
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 counterparties, 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 a 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 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 STS Superintendent shall advise the Masters, Officers and crew on the procedures for a safe and efficient STS Transfer. If at any time the STS Superintendent decides that the STS Transfer operation taking place is 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. Notwithstanding the foregoing and without prejudice to Clause 10 hereto, the Company hereby warrants and represents that the respective Masters remain responsible and in control of their Tanker and the STS Transfer operation at all times during any STS Transfer and during any Pilotage Services associated with the STS Transfer operation.
- 2.3. The parties agree that all STS Superintendents shall take adequate rest periods to meet the requirements of the latest versions of STCW A-V111.1 and the Maritime Labour Convention (MLC).
- 2.4. All STS Transfer operations including Pilotage Services, 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 Tankers.
- 2.5. The Master, Officers and crew of each Tanker involved in the STS Transfer shall be responsible for the safe monitoring, connection and 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. If the Company requires any specific procedures to be followed in the event of an emergency then Company shall 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 for responding effectively to any emergency situation. The Company shall arrange for any FCM personnel attending on board the Tankers to be covered by the Company's and/or by the Tanker's 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 Masters of the Tankers 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 any Tanker's documentation relating to a Transfer or 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 Vessels 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 Vessels are fully classed and certified by a reputable Classification Society; and
 - (d) all Vessels comply with the International Safety Management Code (ISM); 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 Vessels have been entered with a reputable P&I Club for full P&I cover, and additionally that such Vessels 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 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; and

- (g) the charterers of all Vessels 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 the limits customarily offered by members of the International Group of P&I Clubs for charterers' liability policies and the Company shall procure that 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; and
- (i) each Vessel completes and returns to FCM all information requested including fully completed documentation prior to requested dates of the STS Transfer and any Pilotage Services associated with 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 Vessels 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 Contract 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, without liability to the FCM Group, and any additional costs incurred shall be for the Company's account.

2.14. FCM reserves the right to refuse to permit 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, the Company shall send an email or other written request to FCM at least 15 days prior to the anticipated commencement of STS Transfer operation. Such request will provide an expected 5-day laycan window for the Tankers.

3.2. The Company shall provide such information as is necessary for FCM to prepare an STS Offer, including any documentation required by FCM for the purposes of FCM's sanctions screening checks, and FCM shall respond with its STS Offer within 48 hours of the necessary information and documentation 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.

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- 3.4. Following Acceptance the Company shall 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 5-day laycan window. FCM shall make the necessary arrangements to attend the STS Transfer 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 service the revised arrangements notified. Should FCM accept the revised timings and arrangements then it will either confirm that the revised operation may proceed upon the same terms as already provided in the STS Offer, or advise the Company that a new STS Offer will be required. If a new STS Offer is required, the Company shall have the right to elect, by way of written notice to FCM, whether to terminate the existing Contract with immediate effect and proceed on the basis of a new STS Offer (in which case the provisions of clause 5.4 will apply in relation to the termination), or continue on the basis of the Contract as originally agreed.

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) FCM to commence mobilisation for the STS Transfer operation ; or
 - (c) the Company receiving all or any part of the STS Transfer Services from FCM, including, without limitation, 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 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. Any Contract resulting from 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 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 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 one (1) 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 or 17 hereto by the other party or its Group; or

(c) Failure of the other party or its Group to meet payment obligations by the due date.

5.4. Notwithstanding clause 5.2, FCM may terminate a Contract with immediate effect at any time in the event that any aspect of any STS Transfer fails FCM's sanctions screening checks, or in the event that such checks cannot be completed prior to the confirmed time and date of the STS Transfer.

5.5. 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) In the event that a Contract is terminated by the Company under clause 3.5 or 5.2, and FCM has started to mobilise personnel or equipment for the STS Transfer operation but the FCM owned or chartered Support Craft or personnel 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.
- (c) In the event that a Contract is terminated by the Company under clause 3.5 after any FCM owned or chartered Support Craft or personnel have departed from the mobilisation port, or in the event that a Contract is terminated by FCM under the provisions of clause 5.3, 5.4, 5.6 or 16.5 after any FCM owned or chartered Support Craft or personnel have departed from the mobilisation port, then one hundred per cent of the full fee stated in the STS Offer shall be payable together, if applicable, with any overtime incurred.
- (d) 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.
- (e) Termination of a Contract shall not affect any rights, remedies, obligations or liabilities of the parties 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.

5.6. Notwithstanding any other provision of 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) any provision of the Contract where such non-compliance materially affects the ability of FCM or the Company to safely perform STS Transfer Services.

