

INTERNATIONAL MARITIME LAW ARBITRATION MOOT 2024

MOOT PROBLEM

Released by the IMLAM Organising Committee
26 December 2023 (v1)

Important information for IMLAM 2024 can be found at:
<https://www.swansea.ac.uk/law/imlam/>



BEEFEATER SOLICITORS LLP

40-00 Good Ideas Nook, Singapore 564738

Veggies of Earth Banking Ltd.

Room 1818, 18/F Farmers Building
18 Gardens Road
Tuen Mun
Hong Kong SAR

By Courier

22 December 2023

Dear Sirs,

MT NIUYANG – CP DATED 01.09.2023 BETWEEN YU SHIPPING LTD AS CHARTERERS AND TOMAHAWK MARITIME S.A. AS OWNERS

BILL OF LADING NO. COW-001A DATED 04.09.2023

NOTICE OF ARBITRATION

1. We act for Tomahawk Maritime S.A. (the “**Claimant**”).
2. This is the Claimant's Notice of Arbitration.
3. A dispute has arisen between the Claimant and Veggies of Earth Banking Ltd. (the “**Respondent**”) relating to the carriage of a 16,999.01 MT cargo of crude palm oil (the “**Cargo**”) on board the vessel “NIUYANG” shipped under Bill of Lading No. COW-001A dated 4 September 2023 (the “**BL**”) from Bintulu, Malaysia, to Busan, South Korea. A copy of the BL is enclosed with this Notice.
4. In this dispute, the Claimant claims against the Respondent for all loss, damage, and/or expense incurred as a result of the Respondent's failure to discharge the Cargo within the time allowed under the provisions of the voyage charterparty dated 1 September 2023 (the “**Charterparty**”), which terms are incorporated in the BL.
5. The Claimant requests that the dispute be referred to arbitration in accordance with the arbitration agreement under the terms of the BL. The arbitration agreement is embodied in an arbitration clause incorporated in the BL providing as follows: -

“General Average and Arbitration, if any, to be held in Guangzhou with three arbitrators and SCMA Rules. English law to apply to the CP.”

6. The Claimant is represented in this arbitration by : -

Ms. Hong Rou
Email: h.rou@beefmakan.com.sg
Telephone: +65 6764 9138
Address: 40-00 Good Ideas Nook, Singapore 564738

7. The Respondent's representative, as far as the Claimant is aware, is: -

Chai Sim

Email: cs@VOE.com

Telephone: +852 1346 7982

Address: Room 1818, 18/F Farmers Building, 18 Gardens Road, Tuen Mun, Hong Kong SAR

8. The Claimant nominates Mr. Nivor Ohm as its party-nominated arbitrator for this arbitration. Mr. Ohm's contact details are as follows: -

Email: n.o@dispute.com

Telephone: +65 6818 8181

Address: 18-01 Happy Lane

9. The Expedited Procedure in Rule 44 of the SCMA 4th Edition Rules is not intended to apply.

Please confirm receipt of this Notice.

Yours faithfully,

Beefeater Solicitors LLP

Enc.

cc. The Singapore Chamber of Maritime Arbitration Secretariat

[By Email only]

Shipped in apparent good order and condition by
Shipper

Tanker Bill of Lading

B/L NO. COW-001A

Good Oil Sdn Bhd
30-00 Loam Road
Kota Kinabalu, Sarawak, Malaysia

FIRST ORIGINAL

Consignee/Order of
Veggies of Earth Banking Ltd. or Order

Notify Party
Gileum Refinery Co., Ltd.
Bldg. 500-500
Sajik-ro-8-gil 96
Jongno-gu, Seoil 75319

| | | |
|------------------------------------|------------------|--------------------------|
| On board the tanker MT. YANGNIU | Flag Liberian | Master CAPT. NGAU TAU |
|------------------------------------|------------------|--------------------------|

| | |
|----------------------------------|---|
| Loaded at the port of Bintulu | To be delivered to the port of Busan |
|----------------------------------|---|

A quantity in bulk said by the Shipper to be:

| COMMODITY (Name of Product) | QUANTITY (lbs., tonnes, barrels, gallons) |
|---------------------------------------|--|
| CRUDE PALM OIL (EDIBLE GRADE) IN BULK | 16,999.01 MT |

CLEAN ON BOARD

"FREIGHT PAYABLE AS PER CHARTER PARTY"

