



## BIMCO 2018 年燃油供应合同

### 解释性说明

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**BIMCO BUNKER TERMS 2018**  
**BIMCO 2018 年燃油供应合同**

**Explanatory Notes**  
**解释性说明**

The following notes are intended to provide an explanation of the reasoning behind the clauses of the BIMCO Bunker Terms 2018 that are not self-explanatory.

以下术语解释旨在为《BIMCO 2018 年燃油供应合同》中需要解释的条款给予诠释。

**Clause 1 – Definitions**  
**第 1 条 定义**

The Definitions section sets out the contractual meaning of important terms that appear in several places in the contract.

定义部分明确了在本合同中多处出现的重要术语的合同释义。

“Banking Day” – This definition establishes what constitutes a banking day for the purposes of the agreement and distinguishes between payments made in US dollars which require New York banks to be open, and payments made in other currencies, which do not.

“银行日” – 该定义就本合同目的明确了银行日的构成要件；且辨明，支付美元要求纽约的银行处于营业状态，而支付其他货币则无此要求。

“Confirmation Note” – A signed Confirmation Note (sometimes referred to as a confirmation order in practice) should, ideally, be used for every bunker supply. It should list the specific terms agreed and make reference to the underlying standard terms and conditions (BIMCO Bunker Terms 2018). In the absence of a formal Note, this definition will encompass a seller's written confirmation of the final binding main terms. The BIMCO Bunker Terms do not include a standard confirmation note as parties generally prefer to use their own confirmation notes rather than a standard version.

“确认书” – 一份经签署的确认书（在实践中有时称为“确认单”）最好应适用于每一笔燃油供应。该文件应列明当事人达成共识的详细条款，并且将《BIMCO 2018 年燃油供应合同》中的标准条款及条件为参考。若无正式确认书，该定义则包含卖方对主要条款作出有最终约束力的书面确认。由于当事方通常倾向于使用自己的确认书，因此《BIMCO 2018 年燃油供应合同》不包含此类标准确认书。

“Contract” – The whole agreement will encompass the general terms and conditions in the BIMCO Bunker Terms 2018, the Confirmation Note, and the Election Sheet if used. Each delivery should be considered to be a separate agreement.

“合同” – 一份完整的协议包括：《BIMCO 2018 年燃油供应合同》中的通用条款和条件、确认书、选择权清单（如经使用）。每一次燃油交付应当视为一个单独协议。

“Sellers” – This definition covers not just the sale of bunker supplies but also the arrangement for actual delivery to the ship, which may in many cases may be carried out by a third party physical supplier.

“卖方” – 考虑到在实务中，往往由第三方实际安排燃油交付给船舶，该定义不仅包含燃油销售商，也包括此类第三方。

## **Clause 2 – Specifications/Grades/Quality**

### **第 2 条 规格/等级/质量**

It is the buyers' responsibility to nominate the specifications and grades of bunkers that are suitable for their ship. It is not the task of the sellers to provide fuels that are "fit for use by the vessel" as it is not reasonable to expect suppliers to be fully conversant with every main engine design to be able to make such an informed decision.

买方有责任指定适合其船舶的燃油规格和等级。提供“适合船舶”的燃油并非卖方的任务，因为期望燃油供应商能熟悉每一款主机设计从而作出此种知情决策是不合理的。

## **Clause 3 – Quantities/Measurements**

### **第 3 条 数量/测量**

Subclause (a) takes account of the various methods used around the world to measure the quantity of bunkers delivered to the ship.

第 3(a)款考虑了全世界各地使用不同方法来测量交付至船舶的燃油数量。

Subclause (b) ensures that the buyers have the possibility to be present and to access gauges when quantity measurements are taken by the sellers. It is intended that the sellers should make all of the tanks on the bunker barge or barges available for inspection.

第 3(b)款确保买方可以在卖方测量数量时到场检查。卖方应当保证加油驳船上所有油罐处于待检状态。

## **Clause 4 - Sampling**

### **第 4 条 采样**

This clause has been carefully drafted to reflect current practices and establish a fair balance of obligations and responsibilities.

第 4 条经过精心起草以反映当下实践，并建立义务和责任间的良好平衡。

One of the main issues is the location of the sampling point – at the bunker barge's manifold or at the vessel's bunker manifold. Most buyers prefer to have samples taken at the ship's manifold. However, practical factors may determine that the sampling point should be located elsewhere, such as accessibility to the receiving vessel from the bunker barge. To address these practical considerations and to give the parties a degree of flexibility in the location of the sampling point, the parties can agree on the location on a case by case basis, provided it's closest to the ship's bunker manifold and otherwise in accordance with the procedures set out in the IMO Resolution MEPC. 182(59) Guidelines for the Sampling of Fuel Oil for Determination of Compliance with MARPOL 73/78 Annex VI. What is of perhaps even greater importance than the location of the sampling point is that the sampling is properly witnessed by the ship's crew.

