regard to STS Transfer operations.

13.3. Every notice or communication under a Contract shall be given in writing by facsimile or electronic mail or equivalent form of speedy business communication.

## **14. THIRD PARTY RIGHTS**

14.1. Except as otherwise may be provided in the Contract, a party who is not named in any STS Offer as the contracting entity under the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or take the benefit of any term(s) of the Contract.

## **15. CONFIDENTIALITY**

15.1. The Company (Receiving Party) agrees that it shall at all times (both during the Term of any Contract and after its

termination) keep confidential, and shall not without the prior written consent of FCM (Disclosing Party) use or disclose to any third party (other than as permitted by FCM), any Confidential Information of the Disclosing Party, unless such information: a) was public knowledge at the time of disclosure; b) subsequently becomes public knowledge other than by breach of the Contract; c) is agreed by the parties not to be confidential or to be disclosable;

15.2. The Receiving Party may use the Disclosing Party's Confidential Information solely in the performance of its obligations and the exercise of its rights under the Contract.

15.3. All documents and other records (in whatever form) containing Confidential Information supplied to or acquired by the Company from FCM shall be returned promptly to FCM on termination of the Contract, and no copies shall be kept.

## **16. MISCELLANEOUS**

16.1. All insurances of each party shall be endorsed to provide that their insurers and underwriters waive any rights of recourse including in particular subrogation rights against the other party and its respective Affiliates.

16.2. Except as otherwise stated herein, no waiver of any right under the Contract will serve as a waiver of the same right at any future date.

16.3. The Contract or any right hereunder may be assigned or transferred by either party to another Affiliate member in its Group without the written consent of the other party otherwise the Contract shall not be assigned to any other person, business, or company without the written consent of the other party.

16.4. If a provision of the Contract is unenforceable under applicable law, that provision will be enforced to the maximum extent permitted by applicable law or deemed severed from the Contract if unenforceable. The remaining provisions of the Contract will continue in full force and effect.

16.5. No member(s) of the FCM Group shall be under any obligation to sign or otherwise accept any indemnity or other terms and conditions presented by any Master, owner, charterer or other third party prior to or in the course of the STS Transfer, nor shall they be liable for any loss or expense arising as a result of any refusal on their part to sign or otherwise accept the same. The Company undertakes to ensure that third parties involved or otherwise interested in the Transfer do not require any such indemnity or terms and conditions to be accepted by any member(s) of the FCM Group.

16.6. At any time prior to or after FCM Group mobilization for any STS Transfer, FCM reserves its right for whatsoever reason to require any Tanker master, for and on behalf of him/herself and the Tanker owner, operators, demise charterers and ship managers, involved in any STS Transfer to sign and return to FCM's Checklist 1 in the standard form received from or on behalf of FCM ("FCM C1"). Where FCM exercises in writing to Company its right under this Clause 16.6 to receive an FCM C1, FCM's receipt of an FCM C1 shall be deemed a condition precedent to the Company's Acceptance of any STS Offer issued by FCM under these T&Cs. Where this condition precedent is not satisfied prior to or after FCM Group mobilization for any STS Transfer, FCM may decline performance of any STS Transfer without any liability to Company Group.

16.7. The remedies provided for in these T&Cs are the sole and exclusive remedies provided to Company by FCM and Company hereby waives all other rights and remedies available at law.