OCEAN CARRIAGE STOWAGE:

This shipment of 16,999.01 Metric tons was loaded on board the Vessel as part of one original lot of 16,999.01
Metric tons stowed in 1P, 1S, 2P, 2S, 3P, 3S, 4P, 4S with no segregation as to parcels. For the whole shipment One (1) sets
Of Bill of Lading have been issued for which the Vessel is relieved from all responsibilities to the extent it would be if one set only would have been issued. The Vessel undertakes to deliver only that portion of the cargo actually boded which is represented by the percentage that the total amount specified in the Bill(s) of Lading bears to the total of the commingling shipment delivered at destination. Neither the Vessel nor the owners assume any responsibility for the consequences of such commingling nor for the separation thereof at the time of delivery.

The quantity, measurement, weight, gauge, quality, nature and value and actual condition of the cargo unknown to the Vessel and the Master, to be delivered to the port of discharge or so near thereto as the Vessel can safely get, always afloat upon prior payment of freight as agreed. Cargo is warranted free of danger to Vessel except for the usual risks inherent in the carriage of the commodity as described.

This shipment is carried under and pursuant to the terms of the Charter dated 01.09.2023

Between Tomahawk Maritime S.A., As Owner and Yu Shipping Ltd. As Charterers,

And all conditions. Liberties and exceptions whatsoever of the said Charter apply to and govern the rights of the parties concerned in this shipment. The Clause Paramount, New Jason Clause and Both to Blame Collision Clause as set out on the reverse of this Bill of Lading are hereby incorporated herein and shall remain in effect even if unenforceable in the United States of America. General Average payment according to the York-Antwerp Rules 1974, as amended 1994.

The Master is authorized to act for all interests in arranging for salvage assistance on terms of Lloyd's Open Form. The freight is payable discountless and is earned concurrent with loading, ship and/or cargo lost or not lost or abandoned.

The Owners shall have an absolute lien on the cargo for all freight. Deadfreight, demurrage, damages for detention and all other monies due under the above mentioned Charter or under this Bill of Lading, together with the costs and expenses, including attorneys fees, of recovering same, and shall be entitled to sell or otherwise dispose of the property lien and apply the proceeds towards satisfaction of such liability.

The contract of carriage evidenced by this Bill of Lading is between the shipper, consignee and/or owner of the cargo and the owner or demise charterers of the Vessel named herein to carry the cargo described above.

It is understood and agreed that, other than said shipowner or demise charterer, no person, firm or corporation or other legal entity whatsoever, is or shall be deemed to be liable with respect to the shipment as carrier, bailee or otherwise in contract or in tort. If, however, it shall be adjudged that any other than said shipowner or demise charterer is carrier or bailee of said shipment or under any responsibility with respect thereto, all limitations of or exonerations from liability and all defences provided by law or by the terms of the contract of carriage shall be available to such other.

All of the provisions written, printed or stamped on either side hereof are part of this Bill of Lading Contract.

In Witness Whereof, the master has signed 3 (THREE) ORIGINALS

Bills of Lading of this tenor and date, one of which being accomplished, the others will be void.

Dated at Bintulu this 4th day of September 2023

AS AGENT FOR AND ON BEHALF OF THE MASTER
(CAPT. NGAU)

BAUHINIA LAW LLC

Room 8, 8/F Gardens at the Bay, Kowloon, Hong Kong SAR

Beefeater Solicitors LLP

40-00 Good Ideas Nook,
Singapore 564738

Attn: Ms. Hong Rou

**cc. The Singapore Chamber of
Maritime Arbitration Secretariat**

Dear Sirs,

**MT NIUYANG – CP DATED 01.09.2023 BETWEEN YU SHIPPING LTD AS CHARTERERS AND
TOMAHAWK MARITIME S.A. AS OWNERS**

BILL OF LADING NO. COW-001A DATED 04.09.2023

Response to Notice of Arbitration

1. We represent the Respondent, Veggies of Earth Banking Ltd., in this arbitration.
2. The Respondent does not accept that the arbitration commenced by the Claimant is valid. As Guangzhou is the putative chosen seat of arbitration, it is invalid under Chinese law for a PRC-seated arbitration to be administered by a foreign arbitral institute.
3. The Respondent reserves the right to raise its objection to the jurisdiction of the Tribunal at the appropriate juncture.
4. Notwithstanding the Respondent's position on the validity of the arbitration, the Respondent rejects completely the Claimant's claim. Among other things, the Respondent will assert a set-off for losses that the Respondent has incurred as a result of the mis-delivery of the cargo carried pursuant to Bill of Lading No. COW-011A without presentation of the said Bill of Lading.
5. The contact details of the Respondent's representatives are as follows:
-