其中一个主要问题是采样的地点——在加油驳船的歧管还是船舶的燃油歧管。多数买家倾向于在船舶的燃油歧管采样。然而，实际因素可能影响采样地点的选择，比如接受燃油的船舶无法靠近加油驳船。为了解决这些实际问题并给予当事人在一定程度上对采样地点的弹性选择，只要离船舶的燃油歧管最近，当事人可视情况协商采样地点，否则应当符合 IMO 海上环境保护委员决议中的程序，即符合经修订的 MARPOL 73/78 附则 VI 的燃油采样导则。比采样地点更重要的是，采样过程应由船员见证。

Because in some parts of the world, notably Singapore, mandatory local rules and regulations for bunkering operations apply, the Terms clarify that these will take precedence over the provisions of subclause (a).

由于在全球的一些地区，如新加坡，需要适用当地针对燃油加注的强制规则和规范，条文阐明了当地的规则和规范优于第 4(a)款的适用。

The number of samples taken also varies around the world, so the Terms set a minimum number of 5 samples to be collected. Subclause (b) deals with how they should be handled correctly and subclause (c) describes by whom the different samples should be retained and for how long. Two samples should be retained by the sellers for the minimum period stated, as these are the samples most likely to be used for checking purposes, and the other three, one of which should be the MARPOL sample, are to be retained on board the ship.

采样的数量在全球各地不同，因此本条款规定应最少采集 5 个样本。第 4(b)款涉及如何正确取样，而第 4(c)款阐述不同的样本应当由谁保存及保存期间。卖方应当保存 2 个样品，且保存条文中陈述的最短期间，因为这些样品最有可能被用于检查；另外 3 个样品是 MARPOL 样品，应当保存在船上。

## **Clause 5 – Delivery**

### **第 5 条 交付**

Subclause 5(a) – Contains an obligation on the sellers to deliver and the buyers to take delivery of the marine fuels within the period stated in the confirmation note. Delivery can take place at any time (which includes holidays, statutory or otherwise), but is subject to any restrictions imposed by authorities at the port or place of delivery.

第 5(a)款包含卖方的交货义务和买方在确认书规定的期间内接收船舶燃油的义务。卖方可以在任何时间交货（包括法定或其他节假日），但应符合港口当局或交货地的规定。

The buyers are required to give notices to the sellers of the vessel's expected time of arrival as set out in subclause 5(b), ending with a 24-hour definite notice of arrival providing the time and location where delivery is requested. The sellers' written confirmation of the delivery time will constitute the "Confirmed Delivery Time" for the purpose of calculating when delivery must be commenced or in respect of delay claims under subclause 9(c)(i) (Claims – Delay).

买方应当通知卖方船舶的预计到达时间（该内容在第 5(b)款中规定），但提前 24 小时告知卖方确切的交货时间和地点。卖方关于交货时间的书面确认构成“确认交付时间”，以计算交付何时开始，或计算涉及第 9(c)(i)款下迟延交货的索赔。

Subclause 5(c) and 5(d) sets out when the sellers must commence delivery depending on whether the vessel is ready or not to receive fuel at the agreed location and within the delivery window as stated in the Confirmation Note. When the vessel is indeed ready, the sellers are given an additional six hours to commence delivery, and when the vessel is not ready the sellers have an additional 12 hours to commence delivery, both counting from the Confirmed Delivery time or the time of Actual Readiness, whichever is later.

第 5(c)款和第 5(d)款明确了卖方何时必须开始交付取决于船舶是否已经在协商的地点、确认书规定的交货期间内准备就绪。如果船舶已经准备就绪，卖方有额外 6 个小时开始交付；如果船舶没有就绪，卖方有额外 12 个小时开始交付，自确认交货时间或实际就绪时间开始计算，以时间较后的为准。

Subclause 5 (e) states that when no Confirmed Delivery Time has been agreed delivery must commence within 12 hours from the time the vessel is ready to receive fuels at the agreed delivery location. The reasoning is that if the parties have not agreed on a Confirmed Delivery Time, then sellers should not be obliged to sit around and wait for the buyers, i.e. the sellers do not have to be there and be ready once the buyers do show up.

第 5(e)款规定当双方没有协商确认交付时间时，交付必须自船舶在交付地点准备就绪后的 12 个小时内开始。因为未约定时间的情况下，卖方没有义务等待买方，也就是一旦买方到场时，卖方无需在场且就绪。

Responsibility for compliance with local regulations in respect of deliveries rests with the sellers who, if local regulations permit, will also assist the buyers in connecting and disconnecting hoses.

遵守当地关于交付的规范是卖方责任，如果当地规范允许，卖方也将协助买方连接和断开加油管。

## **Clause 6 – Documentation**

## 第 6 条 证明文件

A bunker pre-delivery form or similar document must be presented to the Master or its representative (in practice usually the Chief Engineer) for acknowledgement and should contain values for the various analytical parameters required by ISO 13739. The sellers are required only to sign for values for viscosity, density, sulphur content, flash point and delivery temperature, and, if available, similar information for vanadium, ash content, water content and pour point. Wording is included to provide for where local mandatory rules apply, which will then override subclause 6(a).

燃油预交付表格或类似文件必须提交船长或其代理人（实践中通常是轮机长）以供其知悉，并且该表格应当包含 ISO 13739 所要求的各种分析参数值。卖方只需提供黏度、密度、含硫量、燃点、交付温度及含钒量、含灰量、含水量、倾流点（如有相应数值）。若存在当地强制性规范，则该规范优于分条款 6(a) 适用。

The Bunker Delivery Note (BDN), which should be signed by the Master or authorised representative after completion of delivery of the bunkers, should contain the information listed in subclause 6(b) which is warranted by the sellers, for example, delivered quantity and delivery temperature.