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 UK 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 UK 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 UK 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 other 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

6.2.1 Each party and its Group shall:

- (a) comply with all applicable laws, statutes, regulations and codes relating to slavery, servitude, forced or compulsory labour and human trafficking including the UK 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 6.2.1 (a) and (b) and 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.

6.2.2 Each of the parties represents and warrants that it has not been convicted of any offence involving slavery or human trafficking and, having made reasonable enquiries, to the best of its knowledge none of the members of its Group have been or are the subject of 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 or human trafficking.

7. **FEES FOR STS TRANSFER SERVICES**

7.1. The fee for a 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. Unless otherwise stated in the STS Offer, the freetime covered by the fee shall start to run from the time when the STS equipment commences mobilisation from the relevant FCM base and shall end when such equipment is demobilised at said 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 is exceeded the Company shall pay FCM for such additional time at the hourly fee set out in the STS Offer.

7.3. In the event that FCM has mobilised either the FCM Superintendent or the STS Transfer System for an STS Transfer but the STS Transfer or any associated Pilotage Services are 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 agreed mobilisation time and the actual mobilisation time of the relevant STS support vessel.

7.4. Where STS Superintendent services only (including any associated Pilotage Services) 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.

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- 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 what a reasonable and prudent STS operator would consider to be a standard commercial STS Transfer. In the event the STS Transfer 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 STS Transfer has been completed.
- 8.2. Payments for invoices submitted under 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 (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 Affiliates 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, Pounds Sterling or Euros as specified in the STS Offer and shall be paid to the account set out in the invoice. 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 reasonable control, which shall include but not be limited to epidemics, pandemics, quarantine restrictions, 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. Additionally, FCM shall not be liable for any delay, costs, loss, damage or expense arising out of or in connection with any Loss of Capability that is beyond the reasonable control of FCM, including, without limitation, any unavailability, absence, or inability of any FCM Personnel (including the STS Superintendent) due to loss of health or fitness, or any failure, malfunction, or breakdown of the STS Transfer System supplied for the STS Transfer operation.

10. INDEMNITY, EXCLUSIONS, AND LIMITATION OF LIABILITY

10.1. Knock-for-knock for people and property

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 incur 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

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 or its Group for the Consequential Loss of the other party and/or its Group.

10.3. Pollution Indemnity

The Company acknowledges that in entering into the Contract it has already assessed and addressed the pollution risk associated with the STS Transfer, and the Company shall defend, indemnify and hold harmless each and all members of FCM Group against all Claims brought or sustained by Company Group (whether directly or by way of compensating others), and against all Claims brought or sustained by any third party claiming directly against any member of the FCM Group 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 any 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 and their Affiliates hereby waive any rights to limit their liability that may exist in respect of any cause of action, including without limit any indemnities that they are respectively providing in this Clause 10.

- (b) Subject to clause 10.5, but otherwise notwithstanding any other provision of this Contract the total cumulative liability of the FCM Group arising under or in connection with the Contract shall not in the aggregate exceed twice the fee for the STS Transfer in respect of which the liability arose (“FCM Limitation of Liability”).
- (c) The Company shall be responsible for and shall defend, indemnify and hold harmless the FCM Group for any and all Claim(s) (whether directly or by way of compensating others) over and above the FCM Limitation of Liability regardless of whether it is claimed that the FCM Group 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

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 any applicable law does not permit a party to exclude or limit.

11. ENTIRE AGREEMENTS AND CONTRACT AMENDMENTS

11.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, agreements, promises, warranties, statements, representations, references and understandings between them, whether written or oral, relating to its subject matter.

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. Any contractual and non-contractual dispute(s) arising out of or in connection with the Contract including the interpretation thereof shall be resolved: initially by informal negotiations between the directors of the parties in dispute; and failing resolution by such informal negotiations within a period of 60 days 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 SERVICES AND OTHER NOTICES

- 13.1. Any notice required or permitted to be given by either Party to the other under this Contract shall be in writing (which shall include email) addressed to the other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice. For the purpose of service such notice shall be deemed to have been served in the case of a notice delivered by hand, when delivered, in the case of a letter, forty-eight (48) hours after the time of posting, or in the case of an email, at the time the email leaves the sender's server, provided that no delivery failure notification is received by the sender within twenty-four (24) hours after transmission.