Orchid Lau
Bauhinia Law LLC
Email: o.l@bauhinialaw.co

6. The Respondent nominates Mr. Dieter Strickt as its party-appointed arbitrator. Mr. Strickt's contact details are as follows: -

Email: Strickt_Dieter@arbi.com
Address: 4404 South Street
London
SE49 3EP

7. All of the Respondent's rights, remedies and defences remain fully reserved and nothing herein is to be construed as any representation, waiver or estoppel.

Yours Sincerely,

Bauhinia Law LLC
Orchid Lau
5 January 2024

IN THE MATTER OF AN INTERNATIONAL ARBITRATION

IN THE MATTER OF AN SCMA ARBITRATION UNDER THE SCMA RULES (4TH EDITION)

BETWEEN

TOMAHAWK MARITIME S.A.

..... CLAIMANT

AND

VEGGIES OF EARTH BANKING LTD

..... RESPONDENT

STATEMENT OF CLAIM

1. The Claimant, Tomahawk Maritime S.A., is a company registered and existing under the laws of Panama.
2. The Respondent, Veggies of Earth Banking Ltd., is a financial institution registered and existing under the laws of Hong Kong.

A. THE CHARTERPARTY AND BILL OF LADING

3. On 1 September 2023, the Claimant entered into a Voyage Charterparty (the “**Charterparty**”) with Yu Shipping Ltd (the “**Charterer**”) for the employment of the vessel MT “NIUYANG” (the “**Vessel**”) to carry a cargo of palm oil from Bintulu, Malaysia, to Busan, South Korea.
4. The terms of the Charterparty are set out in an amended VEGOILVOY form accompanied by a set of rider clauses. A copy of the amended VEGOILVOY form and the applicable rider clauses are respectively exhibited at **Annex A** and **Annex B** of this Statement of Claim.
5. In the course of the negotiations over the terms of the Charterparty, the Charterer was informed that after the intended voyage to Busan, the Vessel was to be delivered into a 2-year time charterparty at the port of Kaohsiung with a strict laycan of 1-14 October 2023.
6. Accordingly, the Claimant and the Charterer agreed that the carriage of the Cargo to Busan will be completed by 30 September 2023 in order to allow sufficient time for the Vessel to arrive in Kaohsiung within the laycan for the next charterparty. Clause 37 of the Rider Clauses to the Charterparty therefore provides as follows: -

“After this voyage, Vessel’s next employment is at Kaohsiung with strict laycan 1-14 October 2023 for period of 2 years.”

7. Pursuant to the terms of the Charterparty, the Vessel arrived at Bintulu on 3 September 2023 and tendered its Notice of Readiness at 0300 LT on the same day. Loading of the Cargo was completed on 6 September 2023 at 1745 LT and the Vessel sailed from Bintulu at 2106 LT.
8. Bill of Lading No. COW-001A (the **“Bill of Lading”**) was issued on 6 September 2023 for the Cargo and consigned to “Veggies of Earth Banking Ltd or Order”. The Bill of Lading provided, among other things, that: -

“This shipment is carried under the and pursuant to the terms of the Charterparty dated 01.09.2023 Between [the Claimant], As Owner and Yu Shipping Ltd. As Charterers...”

Overleaf

“1) All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause, are herewith incorporated.”

A copy of the Bill of Lading is exhibited at **Annex C** of this Statement of Claim.

Rider Clause 78 provides for English law to govern the Charterparty. It accordingly likewise governs the Bill of Lading.

