

CONDITIONS OF SALE

MT "EMRE-T"

ORDER OF COURT

1. The public auction of the motor vessel "EMRE-T " takes place in terms of and subject to an Order of the High Court of Namibia (Main Division) Windhoek, (in the exercise of its Admiralty Jurisdiction) under Case No. AC29/2018, the said Order having been made final on 22 January 2019 (hereinafter referred to as "the Order of Court").

DEFINITIONS

2. The following words shall have the meanings herein ascribed to them -
 - 2.1 "Registrar" means the Registrar of the High Court of Namibia (Main Division) Windhoek, Namibia;
 - 2.2 "appraised value" of the Ship shall be such value as is determined in terms of paragraph 1.3.2.2 of the Order of Court;
 - 2.3 "Broker" shall mean the party appointed as such in paragraph 1.1.1 of the Order of Court;

- 2.4 "Bunkers" shall mean Intermediate Fuel Oil (IFO) and Marine Gas Oil (MGO) including lube oils, hydraulic oils and greases on board the Ship at the time of the sale.
- 2.5 "day" shall mean a day other than a Saturday, Sunday or public holiday in Namibia;
- 2.6 "Fund" shall mean the Fund as defined in paragraph 1.1.7 of the Order of Court;
- 2.7 "Purchaser" shall mean such person or his/her nominee as makes the successful bid at the auction of the Ship for the purchase of the Ship and the Bunkers subject to the provisions of the Order of Court, or the Declared Purchaser as referred to in clause 2.8 below;
- 2.8 "Declared Purchaser" shall mean the person or his/her nominee declared to be the Purchaser in terms of the provisions of clauses 9, 12 and 28 of these Conditions of Sale;
- 2.9 "purchase price" shall mean such amount as is bid in respect of the Ship, and accepted as the highest bid, or declared to be so accepted in terms of clauses 9,13 and 29 hereof, including such interest as is payable in

terms of clauses 33 and 34 hereof, and the amount to be paid for the Bunkers which value is calculated in terms clause 35;

2.10 "Sheriff" shall mean the Sheriff of the High Court for Walvis Bay;

2.11 "Ship" shall mean the motor tanker "EMRE-T" registered under the flag of Turkey with the following particulars –

Type of Vessel	:	oil/chemical tanker
Flag	:	Turkey
Built	:	2004
GRT/NRT	:	2 980 / 1 458
IMO Number	:	9286475

together with such equipment, furniture stores and Bunkers on board at the time of delivery to the Purchaser and that are the property of the owners of the Ship at the time of the sale. The above description of the Ship is given for purposes of identification only and without warranty;

ACKNOWLEDGEMENT BY PURCHASER

3. The Purchaser acknowledges –

~~3.1 that an opportunity has been afforded to him or her to view the Ship;~~

- 3.2 that he or she has satisfied him or herself and is aware of the nature, extent and condition of the Ship, its equipment, furniture and stores, and Bunkers (including quantities), of whatsoever nature;
- 3.3 that the Ship and the Bunkers are sold as is, where is (voetstoots), completely without any warranty, guarantee or the like whether express or implied and without any representation of any nature whatsoever having been made;
- 3.4 that neither the Registrar, the Broker, any claimants, applicant or plaintiff participating in or claiming against the Fund, nor any of the above parties' servants, attorneys, advocates or agents shall be responsible for any defect in the Ship or its fittings, engines, machinery, equipment, appurtenances, the Bunkers and title whether patent or latent;
- 3.5 that the Ship is sold with the Bunkers and that the Purchaser shall be obliged to take delivery of such Bunkers and pay for same in addition to the purchase price for the Ship, such amount to form part of the "purchase price" as defined in Clause 2.9 hereof.
- 3.6 that where the Purchaser elects to nominate a nominee, such nominee:
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- 3.6.1 shall sign these Conditions of Sale providing his/her/its full names and contact details, registration number, as well as its physical address;

- 3.6.2 submits to the jurisdiction of the High Court of Namibia (Main Division)
Windhoek, Namibia;
- 3.6.3 notwithstanding his/her nomination, remains liable jointly and severally
with the Purchaser in fulfilling all the terms of these Conditions of Sale;

SALE FREE OF ENCUMBRANCES

4. The Ship and the Bunkers are sold in terms of Namibian law by virtue of the Order of Court for their sale, free of all liens, encumbrances, preferences and charges, and all arrests and attachments effected before the passing of ownership of the Ship and the Bunkers to any Purchaser in terms of any such sale shall be discharged against the Ship on the passing of ownership of the Ship and the Bunkers to the Purchaser.