燃油签收单 (BDN) 应在加油完成后由船长或其有权代理人签字，签收单内应包含第 6(b) 款下卖方保证的信息，如交付数量及交付温度。

The Master may make appropriate remarks on the BDN if not satisfied with the sampling, quantity or other matters concerning the bunkers or the delivery. These remarks should be made on completion of delivery so that the sellers can start to investigate the claim as soon as possible. The remarks should either be stated in the BDN or in a separate letter of protest, if remarks in the BDN are not permitted. To reduce the likelihood of disputes about the receipt of such remarks, the sellers' representative must acknowledge them in writing. It should be noted that there is a different time frame in respect of quality claims in subclause 9(b)(i) stating that quality claims must be notified promptly after the circumstances giving rise to such claim have been discovered (which is unlikely to be at the time of delivery because of the need for analysis of samples).

如船长对交付的燃油样品、数量、交付形式或其他事宜不满意，可以在燃油签收单上作适当批注。该批注应当在交货结束时作出，以便卖方尽快开始调查情况。该批注应当记载在燃油签收单上，如果燃油签收单中的批注未被许可，应当记载于附加声明函件中。为了减少收到该批注时可能发生的纠纷，卖方的代理人应当书面确认收到该批注。应当注意，第 9(b)(i) 款中对提出质量索赔的时间规定有所不同，一经发现应立即提出（因为分析样品需要时间，往往交付时不太可能发现质量问题）。

## Clause 7 – Price

### 第 7 条 价格

In this revision, wording has been included to provide that the price of the marine fuels is only valid if the vessel arrives within the defined Delivery Period, and that the sellers may amend the price in accordance with the prevailing market price if delivery is to take place outside this period.

最新的版本包含了：只有在船舶在约定交付期间到达时，船舶燃油价格有效；如果船舶在约定交付期间外到达，卖方可以依据现行市场价格更改价格。

Any additional charges incurred by the sellers but which the buyers should pay for should be listed in the sellers' quotation and Confirmation Note to avoid unpleasant surprises after delivery. If charges such as overtime cannot be specified as a lump sum then they should, at least, be included as a rate per hour.

任何由于卖方造成但应当由买方负担的额外费用，应当在卖方报价单及确认书中列明，以避免买方在交货后才知悉。诸如像加班费等不能包干的费用，应至少列明按小时为单位的的价格。

## **Clause 8 – Payment**

### **第 8 条 付款**

There is a 30-day time limit within which payment should be made unless another limit has been agreed in the Confirmation Note. The basic principle is that payments should be made on or before the due date. This may be amended by the parties on a case by case basis if they so wish. Any additional payment or refund should be made within seven days from delivery.

付款有 30 天的付款期限，除非在确认书中约定了其他期限。在到期日当天或提前付款是基本原则，当事人如有需要可视情况修改。任何额外付款或退款应当在交付后 7 天内完成。

Subclauses 8(b) to (h) set out the terms for payment, for example, that buyers do not have the right to make deductions, and that payment is deemed earned when it has been credited to the sellers' bank account and that delay in payment or refund will entitle the other party to interest.

第 8(b)款至第 8(h)款明确了付款条款。如：买方没有权利扣减款项，款项一旦划入卖方银行账户即视为卖方已赚取；延迟付款或退款一方应当支付利息。

A new subclause 8(e) has been included to address payment priority. This will be helpful in default scenarios in terms of how interest should be calculated and as to what has been paid or not. Sellers generally prefer to allocate payment to invoices last because outstanding invoices may be used for ship arrests. Interest usually rank before invoices since it is harder to claim. The received payment should be allocated to the various debts in the listed order.

第 8(e)款是新条款，以解决优先支付问题。该条款对在默认情况下如何计算利息及何种款项已付、何种未付的问题上有帮助。对于收到的款项，卖方通常倾向于最后才充抵发票本身的金额，因为未付发票可使卖方申请扣船。由于利息更难索赔，利息的支付通常优先于发票款项的支付。收到的支付款项应当根据已列出的债务排序分配。

Provision has been made for credit downgrade and cross accelerating in the new subclause 8(h). This will address a situation where the buyers' creditworthiness becomes a problem. The sellers can then call for payments immediately instead of waiting for the buyers becoming bankrupt. Cross accelerating payments means that where one invoice is not paid, the sellers can demand payment of all other invoices immediately as well.

第 8(h)款对信用下滑和交叉加速到期作出了规定，解决了买方失信的情况。此时，卖方有权在买方破产清算前要求立即支付。交叉加速到期意味着，当一张发票未得以支付时，卖方有权要求买方立即支付其他发票。

## **Clause 9 – Claims**

### **第 9 条 索赔**

This clause consolidates all the claims-related issues in the BIMCO Bunker Terms into a single provision that also covers time bar provisions. Given the importance of properly dealing with claims under a bunker contract, this clause warrants a detailed explanation.