B. DELAYED DISCHARGE

9. The Vessel arrived at Busan on 20 September 2023. Notice of Readiness was tendered at 0843 LT and accepted at 0915LT on the same day.
10. Despite acceptance of the Notice of Readiness, no berthing and discharge instructions were received by the Vessel. Repeated chasers were sent to the Charterers and it was only on 28 September 2023 that the Charterers responded to state that they were waiting for instructions from the cargo interests.
11. On 29 September 2023 at 1306LT, the Claimant reminded the Charterers about the Vessel’s next fixture at Kaohsiung and that the Vessel had to sail from Busan by 7 October 2023, at the latest, in order to meet the laycan for the next fixture. The Charterers replied at 1718LT that *“all relevant parties are aware of the Vessel’s limitation”* and that they had passed a copy of the Charterparty documents on to the consignee.
12. As further daily reminders to the Charterers were not having any effect, the Claimant sent a message to the Charterers on 3 October 2023 at 0943LT as follows: -

“Owners refer to previous messages to Chtrs. As Chtrs are well aware, Vsl tendered NOR on 20 Sept 2023 and has been waiting for discharge instructions ever since.

Chtrs have confirmed that all cargo interests are aware of Vsl’s next fixture at Kaohsiung with strict laycan of 1-14 Oct. If Vsl fails to meet cancelling date, next charterers have already stated that they will be exercising their right to cancel.

Chtrs are hereby put on notice that Owners will look to Chtrs to recover all losses and/or damages incurred in the event that the Vsl’s next employment is cancelled.

All of Owners’ rights are fully reserved.”

13. Later on 3 October 2023 at 1337 LT, the Charterers responded as follows: -

“Chtrs refer to Owners’ last message.

While Chtrs do not agree with Owners’ position and remind Owners that any delay is already compensated by demurrage, the option to deliver using Letter of Indemnity under CI 57 of the CP is invoked.

Chtrs attach signed LOI and request Owners to commence discharge.

All of Chtrs rights remain fully reserved.”

A copy of the Letter of Indemnity presented in lieu of the Bill of Lading is exhibited at **Annex D**.

14. Following this exchange, berthing and discharge instructions were received by the Vessel. Discharge of the Cargo commenced on 4 October 2023 at 0630LT and was completed on 7 October 2023 at 2348LT. The Vessel departed Busan at 0214LT on 8 October 2023.
15. Unfortunately, due to adverse wind and sea conditions, the Vessel’s progress to Kaohsiung was hampered. While the Vessel was still approximately 300 nautical miles from Kaohsiung, the charterers for the Vessel’s next fixture issued their notice on 16 October 2023 cancelling the charterparty. After negotiations, the Claimant managed to reinstate the Vessel’s employment but at a lower hire rate of USD 30,000 per day.

C. BREACH OF BILL OF LADING TERMS

16. On 15 November 2023, the Claimant issued a demand to the Charterers claiming USD 3,650,000 as compensation for the cancellation of the Vessel’s charterparty as set out at

paragraph 15 (above). On 22 November 2023, the Claimant received a response from Carry On Advisory Services LLP stating that they were the interim liquidators appointed over the Charterers and that they were considering the Claimant's demand.

17. On 29 November 2023, the Respondent wrote to the Claimant claiming to be the holder of the Bill of Lading. As holder of the Bill of Lading, the Respondent is accordingly obliged to ensure that the Cargo is discharged within the laytime permitted under the terms of the Charterparty (Clause E of the Charterparty) as incorporated into the Bill of Lading.
18. In the alternative, it is an implied term of the contract of carriage evidenced by the Bill of Lading that the consignee will take delivery of the Cargo from the Vessel in a reasonable time.
19. In breach of the contractual terms set out at paragraphs 17 and 18 (above), the Respondent failed to procure the discharge and/or take delivery of the Cargo within 96 hours of the commencement of laytime pursuant to Clause 4 of the Charterparty.
20. As a result of the Respondent's failure to procure the discharge and/or take delivery of the Cargo within the timeframe provided under the Bill of Lading, the Vessel lost its next employment at Kaohsiung. The Claimant has suffered loss amounting to USD 3,650,000, quantified as follows: -

| | |
|---|-------------------------------------|
| Initial Hire rate for Kaohsiung Charterparty: | USD 35,000 per day |
| Discounted Hire rate: | USD 30,000 per day |
| Difference in Hire rate x 2 year duration: | USD 5,000 x 365 x 2 = USD 3,650,000 |

AND THE CLAIMANT CLAIMS

- (A) The sum of USD 3,650,000;**
- (B) Interest;**
- (C) Costs; or**
- (D) Such further order or relief as the Tribunal deems fit.**

Dated this 19th day of January 2024

Beefeater Solicitors LLP

ANNEX A

- G. Demurrage per Hour USD 1500
- H. Special provisions. - See Rider Clauses

IN WITNESS WHEREOF the parties hereto have executed this agreement, in duplicate, as of the day and year first above written.