BIDDING AND SALE

5. The sale of the Ship by public auction shall be subject to the exclusive control of the Broker who shall regulate the bidding and shall have the power, in its discretion, to suspend or adjourn the auction.
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6. ~~Bidding shall be in United States Dollars unless another currency is~~
declared by the Broker prior to the commencement of bidding, in which event bidding shall be in that currency. The final decision as to the

applicable currency for bidding and for payment shall rest with the Broker. The amount of the deposit shall be calculated on the purchase price in United States Dollars or other declared currency.

7. Any applicable value added tax (VAT) payable in respect of the sale of the Ship shall be payable by the Purchaser and each bid shall be deemed to be exclusive of VAT.
8. Every bid made shall constitute an offer to purchase the Ship at the amount bid and shall be subject to the provisions of these conditions and to the Order of Court.
9. The Broker shall not be obliged to accept the highest bid made. In the event of a dispute the Broker shall be entitled, but not obliged, to declare the sale to be of no force and effect and thereafter immediately, or at such time indicated by it, to re-sell the Ship on like Conditions of Sale, or it shall within its discretion be entitled to declare any other bid made to be the final and highest bid whereupon such bidder shall, in the absence of any other higher bid then being made, be deemed and be declared by the Broker to be the Purchaser.
10. ~~Every bidder shall prior to commencement of the auction identify himself or~~
herself and the party he or she represents to the Broker and furnish together with his or her address and the address of the party he or she represents,

the local address at which any notices or proceedings in terms hereof may be served.

11. Upon conclusion of the bidding, the Broker shall declare the highest bidder as the Purchaser and declare the second highest bidder and shall immediately sign the declaration which is Annexure "A1" to these Conditions of Sale.
12. The Purchaser shall, immediately on being declared the highest bidder, sign these Conditions of Sale as well as the acknowledgement which is Annexure "A2" to these Conditions of Sale and, in the event of his having purchased on behalf of a third party, shall disclose the name of his principal and shall further produce proof of his or her authority so to act.
13. In the event of his refusal or failure to sign the Conditions of Sale or the said acknowledgement or to disclose his or her principal, or of his or her inability to produce proof of his or her authority, the Broker may cancel the sale and may in its sole discretion either -
 - 13.1 declare the second highest bidder to be the Purchaser forthwith; or
 - ~~13.2 should it elect to approach the court, on such date as directed by the court re-sell the Ship without prejudice to the creditors' or any other~~

parties' rights to recover damages on behalf of the Fund or any other party entitled to such damages from the defaulting Purchaser.

14. In the event of the sale(s) being cancelled in terms of any of the provisions of clauses 13 or 29 hereof, any person or entity suffering loss or damage as a result of such cancellation(s) shall be entitled to claim from either or both the said Purchasers, as the case may be.

SECOND HIGHEST BIDDER

15. The second highest bidder shall, immediately on being declared the second highest bidder, be obliged to sign the Conditions of Sale as well as the acknowledgement which is Annexure "A3" to these Conditions of Sale and the provisions of clauses 12 and 13 shall apply mutatis mutandis as though he were the highest bidder.
16. The second highest bidder may, in the discretion of the Broker, be required (and shall forthwith on being so required, be obliged) to pay ten per cent (10%) of the final amount bid by him or her in the manner set forth in clause 22 below.
17. The amount referred to in clause 16 above shall be held by the Broker until such time as –

- 17.1 the highest bidder has paid or secured the purchase price of the Ship; or
- 17.2 the second highest bidder is declared to be the Purchaser in terms of any of the provisions of these Conditions of Sale.
18. In the event of clause 17.1 above occurring, the said deposit shall, once the purchase price is paid by the highest bidder be repaid to the second highest bidder within 2 (two) days. Any fluctuation in exchange rates shall be at the sole risk of the second highest bidder.
19. In the event of clause 17.2 above occurring, the said deposit shall be appropriated to the purchase price and the balance of the purchase price shall be paid or secured as provided for in terms of clauses 26 and 27 hereof.