该条款囊括了《BIMCO 2018 年燃油供应合同》中所有与索赔相关的问题，也包含时效规定。鉴于妥善处理燃油合同下的索赔至关重要，该条款附带详细解释。

Subclause (a)(i) deals with claims about the quantity of bunkers delivered that must be noted at the time of delivery. The first stage of the claim process is to make a remark in the BDN or in a separate letter of protest. The second stage requires the buyers to present their claim to the sellers within 14 days from the date of delivery. The parties can agree to a different number of days in the Election Sheet. The buyers cannot bring any other claims than the initial claims that have identified in the BDN or in the letter of protest. The 14 days is given to allow the buyers sufficient time to get their documentation in order and is considered a reasonable time in which sellers would still be able to verify delivered quantities. After the two weeks' period, such claims will be considered waived by the buyers and therefore time barred. However, it is important to note that if the buyers are unable for whatever reason to provide all the documentation in support of their claim within 14 days, it will not be time barred provided they have submitted at least some documentation at that point.

第 9(a)(i)款规定了必须在交付时提出的燃油数量方面的索赔。提出索赔程序的第一阶段，是在燃油签收单或附加声明中作出批注。第二阶段要求买方在交付起 14 天内向卖方提出索赔，当事人可以在选择权清单中协商提出索赔的期间。买方不得提出除了最初在燃油签收单或附加声明中作出的批注以外的索赔。14 天的索赔期间是为了使买方有足够的时间整理证明文件，也使卖方能够核实交付燃油的数量。该期间过后，视为买方放弃索赔，从而时效届满。然而，值得注意的是，如果买方出于任何原因无法在 14 天内提供所有证明文件以佐证其索赔，但期间内提供了部分证明文件，时效不受影响。

Under subclauses (a)(ii)-(iii) the sellers and the buyers respectively have the right to charge each other for proven additional expenses. The sellers will have this right where the buyers have failed to take delivery of the full quantity of the ordered bunkers, and the buyers will have the right

when the sellers fail to deliver the agreed quantity (unless the Master has put in writing that a lesser quantity is to be taken). The type of costs that are envisaged are, for example, if buyers receive less bunkers than ordered they may have to call at another port to top-up with bunkers, which will mean extra costs. From the sellers' perspective, additional costs may be incurred if the buyers do not take full delivery of bunkers. As bunkers are often customs cleared for export, the sellers will have to wait for an opportunity to sell and deliver the fuel to another client as they cannot easily be "re-imported".

第 9(a)(ii)至(iii)款下，买卖双方均有权要求对方支付已证实的额外费用。在买方未能接收预定的全部燃油时，卖方有此权利；在卖方未能交付约定的燃油数量时，买方有此权利（除非船长以书面形式通知了只接收更少数量的燃料）。该种额外费用的假定情况为：买方接收了比预定量少的燃油，从而需要停靠在其他港口补充，这将产生额外费用。从卖方的立场看，在买方没有接收全部燃油的情况下可能产生额外费用，如燃油在出口时已完成清关，故而无法“再进口”，卖方只得择机另售。

In the latest revision, an operational tolerance of +/- 2 per cent has been inserted in relation to the delivered quantity. This reflects practice as the fuel will, to a higher or lesser degree, stick to the walls of the barge tanks, depending on the type of product.

最新的版本增设了交付数量允许 2%上下浮动。这反映了在实践中的情况：由于产品的不同，燃油附着在驳船油罐壁上的程度也不同。

Subclause (b)(i) gives the buyers 30 days from the date of delivery to give notice to the sellers of claims relating to the quality or specification of the bunkers. The longer time bar for these type of claims is due to the fact that samples will have to be tested by laboratories, which can be a time-consuming process involving shipping samples to a remote location. The parties might prefer to negotiate the number of days on a case by case basis. They can do so and state the different time bar in the Election Sheet. Influencing factors on the suppliers' preferred number of days can be, for example, if they are acting as traders or physical suppliers.

第 9(b)(i)款给予买方在交货日起 30 天内通知卖方燃油质量和规格索赔期间。规定该类索赔更长的期间是考虑到，样品需要从采样地点远程运输至实验室并进行检测，往往耗时较长。当事方可能倾向于根据实际情况协商该期间，则需要在选择权清单中另行陈述。影响供应商选择该期间的因素各异，例如贸易商或实际供油商的考量就会不同。

The procedure for quality or specification claims is set out in subclause 9(b)(ii). The buyers have the option to request a full analysis showing all fingerprint parameters. The reasoning behind the buyers' option to request a full analysis is that it is generally cheaper to request a full analysis rather than to test only the parameters that are allegedly off-spec. If such option is exercised, the analysis should always be made in accordance with the specification set out in the Confirmation Note and ISO 4259. If there is a conflict between what is stated in the Confirmation Note and this clause, the Confirmation Note will prevail, see subclause 26(d) (Entire Agreement and Priority of Terms). A full analysis may not be possible in all parts of the world, so the parties are free to agree

the extent of the analysis. The party whose claim or case is unfounded will have to pay for the analysis.