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 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 use or disclose to any third party (other than as permitted by FCM), any Confidential Information of FCM or its Group, unless such information: a) was public knowledge at the time of disclosure; b) subsequently becomes public knowledge other than by breach of the Contract by the Company; c) is agreed by the parties not to be confidential or to be disclosable.
- 15.2. The Company may use FCM'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. 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.
- 16.2. The Contract or any right hereunder may be assigned or transferred by either party to another Affiliate 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.
- 16.3. If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

- 16.4. 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.
- 16.5. At any time prior to or after FCM Group mobilisation for any STS Transfer, FCM reserves the right for whatsoever reason to require any Vessel Master, for and on behalf of him/herself and the Vessel owner, operators, demise charterers and ship managers, involved in any STS Transfer to sign and return to FCM its Appendix A – Pre-STS ‘Ship Standard Questionnaire’ in the standard form received from or on behalf of FCM (“FCM Questionnaire”). Where FCM exercises in writing to Company its right under this Clause 16.5 to receive an FCM Questionnaire, FCM’s receipt of an FCM Questionnaire shall be deemed a condition precedent to FCM’s performance of the STS Transfer Services. Where this condition precedent is not satisfied prior to or after FCM Group mobilisation for any STS Transfer, FCM may terminate the Contract with immediate effect without any liability to Company Group.
- 16.6. 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. TRADE CONTROLS CLAUSE

17.1. End use restrictions

- 17.1.1 The Company agrees that it will comply with Applicable Trade Controls Laws in relation to any goods, services (including STS Transfer Services) or other items provided by FCM under this Contract.
- 17.1.2 The Company shall at all times ensure that no commodities, software or technical data of U.S., Australia, U.K., Canadian or EU origin or otherwise subject to the export controls laws of these jurisdictions will be sold, exported, re-exported, transmitted, transferred, retransferred or used except in compliance with all applicable government requirements.
- 17.1.3 The Company represents and warrants that:
- (a) It is not organised under the laws of, or located, operating or ordinarily resident in, a Sanctioned Country;
 - (b) It is not part of nor owned or controlled by the government of a Sanctioned Country;
 - (c) Neither it, nor any Related Body Corporate, nor any directors, officers or employees of the Company, is a Restricted Party;
 - (d) No Tanker or Vessel involved in any STS Transfer is a Restricted Party;
 - (e) No Cargo involved in any STS Transfer originates from any Sanctioned Country;
 - (f) It will not take any actions that cause it to become a Restricted Party or otherwise to become sanctioned, restricted or designated under Applicable Trade Controls Laws during the term of this Contract, and it will promptly inform FCM in the event it becomes so sanctioned, restricted or designated.
- 17.1.4 The Company must upon request by FCM provide written certification that it has complied with all Applicable Trade Controls Laws including, where requested, by providing an end-use certificate for any product, service or other item provided by FCM.

17.1.5 Nothing in this Contract requires any Party to take any action, or refrain from taking any action, where doing so would be prohibited by or subject to penalty under Applicable Trade Controls Laws.

17.2. Audit

The Company shall, upon request, permit FCM to audit, examine and inspect any books, financial records, property or location under the supervision, direction or control of the Company (including, but not limited to, the Company's transactions with third parties in connection with this Contract or any goods, services or other items provided by FCM) as necessary for the verification of compliance with the Company's representations, warranties and undertakings under clause 17.1, except to the extent prohibited under applicable competition or anti-trust laws.

18. DEFINITIONS AND INTERPRETATION APPLICABLE TO THESE T&CS

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

Acceptance / Accept	As defined at clause 4 to these T&Cs.
Affiliate	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.
Applicable Trade Controls Laws	Means any sanctions, export control, or import laws, or other regulations, orders, directives, designations, licenses, or decisions relating to the trade of goods, technology, software and services which are imposed, administered or enforced from time to time by Australia, the United States, the United Kingdom, Canada, the EU, EU Member States, Switzerland, the United Nations or United Nations Security Council and also includes U.S. anti-boycott laws and regulations.
Cargo	Crude Petroleum and/or its products, LNG, LPG, or any other cargo required to be transferred by the Company and which is accepted in writing by FCM.
Claim(s)	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.
Company	Shall mean the company legal entity named as a party to the STS Offer (and the corresponding Contract as a result of Acceptance).
Company Group	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) and 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, (e) any contractor (of any tier) in case of (a) to (e) inclusive shall exclude any member(s) of the FCM Group.
Confidential Information	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.