CONFIRMATION OF THE SALE BY THE COURT

20. In the event that the bid accepted by the Broker as being the highest bid is not in excess of 75% of the appraised value of the Ship, the sale shall be subject to confirmation by the Court within 7 (seven) days, or as soon as possible thereafter, of the conditional acceptance of the highest bid and in ~~the event of the sale not being so confirmed the Ship shall forthwith or on~~ such date as directed by the Court, be resold subject to the terms and

conditions (excluding those relating to the service of the Order of Court) as appear in the Order of Court and these Conditions of Sale.

PAYMENT

21. The Purchaser shall pay ten per cent (10%) of the equivalent of the amount bid in United States Dollars (or such other currency as may be designated by the Broker) by 16h30 Namibian time on the second (2nd) day after the date of the auction (excluding the day of the auction), by way of a direct telegraphic transfer into the account nominated by the Registrar.
22. The method of payment is at the election and risk of the Purchaser but payment will be regarded as having been made only upon the funds reflecting in the account of the Registrar as available for immediate use, alternatively upon receipt of a SWIFT confirmation of remittance received from the Purchaser's bank.
23. The second highest bidder shall pay ten per cent (10%) of the equivalent of the purchase price in United States Dollars (or such other currency as may be designated by the Broker) by 16h30 Namibian time on the third (3rd) day after the date of the auction (excluding the day of the auction) by way of a ~~direct telegraphic transfer into the account nominated by the Registrar, the~~ provisions of paragraph 22 applying mutatis mutandis.

24. The aforesaid payment by the Purchaser or second highest bidder or both shall be made notwithstanding that the sale might be subject to confirmation by the Court. In the event of the sale not being confirmed, the deposit so made shall be refunded to the relevant party within 2 (two) days after the date of such Order. Any variation in the exchange rate shall be at the risk of the relevant party.
25. Should the deposit not have been paid upon the expiry of the two day period referred to in clause 21, the Broker may in his sole discretion stipulate that the auction be reconstituted after such period has elapsed or he may then declare the second highest bidder to be the Purchaser.
26. Subject to the provisions of clause 27 hereunder, the balance of the Purchase Price shall be paid in United States Dollars or in such other currency as may be designated by the Broker, by way of a direct telegraphic transfer into the account nominated by the Registrar, by 16h30 Namibian time on the sixth (6th) day after the date of the auction (excluding the day of the auction), or of the date of the confirmation of the sale by the Court should confirmation be necessary.
27. Notwithstanding the provisions of clause 22 and 26 above, the Broker may ~~in consultation with the Registrar and with his or her consent or with the~~ leave of this Court, accept that the balance of the Purchase Price as referred to in clause 26 above shall be paid within such further period not exceeding

5 (five) days, alternatively shall not be paid by direct transfer, but shall be secured by an irrevocable bank guarantee, bank draft or bank letter of credit in favour of the Fund, payable on demand in Windhoek and expressed in United States Dollars or such other currency as may be designated by the Broker on such terms, including interest, as the Broker in consultation with the Registrar and with his or her consent or with the leave of a Judge in Chambers may deem appropriate.

BREACH AND DECLARATION OF NEXT HIGHEST BIDDER AS PURCHASER

28. In the event of the Purchaser failing to pay the deposit in terms of clause 21 or the balance of the Purchase Price in terms of clause 26 above, or to secure such balance in terms of clause 27 above, the deposit paid in terms of clause 21 hereof shall forthwith and ipso facto be forfeited to the Fund and the Purchaser shall have no claim whatsoever in respect thereof, which forfeiture shall be without prejudice to any other party's rights in terms of clauses 14 and 31 hereof;
29. In the event of the purchase price not being paid or secured, the Broker may in its discretion cancel the sale and either –

- 29.1 forthwith make application to court on notice to the Registrar for such further directions as the court may deem appropriate, whether for the re-sale of the Ship in terms of these conditions or otherwise; or
- 29.2 declare the second highest bidder to be the Purchaser; or
- 29.3 reconstitute the auction.
30. In the event of the second highest bidder being declared to be the Purchaser in terms of 29.2 above, the ten per cent (10%) deposit paid by the second highest bidder in terms of clause 16 above will be appropriated to the purchase price and the second highest bidder shall be obliged thereafter to effect payment of the balance of the purchase price or to lodge the required security by close of business on the fifth (5th) day after such declaration, excluding the date of such declaration, as if he had been the highest bidder in terms of these conditions and the provisions of clause 26 and 27 hereof shall apply mutatis mutandis.
31. The said procedure shall be without prejudice to the right of the Broker, the creditors or any other parties to claim damages against the defaulting Purchaser, either on their own behalf or on behalf of the Fund or any other party entitled thereto.