第 9(b)(ii)款规定了质量或规格的索赔程序。买方有权要求包含全部指纹参数的完整检测报告。买方有权作此要求的原因在于，制作一份完整指纹参数检测报告通常比只要求检测其不合格项更便宜。如果执行该权利，检测应当与确认书及 ISO 4259 中的标准一致。根据第 26(d)款（完整协议及条款优先适用），确认书与 ISO 4259 的标准不一致，确认书的规定优先。当完整检测无法在全球各地完成，当事方可以协商检测的范围。经检测证实，索赔或案件不成立时，索赔方承担检测费用。

If a party suffers a loss because of a delay, they can claim compensation from the other party for those losses. From the buyers' side, the delay may spring from their failure to observe the notices requirements; failure to be ready to receive fuels at the agreed location within the Delivery Window; or failure to receive the bunkers at the previously advised pumping rate and pressure. The sellers, on the other hand, may cause a delay by failing to commence bunker delivery as agreed or their inability to deliver bunkers at the agreed minimum pumping rate and pressure.

如果当事方由于延迟承担损失，其可向对方索赔。对买方来说，可能的延迟情形包括：未遵守提前通知卖方的要求、未能在协商地点及交付期间准备就绪、未能达到建议泵送率及泵压。对卖方来说，可能的延迟情形包括：未能按协商时间开始交付、未能按协商的最小泵送率及泵压交付。

Subclause (d) contains an overall time bar of 12 months from the date of delivery or the date when delivery should have commenced. To break the time bar, arbitration proceedings have to be initiated in accordance with the dispute resolution provisions under clause 24.

第 9(d)款包含的 12 个月总时效从交付或应当开始交付当天起算。如根据第 24 条的争议解决规定提起仲裁程序，该时效中止。

#### **Clause 10 – Risk/Title** **第 10 条 风险/所有权**

In the latest revision, this clause has been made into two options. Subclause 10(a) provides for an option where both risk and title in the marine fuels pass to the buyers once the fuels have passed the sellers' flange. Under the option contained in subclause 10(b), the risk in the marine fuels passes to the buyers when the bunkers have passed the sellers' flange. However, title only passes upon payment, not only for the fuel, but for all sums due to the sellers. Such other sums can be interest, debts or other outstanding costs owed to the sellers. So, under subclause 10(b), until payment is made, the sellers retain full title to the bunkers and the buyers are in possession of the bunkers as a "bailee" only (a legal obligation to look after something owned by another, while in your possession). The agreed alternative should be stated in the election sheet.

在最新版本中，此条款的选择一分为二。第 10(a)款规定，即一旦船舶燃油通过卖方的法兰，其风险和所有权就转移给买方。而第 10(b)款规定，当燃油通过卖方的法兰时，其风险转移

给买方。然而，燃油所有权只在买方付清包括燃油费用在内的所有款项时才转移。这类其他款项可以是利息、债务或欠卖方的其他未付费用。因此，根据第 10(b)款的规定，在付款之前，卖方持有对燃油的全部所有权，买方仅作为“受托人”占有燃油（在占有时，照看他人所有的东西的法律义务）。约定的备选方案应在选择权清单中说明。

Subclause 10(c) includes an express permission to consume the fuel for propulsion of the ship.

第 10(c)款明确允许买方在信用购买的情况下，其有权（在付款及取得燃油所有权之前）使用燃油。

## **Clause 12 – Sanctions Compliance Clause** **第 12 条 制裁合规条款**

The affect of sanctions on international trade applies equally to the purchase of bunkers and it is essential that parties are fully aware of the importance of exercising due diligence. The purpose of this clause is to protect parties against dealings with persons or undertakings prohibited from engaging in trade, commerce or financial transactions. P&I insurance cover will be prejudiced if a party is dealing with sanctioned parties.

制裁对国际贸易的影响同样适用于燃油购买，因此双方必须充分认识到尽职调查的重要性。此条目的是保护当事方不与禁止从事贸易、商业或金融交易的个人或企业进行交易。如果一方与受制裁方交易，保赔保险范围将因此受损。

While sanctions clauses of this type are now a common feature of most maritime contracts, this provision has been extended to address the issue of "source of origin" in respect of bunkers which may have come from a sanctioned country or is a blend of products which include bunkers from a country subject to relevant sanctions.

尽管此类制裁条款现在已成为大多数海运合同的共同特点，但这项规定范围已被扩大以处理燃油的“来源”问题，即燃油可能来自受制裁国家，或者混合燃油中包括来自受到制裁国家的燃料。

In the latest revision, reference to the United Kingdom has been included with the pending departure from the EU in mind. Specific mention of the US Department of the Treasury Office of Foreign Asset Control (“OFAC”) has also been made. The clause now provides for the main parties/bodies in the world in respect of sanctions.

在最新的修订版中，英国的相关内容已经包含在即将脱离欧盟的内容中。还特别提到了美国财政部外国资产管制办公室（“OFAC”）。该条款现在规定了世界上有关制裁的主要当事方/机构。

It should be noted that the sanctions clause can be opted out from in the Election Sheet.

应该指出的是，双方可以在选择权清单移除制裁条款。

### **Clause 13 – Anti-Corruption Clause**

#### **第 13 条 反贪污条款**

This clause is based on BIMCO’s Anti-Corruption Clause for Charter Parties and amended to fit a bunker purchase context. The clause focuses on encouraging collaboration between the parties and how to deal with corruption in practice.

此条款以 BIMCO 租船合同中的反贪污条款为基础，并进行了修订以适应燃油购买情况。该条款的重点是鼓励各方合作，以及如何在实践中应对贪污问题。

Subclause 13(a)(i) requires the parties to comply with “all applicable anti-corruption legislation”. Since the clause is designed for worldwide trading and is not linked to any specific legal system, this provision aims to encompass any laws or regulations to which the parties are subject under their own national legislation or legislation in the country or jurisdiction where they are operating.