Witness to signature of:

..... [Signature]
By: on behalf of Tomahawk Maritime S.A.

Witness to signature of:

..... [Signature]
By: on behalf of Yu Shipping Ltd

PART II

1. WARRANTY

- (a) The Owner shall, before and at the commencement of the voyage, exercise due diligence to make the Vessel seaworthy, properly manned, equipped, and supplied for and during the voyage, and to make the pipes, pumps, and heater coils tight, staunch, and strong, in every respect fit for the voyage, and to make the tanks, holds, and other spaces in which cargo is carried fit and safe for its carriage and preservation.
- (b) It is understood that if the tank or tanks, into which the particular cargo covered by this Charter is to be placed, upon testing prove to be defective the Owner undertakes to execute the necessary repairs, provided repairs can be effected within 24 hours and at reasonable expense; otherwise, Owner has the option of cancelling this Charter in which case no responsibility shall rest with the Vessel, Owners, or Agents.

2. TIME FOR READINESS OF CARGO.

Charterer warrants that the cargo shall be available for loading at the designated loading port upon arrival of the Vessel within the Readiness and Cancelling date shown in Part I hereof. Any delay suffered by the Vessel for failure to conform to this warranty shall count as used lay time.

3. READINESS AND CANCELLING DATE.

Laytime shall not commence before the readiness date named in Part I, unless otherwise provided in this Charter, or unless the Charterer accepts a notice of readiness or orders or permits the Vessel to berth before that date, or otherwise waives the provisions of this paragraph. If the Vessel is not ready to load by 4.00 p.m. (local time) on the cancelling date named in Part I, the Charterer shall have the option of cancelling this Charter by giving the Owner notice of such cancellation within twenty-four (24) hours after the cancelling date; otherwise this Charter shall remain in full force and effect. The Charterer may in its notice of cancellation specify that it will nevertheless accept the Vessel if she is ready to load on or before a date or time that Charterer may designate in such notice in which event the Owner may at its option either treat this Charter Party as cancelled or tender the Vessel on or before the date named by the Charterer in its notice, whereupon this Charter shall remain in full force and effect.

4. NOTICE OF READINESS AND COMMENCEMENT OF LAYTIME.

- (a) When the Vessel has arrived at the port of loading or discharge and is ready to load or discharge, a notice of readiness shall be tendered to the Charterer or its agent by the Master or Agent by letter, telegraph, wireless or telephone. The Vessel shall be deemed ready within the meaning of this clause whether she arrives during or outside of usual business hours, whether she is in or out of berth or whether or not she has ballast water or slops in her tanks. Laytime shall commence either at the expiration of six (6) running hours after tender of notice of readiness, Vessel in or out of berth, except that any delay to the Vessel in reaching her berth caused by the fault of the Vessel or Owner shall not count as used laytime; or immediately upon the Vessel's arrival in berth (i.e. finished mooring when at a sea loading or discharging terminal and all fast when loading or discharging alongside a wharf) with or without notice of readiness, whichever first occurs.
- (b) Notwithstanding anything contained in paragraph (a) of this clause, laytime shall commence when the Vessel arrives at the loading or discharging port, whether or not berth is available; provided that notice of readiness shall always be tendered as therein stipulated.

5. LAYTIME.

- (a) The number of running hours specified as laytime in Part I shall be permitted the Charterer for loading, discharging, and used laytime; but any delay due to breakdown or inability of the Vessel's facilities to load or discharge the cargo within the time allowed shall not count as used laytime. If regulations of the Owner prohibit loading or discharging of the cargo at night, time so lost shall not count as used laytime; if the Charterer, shipper or consignee, or the port authorities prohibit loading or discharging at night, time so lost shall count as used laytime. The Vessel shall have the right to sail from all ports immediately upon the completion of loading or discharging whether or not laytime has expired.
- (b) Where commingled shipments, or separate shipments, are loaded or discharged concurrently at the same installation, the laytime allowed to each shipper shall be the gross number of hours allowed any of the commingled or separate shipments, it being conclusively presumed that loading and discharging of all such shipments shall commence simultaneously.