32. Notwithstanding the foregoing, in the event of the second highest bidder being declared to be the Purchaser and the deposit not having previously been called for and paid in terms of clause 16 hereof, then the deposit required in terms of clause 21 hereof shall be payable within two (2) days by the second highest bidder upon such declaration, excluding the date of such declaration.

INTEREST ON UNPAID OR UNSECURED BALANCE OF PURCHASE PRICE

33. In any event, the purchase price unpaid or unsecured at any time shall bear interest at the rate quoted by the Standard Bank of South Africa Limited from time to time as being the deposit rate for the currency concerned, calculated from the date on which payment thereof was due to the date of the payment of the purchase price or the provision of security in respect thereof in terms of Clauses 26 and 27 hereof.
34. The said interest shall be payable and shall form part of the purchase price for all purposes in terms of these Conditions of Sale.

BUNKERS

35. ~~The Purchaser shall, together with and in addition to the payment of the~~
balance of the purchase price of the Ship in terms of clause 26 above, pay

into the account designated by the Registrar the purchase price in respect of the Bunkers-

- 35.1 the purchase price for the Bunkers shall be fixed by the Broker by reference to the prevailing price for such Bunkers at the port of Walvis Bay on the date of sale and shall be announced by the Broker (and binding on all bidders) at the auction prior to the commencement of bidding in respect of the Ship;
- 35.2 the purchase price shall be paid in United States Dollars unless another currency is declared by the Broker prior to the commencement of bidding in respect of the Ship;
- 35.3 the provisions of clauses 26, 27, 28, 33-34, 36-43, 46 and 48 shall apply mutatis mutandis.

RISK AND DELIVERY

36. The risk in and to the Ship and the Bunkers shall pass:

- 36.1 to the Purchaser, either on delivery or at 16h30 on the date on which the ~~balance of the Purchase Price is due in terms of clause 26, whichever~~ shall occur first. The passing of risk shall not be delayed notwithstanding any extension of time for payment or other indulgence afforded to the

Purchaser in terms of these conditions. The Purchaser shall be liable on the passing of risk for the payment of all costs in respect of the Ship, including but not limited to the costs of the preservation and maintenance of the Ship, all port dues and other charges and levies in respect of the Ship, the cost of maintaining the crew on board and all Bunkers consumed; or

36.2 in the event that the Purchaser does not take delivery, for whatever reason, then risk will pass to the second highest bidder either on delivery to the second highest bidder or at 16h30 on the date when the balance of the purchase price becomes due in terms of clause 26, whichever shall occur first. The passing of risk shall not be delayed notwithstanding any extension of time for payment or other indulgence afforded to the second highest bidder in terms of these Conditions. The second highest bidder shall be liable on the passing of risk for the payment of all costs in respect of the Ship as referred to in clause 36.1.

37. Subject to these conditions, delivery of the Ship and the Bunkers shall be given and the Purchaser shall be obliged to take delivery immediately on the payment of the full purchase price or on such payment being secured to the satisfaction of the Broker.

38. Receipt of delivery shall be confirmed in writing by the Purchaser forthwith upon delivery having been effected.

39. In any event and notwithstanding any dispute whatsoever and howsoever arising, the Purchaser shall be obliged to accept delivery when tendered and a refusal or delay to do so shall be a breach of the Purchaser's obligations in terms hereof, entitling but not obliging the Broker to cancel the sale and declare that the deposit be forfeit to the fund and any other amounts paid to be forfeit to the Fund without recourse by the Purchaser.
40. Ownership in and to the Ship and the Bunkers shall pass to the Purchaser only when the full purchase price is paid or secured and delivery has been tendered to the Purchaser.
41. The Purchaser shall immediately upon the passing of risk to such Purchaser insure the Ship and her machinery and equipment for the full purchase price in the name of the Purchaser and the Registrar (representing the Fund) for their respective rights and interest in the Ship and shall forthwith deliver the policy of insurance to the Broker. Such policy shall remain in force for as long as the balance of the purchase price or any other charges remain unpaid or unsecured. In the event of the Purchaser failing to insure the Ship, the Broker may in its discretion insure the Ship on behalf of the Fund and the Purchaser will be obliged to pay the costs of and incidental to taking out ~~the said insurance. The Broker shall not be obliged to take out such~~ insurance.