第 13(a)(i)款要求双方遵守“所有适用的反贪污立法”。由于该条款是为全球贸易而设计的，并未联系到任何具体的法律制度，因此项规定旨在涵盖当事方根据其本国、经营所在国或管辖区立法而须遵守的任何法律或条例。

Each party must have in place procedures to ensure that their commercial dealings with counter-parties are designed to prevent any offence being committed by their employees or agents. This is likely to be based on a company’s internal anti-corruption rules and guidance published by industry organisations. While there is no expectation that such procedures will be effective in every case, a certain and high threshold is set and parties should ensure they have robust systems in place for making appropriate background checks and undertaking due diligence in the appointment of agents and other third parties. Company procedures must also set, and enforce, high standards of conduct.

各方必须具备适当的程序，以确保其与对方的商业交易是为防止其雇员或代理人犯下任何罪行。这可能是基于公司内部的反贪污规定和行业组织发布的指导方针。虽然并不期望这种程序在每种情况下都有效，但规定了一定的高门槛，双方应确保建立健全的制度，对代理人和其他第三方的选任进行适当的背景调查和尽职调查。公司程序还必须制定和执行高标准的行为准则。

Subclause 13(a)(ii) makes an express provision for record keeping that reflects customary company practice and statutory obligations for keeping and maintaining accounting information. Proper recording of any payments made or gifts provided, along with the circumstances in which they were made or provided, is an essential part of a company’s procedures with regards to unwarranted facilitation payments.

第 13(a)(ii)款对反映公司惯例的记录保存以及保存和维护会计信息的法定义务作出了明确规定。妥善记录支付的任何款项或提供的礼品及其支付或提供情况，是公司处理无端“疏通费”的重要程序之一。

Subclause 13(b) is triggered when a request is received by either party for payment or goods or other items of value (defined in the clause as a “Demand”) from any official, contractor or sub-contractor either engaged by either party or acting on behalf of any third party (such as port or customs officers). If the Demand is viewed as an illegal payment, the party receiving the demand must notify the other party and the two parties are to cooperate in taking reasonable steps to resist the Demand.

第 13(b)款适用于当一方从任何一方雇佣的或代表任何第三方行事的任何官员、承包商或分包商（如港口或海关官员）处收到付款或货物或其他有价物品（在本条中定义为“要求”）的请求。如果要求被视为非法付款，收到要求的一方必须通知另一方，双方应合作采取合理抵制措施。

Subclause 13(c) provides mutual indemnities whereby a party that has breached anticorruption legislation to which it is subject, must indemnify the other party against any loss or damage suffered as a result by the latter.

第 13(c)款规定了相互赔偿，其中一方违反应当遵守的反贪污立法，必须赔偿另一方因此遭受的任何损失或损害。

Subclause 13(d) sets out the criteria for termination. Termination can be invoked either by either party but only where the other party has breached applicable legislation in connection with the contract; and that breach has put the other, non-breaching, party in breach of anti-corruption legislation to which it is subject.

第 13(d)款规定了解约标准。任何一方均可援引解约条款，但仅限于另一方违反与合同有关的适用法律的情况；而这一违约行为使另一方，即非违约方，违反了应当遵守的反贪污立法。

It should be noted that:

应注意的是：

- use of the termination provision is optional and any breach committed by one party can be disregarded by the other party;
- the commission of a breach is limited to the actions of those directly employed by the breaching party and not those of agents or contractors engaged to act on their behalf;
- it is expressly provided that termination must be exercised “without delay”. This is to prevent a party using a prior incident as an excuse to bring the contract to an end possibly weeks or months later. The interpretation of “undue delay” will depend on case sensitive facts and circumstances; and
- termination is expressly “without prejudice” to any other rights under the contract.

- 援引解约条款是非强制的，一方的任何违约行为都可以被另一方忽略；
- 违约行为仅限于违约方直接雇用的人员的行为，而不包括代表其行事的代理人或承包商的行为；
- 明确规定解约必须“毫不迟延地”行使。这是为了防止一方利用先前的事件作为借口，可能在数周或数月后才解约。对“不当延误”的解释将取决于事件的敏感程度和情况；以及
- 解约明确表示“不损害”本合同项下的任何其他权利。

Subclause 13(e) provides a self-standing regime warranting that the contract has not been procured by corrupt means. If breached, the innocent party may terminate the contract.

第 13(e)款规定了一个独立的制度，保证合同不由贪污手段促成。如果违约，无过错方可以解约。

#### **Clause 14 – Indemnity**

##### **第 14 条 赔偿**

This indemnity is strictly limited to damages directly caused by compliance with directions given by one party to the other; excluding any other causes.

此赔偿严格限于因一方遵守另一方的指示而直接造成的损害；排除任何其他原因。

#### **Clause 15 – Liability**

##### **第 15 条 责任**

Subclause 15(a) is an exclusion of losses clause where subclause 15(a)(i) excludes certain specified losses that may be direct or indirect, and subclause 15(a)(ii) excludes indirect or consequential losses. This means that under the BIMCO Bunker Terms 2018, the buyers can claim for all direct losses, except those expressly excluded under 15(a)(i). The sellers on the other hand are protected by the cap on liability.