## **17. DEFINITIONS AND INTERPRETATION APPLICABLE TO THESE T&Cs**

## 17.1 The following definitions and interpretation clauses form part of each and any Contract:

<b>Acceptance / Accept</b>	As defined at clause 4 to these T&Cs, subject always to Clause 16.6.
<b>Affiliate</b>	Any company (other than FCM or the Company) which is directly or indirectly controlled in full or in part by FCM or the Company or which directly or indirectly controls in full or in part FCM or the Company or which is under the direct or indirect control in full or in part of a company which directly or indirectly controls in full or in part FCM or the Company.
<b>Cargo</b>	Crude Petroleum and/or its products, LNG, LPG, or any other cargo required to be transferred by the Company and which is Accepted by FCM.
<b>Claim(s)</b>	All actions, claims, demands, proceedings, damages, awards, payments, losses, costs, expenses, penalties, fines, compensation or other liabilities (including without limit direct, indirect, special, incidental, consequential, Consequential Loss or otherwise including without limit loss of profit, business, turnover or market share), legal and or professional costs and or expenses, and in case of each and all of the foregoing any interest thereon and howsoever and whatsoever arising from or connected with any performance or non-performance under the Contract, including but not limited to where caused or occasioned by or attributable or contributed to a breach of contract (including under an indemnity), warranty, representation, statement, guarantee, promise, statutory indemnity, tort (including without limit negligence, gross negligence and/or breach of statutory duty), strict liability, wilful misconduct or otherwise.
<b>Company</b>	Shall mean the company legal entity named as party to the STS Offer and the corresponding Contract upon Acceptance.
<b>Company Group</b>	Shall mean:  (a) Company; and (b) Company's client or client's client (of any tier) whether or not one or more is named in the STS Offer; and (c) any Company Affiliate(s), its co-venturers; and (d) any director, officer, employee, agent or other individual working under the direct control and or supervision of Company, its co-venturers or any Company Affiliates, its co-venturers; (e) any contractor (of any tier) but excluding any member(s) of the FCM Group  in case of (a) to (e) inclusive shall exclude any member(s) of the FCM Group.
<b>Confidential Information</b>	Shall mean all information of a confidential nature, including trade secrets and information of commercial value, disclosed by either party, its employees, officers or representatives to the other party.
<b>Consequential Loss</b>	Any loss of anticipated profits; loss of profits; loss of anticipated revenue; loss of revenue; delay; loss of bargain; reduction in turnover; loss of Cargo; loss of use of property, plant or equipment; downtime costs; claims of Company or other contractors of Company (whether directly or by way of compensating others); or, whether (i) or not expressly included in this definition; and (ii), in case of each foregoing head of loss, direct or Indirect loss, any indirect, special, incidental or other consequential loss or damages ("Indirect") sustained by a party and whether or not such loss(es) were foreseeable at the date of the Contract.
<b>Contract</b>	Any contract for a Transfer formed between the parties as a result of any Company's oral, written or by conduct Acceptance of any STS Offer in accordance with and under these T&Cs.
<b>FCM</b>	Shall mean the Fender Care Marine legal entity named as party to the STS Offer and the corresponding Contract upon Acceptance.
<b>FCM Group</b>	Shall mean:  (a) FCM; (b) FCM's subcontractors (of any tier), including any STS Superintendent(s); (c) any FCM Affiliate or its subcontractors (of any tier); and (d) any director, officer, employee, other person, or agency personnel, employed by or acting for and on behalf of, FCM, its subcontractors (of any tier), or any FCM Affiliate(s) and its their subcontractors (of any tier)  but in case of (a) to (d) inclusive excluding any member(s) of the Company Group.
<b>FCM C1</b>	Shall mean as defined in Clause 16.6.
<b>FCM Personnel</b>	Shall mean (b), (c), (d) inclusive of FCM Group, but shall exclude Company Group.
<b>Group</b>	Shall mean the FCM Group or Company Group as the context of the relevant clause, sub-clause or sentence dictates.
<b>STS</b>	Ship to Ship.
<b>STS Location</b>	The location for any given STS Transfer rendezvous area is as stated in the applicable STS Offer.
<b>STS Offer</b>	An offer by FCM to provide STS Transfer Services for any given STS Transfer which, where Accepted

	by Company in accordance with these T&Cs, forms a Contract.
<b>STS Superintendent</b>	An employee or agent of, or a consultant or consultants, who shall be qualified to the required industry standards, engaged by FCM to provide advisory services and offshore co-ordination of an STS Transfer on behalf of FCM in connection with a Contract.
<b>STS Transfer Guide</b>	The latest edition at the time in question of the International Chamber of Shipping/Oil Companies International Marine Forum "Ship to Ship Transfer Guide", for Petroleum or Gas, as applicable to the STS Transfer Services in question.
<b>STS Transfer System</b>	The STS Transfer System which FCM proposes to operate at the STS Location for any given STS Transfer consists of the equipment and/or any support craft described in the STS Offer in question (or any substitution therefore made in good faith).
<b>STS Transfer Services</b>	The provision of the STS Transfer System if specified in the STS Offer together with all associated planning, co-ordination and/or if specified in the STS Offer the provision of a suitably trained STS Superintendent(s) acting in an advisory capacity to the Masters of any Tankers involved in the STS Transfer.
<b>Support Craft</b>	The vessel(s) used to support the delivery and re-delivery of the STS Transfer System to the STS Location. Except where local regulations require otherwise, the Support Craft will not remain at the STS Location throughout the STS Transfer operation, unless FCM decides in its sole discretion that it will.
<b>Tanker(s)</b>	All marine vessel(s) that (i) carry Cargo that may be transferred; or (ii) other vessel(s) that are involved in the STS Transfer operation (except for any Support Craft owned or chartered by FCM or its Affiliates).
<b>T&amp;Cs</b>	These Terms and Conditions For Supply of STS Transfer Services.
<b>Transfer or STS Transfer</b>	Any Cargo shipments from Tanker(s) delivered into other Tanker(s) made fast alongside each other for the purpose of provision of STS Transfer Services under a Contract.
<b>General meanings and interpretations</b>	<p>Any reference in the T&amp;Cs or any Contract to a day, month, quarter or year shall unless the context otherwise requires be to a calendar day, calendar month, calendar quarter or calendar year.</p> <p>All terms defined in these T&amp;Cs shall be deemed to have the same meaning in any STS Offer unless otherwise defined in the STS Offer in which case the meaning as set out in the STS Offer shall prevail.</p> <p>Except where otherwise stated in the Contract, any reference to 'party' in the Contract shall be construed as a reference to FCM or the FCM Affiliate or Company and or the Company Affiliate party named in any STS Offer as the contracting entity; and reference to 'parties' in the Contract shall be construed as a reference to either FCM or the FCM Affiliate and the Company and or the Company Affiliate named in the relevant STS Offer as the respective contracting entity.</p> <p>In these T&amp;Cs and in any Contract any reference to the singular shall be constructed as including the plural and any reference to the plural shall be constructed as including the singular.</p> <p>A reference to any statute, enactment, ordinance, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, ordinance, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.</p> <p>Any reference in these T&amp;Cs or in any Contract to "vessel(s)" shall be deemed to be succeeded by "including any Tanker(s)".</p> <p>Any Contract resulting from any Company's Acceptance of any STS Offer shall be deemed to incorporate and be subject to these T&amp;Cs to the exclusion of all other term(s) that Company, any Company Affiliate or any third party may seek to apply.</p>