GENERAL

42. In the event of the Broker making any error or mistake in the conduct of the auction or the conclusion of the sale, such error or mistake shall not be binding on the Broker or the Registrar, any of whom shall be entitled to require the Ship to be re-sold on like terms. No representation made by the Broker not in accordance with these Conditions of Sale or the said Order of Court shall be binding on the Broker or the Registrar of the Court.
43. Subject to clause 7 above, the Purchaser shall be liable to make payment of any value added tax or other tax or duty payable to the Namibian authorities or to any other authority and, in the event of the Ship or Bunkers being sold to a Namibian interest, shall be responsible for obtaining any import permit or other authority required. It shall be the Purchaser's duty to provide proof of compliance with these provisions when required to do so by the Registrar or the Broker.
44. Bidding shall be in United States Dollars unless any other currency is declared by the Broker prior to the Ship being offered for sale in terms hereof. The deposit and the balance of the purchase price shall be payable at the discretion of the Broker, free of exchange and any bank or other charges of whatsoever nature, in United States Dollars or in the currency directed by the Broker at the prevailing United States Dollars exchange rate for such currency as fixed by the Broker.

45. It shall be the Purchaser's obligation to obtain, and he shall pay all costs necessary for, the transfer of the registration of the Ship into the name of the Purchaser and, if required, the deletion of the Ship from her current registry and effecting registration thereof in the Purchaser's name in any registry and all other expenses or fees in connection with the production of a bill of sale and for documentation in relation to the transfer of the Ship to the Purchaser.
46. Neither the Registrar, the Broker nor any other participating creditor of or to the Fund nor any of their servants, attorneys, advocates or agents shall be liable for any delays and/or inability (or any consequences arising therefrom) in obtaining the deletion of the Ship from her current registry or the transfer or re-registration of the Ship howsoever caused.
47. The Purchaser shall be entitled to receive all such documents as the Broker, the Sheriff or the Registrar are able to furnish as may be required by the Purchaser in order to effect transfer of the Ship into the Purchaser's name; which documents shall only be delivered upon full payment of the purchase price and all other outstanding amounts. The sale shall not be invalidated by the failure or inability of the Registrar or the Broker to deliver any of the aforesaid documents or in the event of any of the documents so provided, or quoted from, proving to be illegally obtained.

48. For the purposes of these conditions the Purchaser and any other bidder are deemed by having made a bid to have submitted to the jurisdiction of the High Court of Namibia (Main Division) Windhoek (in the exercise of its Admiralty Jurisdiction) in respect of any action arising in any manner whatsoever for any amount, including but not limited to recovery of any damages or the balance of the purchase price or other charges, or otherwise.
49. Any sale which comes into effect in terms hereof shall be subject to Namibian law.

ANNEXURE "A1"

SIGNATURE OF THE BROKER

The Ship, having been put for sale by public auction in accordance with the terms and conditions herein contained at _____ on the _____ day of _____ was sold

to: _____

for the sum of USD _____

plus USD _____ for the Bunkers on board.

DATED at _____ on this _____ day of _____

COURT APPOINTED BROKER

Per:

being the person appointed by the Broker to conduct the auction sale on behalf of the Broker, being:-

(i) name:

(ii) address:

(iii) name of person conducting the auction sale:

ANNEXURE "A2"

SIGNATURE OF THE HIGHEST BIDDER

I/We, the undersigned _____
represented herein by _____

in his/her capacity as _____
of _____

hereby acknowledge that the Ship was today, _____ sold
to me/us for the sum of USDD _____
plus USDD _____ for the Bunkers on board,
and bind myself/ourselves, as purchaser/s of the Ship to pay the purchase price
thereof, and to perform all and singular of the terms and conditions set out herein.

DATED at _____ on this _____ day of _____

(HIGHEST BIDDER)

ANNEXURE "A3"

SIGNATURE OF THE SECOND HIGHEST BIDDER

I/We, the undersigned _____

represented herein by _____

in his/her capacity as _____

of _____

having today _____ made the second highest bid at the auction of the above Ship in the amount of USD _____ plus USD _____ for the Bunkers on board signed these Conditions in terms of clause 15 thereof and, in the event that I/we am/are declared to be the Purchaser/s of the Ship in terms of any of the provisions of these Conditions, bind myself/ourselves to perform same in all respects as Purchaser/s of the Ship, and I/we further bind myself/ourselves as the second highest bidder to perform such of these Conditions as apply to me/us in that capacity.

DATED at _____ on this _____ day of _____

(SECOND HIGHEST BIDDER)