第 15(a)款是一项损失除外条款，其中第 15(a)(i)款排除了某些可能是直接或间接的特定损失，第 15(a)(ii)款排除了间接或随之发生的损失。这意味着，根据《BIMCO 2018 年燃油供应合同》，买方可以对所有直接损失提出索赔，但第 15(a)(i)款明确排除的损失除外。另一方面，卖方受到责任上限的保护。

Subclause 15(b) – In line with the majority of bunker contracts in the market, an overall limit of liability has been included in the BIMCO Bunker Terms 2018. The limit has been set at the invoice value of the marine fuels or USD 500 000, whichever is the higher. The parties can agree to a higher limit in the Election Sheet, but the limit in this clause will serve as the default position.

第 15(b)款 — 根据市场上大多数燃油合同, 《BIMCO 2018 年燃油供应合同》中列明了整体责任限额, 按燃油的发票金额或 500,000 美元确定, 以较高者为准。双方可以在选择权清单中商定一个更高的限额, 但本条中的限额将作为默认金额。

#### **Clause 16 – Force Majeure**

##### **第 16 条 不可抗力**

This clause is based on the ICC (International Chamber of Commerce) model Force Majeure Clause 2003 which BIMCO has used to create a “standard” force majeure provision for its contracts. A “force majeure” event is a major or catastrophic event beyond the control of either party for which neither is responsible, but which prevents the party seeking to rely on the clause from fulfilling its contractual obligations. The event must not have been reasonably foreseen or possible to guard against. The clause requires the parties affected by a “force majeure” event to make reasonable efforts to minimise the effect of the event. Combined with the provisions of clause 17(e) (Termination), “force majeure” can give rise to a right of termination by either party should the event continue for a period exceeding 10 consecutive days from the date of the event or notification to the other party.

此条款是 BIMCO 以国际商会 (ICC) 2003 年不可抗力条款为模板, 为其合同制定了“标准的”不可抗力条款。“不可抗力”事件是超出任何一方控制范围的重大或灾难性事件, 双方均对此不负责, 且阻碍了一方依照条款履行其合同义务。该事件必须无法合理预见或避免。该条款要求受“不可抗力”事件影响的双方作出合理努力, 尽量止损。结合第 17(e)款 (解约) 的规定, 如果事件自发生之日或通知另一方之日起超过连续 10 天, “不可抗力”条款给予任何一方解约的权利。

#### **Clause 17 – Termination**

##### **第 17 条 解约**

Fundamental to any contract of this nature is the right of the parties to terminate the agreement under certain specified circumstances. For ready-reference, all of the BIMCO Bunker Terms' termination provisions are consolidated into a single clause. The termination rights are mutual and clearly set out in the text. In the latest revision, the right to terminate if the other party is in material breach has been added.

第 17 条规定了此类合同的重要一点, 即满足某些特定情况当事双方的解约权利。为方便参考, 《BIMCO 2018 年燃油供应合同》的所有解约条款合并为一个条款。解约权是相互的, 并在条款中明确规定。在最新版本中, 增加了另一方实质违约而产生的解约权利。

#### **Clause 18 – Pollution**

##### **第 18 条 污染**

This collaborative provision deals with incidents of pollution that may occur during any stage of the bunkering operation.

第 18 条用以合作应对燃油加注作业的任何阶段可能发生的污染事件。

Regardless of which party is responsible for a spill, subclause 18(a) requires that buyers and sellers jointly take immediate steps to effect a clean-up operation in accordance with local laws and regulations.

无论哪一方对泄漏负责，第 18(a)款要求买卖双方根据当地法律法规立即采取措施进行清理。

In subclause 18(b) an obligation is put on the sellers to have in place valid oil-spill contingency plans, approved by the relevant authorities.

在第 18(b)款中，卖方有义务制定经有关当局批准的有效溢油应急计划。

Subclause 18(c) requires the parties to indemnify and hold each other harmless for any claims, losses, damages, penalties and other liabilities they have caused or contributed to and which are incurred under, for example, state, national or international pollution legislation, in connection with the performance of the contract.

第 18(c)款要求双方赔偿并使对方免受因履行合同而引起或导致的、根据州、国家或国际污染立法等规定产生的任何索赔、损失、损害、处罚和其他责任。

In subclause 18(d), the sellers are made responsible for ensuring that the bunker company has satisfactory insurance for oil spills, either by ensuring that the bunker supplying company takes out such insurance or by providing such coverage themselves.

在第 18(d)款中，卖方有责任确保燃油公司对石油泄漏的投保符合要求，无论是确保燃油供应公司购买此类保险，还是自行购买此类保险。

In the last revision, this clause has been made more general and wider. In the 2015 edition of the bunker contract, the buyers were required to indemnify the sellers for spillages after the transfer of risk, except when it was the fault of the sellers. But there was no provision for before the risk had passed and if spillage was caused by the buyers. Furthermore, the indemnity in the 2015 edition covered liabilities that had incurred under pollution legislation only, and not all losses. This subclause has therefore been amended and now allocates liability based on fault, and not based on the passing of risk in the bunkers.