Consequential Loss	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 by the Company or other contractors of Company (whether directly or by way of compensating others); or, whether or not expressly included in this definition, any indirect, special, incidental or consequential loss or damages sustained by a party and whether or not such loss(es) were foreseeable at the date of the Contract.
Contract	Any contract for a Transfer formed between the parties as a result of any oral, written or conduct-based Acceptance by the Company of any STS Offer in accordance with and under these T&Cs.
Effective Date	Has the meaning given in Clause 1.2.
FCM	Shall mean the Fender Care Marine legal entity named as party to the STS Offer (and the corresponding Contract as a result of Acceptance).
FCM Group	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 their subcontractors (of any tier) but in case of (a) to (d) inclusive excluding any member(s) of the Company Group.
FCM Personnel	Shall mean those individuals listed in sub-clauses (b), (c) and (d) of the definition of FCM Group, but shall exclude Company Group.
FCM Questionnaire	Shall have the meaning given in Clause 16.5.
Group	Shall mean the FCM Group or Company Group as the context of the relevant clause, sub-clause or sentence dictates.
Loss of Capability	Shall mean any failure, degradation or unavailability of equipment or systems (including the STS Transfer System), personnel (including FCM Personnel) or procedures that materially impairs the ability of FCM to conduct the STS Transfer in accordance with the Contract, regardless of whether such failure is caused by FCM, the Company, the Vessels or any third party.
Pilotage Services	The provision of pilotage assistance to the Master of a Tanker involved in the STS Transfer for the purposes of navigating the Tanker to and from the STS Location where the STS Transfer will take place.
Related Body Corporate	Means in respect of a legal entity, any legal entity directly or indirectly controlling, controlled by, or under common control with that legal entity, through: (i) ownership of 50% or more of issued equity; or (ii) control over the composition of the board of directors or voting stock, or otherwise, control over the day-to-day operations of the entity.

Restricted Party	Means any person, entity, governmental body, organization or vessel/aircraft that is designated for export controls or sanctions restrictions under any Applicable Trade Controls Laws, including but not limited to those designated under the U.S. List of Specially Designated Nationals and Blocked Persons, Foreign Sanctions Evaders List, Entity List, Unverified List, Denied Persons List, Debarred List, the Australian Consolidated List, the UK Sanctions List and the EU Consolidated List of Persons, Groups, and Entities Subject to EU Financial Sanctions.
Sanctioned Country	Means any country or territory against which comprehensive sanctions are imposed by Australia, the United States, the United Kingdom, Canada, the EU, any EU Member States, Switzerland, the United Nations, or any other country with jurisdiction over the activities undertaken in connection with this Contract. As at the date of these T&Cs, Sanctioned Countries include Belarus, Cuba, Iran, North Korea, Russia, Syria, and the Crimea, Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine.
STS	Ship to Ship.
STS Location	The location for any given STS Transfer as stated in the applicable STS Offer.
STS Offer	An offer by FCM to provide STS Transfer Services for an STS Transfer which, where Accepted by Company in accordance with these T&Cs, forms a Contract.
STS Superintendent	An individual who shall be qualified to the required industry standards, engaged by FCM to provide advisory services and offshore co-ordination of an STS Transfer or Pilotage Services for the purposes of an STS Transfer on behalf of FCM in connection with a Contract.
STS Transfer Guide	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.
STS Transfer Services	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 and/or for the purpose of conducting Pilotage Services associated with the STS Transfer.
STS Transfer System	The system which FCM proposes to operate at the STS Location for any given STS Transfer, consisting of the equipment and/or any support craft described in the relevant STS Offer (or any substitution therefor made in good faith).
Support Craft	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 otherwise in its sole discretion.
Tanker(s)	All Cargo-carrying marine vessel(s).
T&Cs	These Terms and Conditions for Supply of STS Transfer Services.
Transfer or STS Transfer	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.
Vessel(s)	All marine vessel(s) that are involved in the STS Transfer operation, including Tankers, but excluding any Support Craft owned or chartered by FCM or its Affiliates.

<p>General meanings and interpretations</p>	<p>Any reference in the T&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&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 (or the Company Affiliate) named in any STS Offer as the contracting entity; and reference to ‘parties’ in the Contract shall be construed as a reference to FCM (or the FCM Affiliate) and the Company (or the Company Affiliate) named in the relevant STS Offer as the contracting entity.</p> <p>In these T&Cs and in any Contract any reference to the singular shall be construed as including the plural and any reference to the plural shall be construed 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 Contract resulting from any Company’s Acceptance of any STS Offer shall be deemed to incorporate and be subject to these T&Cs to the exclusion of all other term(s) that Company, any Company Affiliate or any third party may seek to apply.</p>
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