在上一次修订中，此条款制定得更为笼统和宽泛。在 2015 年版的燃油合同中，除非卖方过错，否则买方需要赔偿卖方在风险转移后的泄漏。但对于风险转移之前买方造成泄漏的情况没有任何规定。此外，2015 年版的赔偿仅涵盖污染立法下产生的责任，而不是所有损失。因此，子条款得以修改，现在根据过错而不是根据燃油的风险转移来分配责任。

It should be noted that the liability cap of USD 500 000 applies to indemnity claims between the buyers and sellers under subclause 18(c) as well.

应注意的是，500,000 美元的责任上限也适用于买卖双方之间根据第 18(c)款提出的赔偿索赔。

#### **Clause 19 – Drugs and Alcohol Policy**

##### **第 19 条 毒品和酒精条款**

The buyers and sellers must have in place, and enforce, drugs and alcohol policies that, as a minimum, meet the standards in the latest edition of STCW 1978 (Standards of Training, Certification and Watchkeeping for Seafarers). The policies apply primarily to the buyers' ship and to the sellers' bunker barge, but in the case of the sellers, it also extends to their shore facilities. The ban on drugs extends to prescription drugs if used or abused for purposes other than those for which they were medically prescribed.

燃油买卖双方必须约定并执行毒品和酒精政策，这些政策至少应符合最新版《1978 年海员培训、发证和值班标准国际公约》（STCW 1978）的标准。这些政策主要适用于买方的船舶和卖方的加油驳船，但就卖方而言，也适用于其岸上设施。如果使用或滥用的目的不符合医学药方规定，则禁止毒品的范围扩大到处方药。

#### **Clause 22 – Assignment**

##### **第 22 条 转让**

If one of the parties to the bunker agreement wants to assign or transfer the rights to the contract to another party, then it can only do so by prior agreement with the original contracting party. In the Election Sheet, the parties can specify certain rights that may be assigned without the prior written agreement as per this clause. For example, the sellers may want to include an express right to assign their invoices to their bank as part of their financing structure.

如果燃油协议的一方想将合同的权利转让或转移给第三方，则只能事先与原缔约方达成协议。在选择权清单中，双方可根据本条款规定，在未经事先书面同意的情况下，指定可转让的某些权利。例如，卖方可能希望加入一项明示权利，将其发票转让给银行作为其融资结构的一部分。

#### **Clause 24 – Dispute Resolution Clause 2016**

##### **第 24 条 2016 年争议解决条款**

The dispute resolution clause offers four options for arbitration: London (which applies by default in the absence of a stated alternative in the Election Sheet); New York; Singapore; or an open choice for parties to agree the governing contractual law and seat of arbitration. Mediation procedures are set out for London, Singapore and the open forum. However, mediation has a different position in the USA and it is left to the parties to agree their own procedures.

争议解决条款提供了四种仲裁选择：伦敦（在选择权清单未写明备选方案的情况下默认适用）；纽约；新加坡；或者双方可以自由选择约定适用的准据法和仲裁地。伦敦、新加坡和自由选择地都规定了调解程序。然而，调解在美国的地位不同，由当事人自行商定程序。

## **Clause 26 – Entire Agreement and Priority of Terms**

### **第 26 条 完整协议和条款优先适用**

This clause limits the rights of the parties to the written terms of the contract. Representations, written and oral, are excluded and not intended to be part of the final concluded contract. It does not mean that the charter party, annexes, etc., override all other contracts that might exist between the parties, for instance contracts concerning other vessels. In its un-amended form, the UK Sale of Goods Act 1979 (SOGA) will not apply to this contract. However, if it is amended in a way so that it becomes a contract for the sale of goods, then the SOGA might apply, but subclause 26(c) would exclude the implied terms of the SOGA.

本条款限制双方对书面合同条款的权利。书面和口头陈述均不包括在内，不构成最终订立合同的一部分。这并不意味着租船合同、附件等凌驾于当事人之间可能存在的所有其他合同之上，例如关于其他船舶的合同。在其未经修订的形式中，英国 1979 年货物买卖法 (SOGA) 将不适用于本合同。但是，一经修改成为货物买卖合同后，则 SOGA 可以适用，但第 26(c)款将排除 SOGA 的默示条款。

Subclause 26(c) does not exclude liability for fraud by the sellers and/or buyers, so that that the parties to the bunker contract will be liable for fraud against each other.

第 26(c)款并不排除卖方和/或买方的欺诈责任，因此，燃油供应合同双方将为欺诈对方的行为承担责任。

Subclause 26(d) is new and sets out the priority of the terms in case of conflicting terms. The Election Sheet takes priority over the General Terms and Conditions as the former is specifically negotiated and agreed between the parties. For the same reasons, the Confirmation Note takes priority over the General Terms and Conditions and the Election Sheet in case of conflicting provisions.

第 26(d)款是新的，规定了条款冲突时的优先适用。由于选择权清单由双方具体谈判后商定，它优先于一般条款与条件。同样地，确认书优先于一般条款与条件以及选择权清单，以防条款冲突。

## **BIMCO Bunker Terms 2018 – Annex A (Election Sheet)**

### **BIMCO 2018 年燃油供应合同 – 附件一 选择权清单**

The Election Sheet gives the parties the possibility to customise some of the clauses in the General Terms and Conditions.

双方可以通过选择性清单定制一般条款与条件中的部分条款内容。