6. SAFE BERTH. SHIFTING.

- (a) If under Part I hereof the Charterer is given the right to name the loading and discharging berth, the Vessel shall load and discharge at any safe place or wharf, or alongside vessels or lighters reachable on her arrival, which shall be designated and procured by the Charterer, provided that the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat, any lighterage being at the expense, risk and peril of the Charterer.
- (b) If under Part I hereof the Charterer is given the right to load or discharge at more than one berth, the Charterer shall arrange with the agent of the Vessel for shifting the Vessel at ports of loading and/or discharge from one safe berth to another on payment of all towage and pilotage shifting to the next berth, charges for running lines on arrival at and leaving that berth, wharfage and dockage charges at that berth, additional agency charges and expense, Customs overtime and fees, and any other extra port charges or port expenses incurred by reason of using more than one berth. Time lost to the Vessel on account of shifting shall count as used laytime.
- (c) Notwithstanding anything contained in paragraphs (a) and (b) of this clause, the Charterer warrants that the cargo shall be discharged at the ports and berths specified in Part I. Any change in loading or discharging ports or berths shall be made only as the result of special agreement in writing between Charterer and Owner, and in such case, Charterer shall assume all cost incident to such change, including the value of the vessel's time if the voyage is prolonged thereby.

- (d) Lighterage. Lighterage at port of loading shall be at the risk and expense of Charterer. The Charterer shall deliver cargo to alongside Vessel as instructed by Owner, and the Owner shall provide a berth immediately alongside the Vessel for the barge or barges carrying the cargo after which pumping shall commence and proceed continuously.

7. PUMPING IN AND OUT, HOSES.

- (a) The cargo shall be pumped into the Vessel at the expense, risk and peril of the Charterer, and shall be pumped out of the Vessel at the expense of the Vessel, but at the risk and peril of the Vessel only so far as the Vessel's permanent hose connections, where delivery of the cargo shall be taken by the Charterer or consignee. The Vessel shall furnish her pumps and the necessary steam for discharging in all ports where the regulations permit of fire on board, as well as necessary hands. Should regulations not permit fires on board, the Charterer or consignee shall supply, at its expense, all steam necessary for discharging as well as loading, but the Owner shall pay for steam supplied to the Vessel for all other purposes. If cargo is loaded from lighters, the Vessel, if permitted to have fires on board, shall, if required, furnish steam to lighters at Charterer's expense for pumping cargo into the Vessel.
- (b) Hoses--All hose (suitable to fit Vessel's connection) and other necessary equipment and labor to accomplish delivery of cargo to be provided by Charterer at Charterer's risk and expense.
- (c) Stevedoring--If stevedoring is required, it is to be arranged and paid for by the Charterer.
- (d) Steam--Vessel to furnish steam at its expense for the operation of receiver's pumps at port of discharge.
- (e) Squeezing--Squeezing to be paid by the Owner and time used is not to count as used laytime.
- (f) When shipments are commingled before loading--The cargo to be carried pursuant to this Charter Party has been or will be commingled with cargo belonging to other Charterers prior to loading, and will be loaded into the tanks of the Vessel without separation or identification. Neither the Vessel nor Owner assumes any responsibility for the consequences of such commingling, nor for separation of the several consignments at the time of delivery. The Vessel undertakes to deliver only that proportion of the cargo actually loaded in the designated tanks which is represented by the percentage that the amount specified in the Bill of Lading issued for the cargo covered by this Charter Party bears to the total of the commingled shipments delivered at destination.
- (g) When shipments are to be commingled upon loading in the tanks of a vessel--It is understood that the Vessel will carry cargoes supplied by other Charterers to be carried subject to the terms of substantially similar part-cargo charter parties. Where the products are similar, the Vessel shall have the right to commingle such products in the tanks of the Vessel, in which case the Vessel undertakes to deliver only that proportion of the cargo actually loaded in the designated tanks which is represented by the percentage that the total amount specified in the bill of lading bears to the total of the commingled shipments delivered at destination. Neither the Vessel nor Owner assumes any responsibility for the consequences of such commingling, nor for the separation thereof at the time of delivery.
- (h) Unless notation or exception is made in writing on the bill of lading, or other shipping document before departure of the vessel from the dock or place at which the said cargo is delivered, receipt of the cargo shall be deemed prima facie evidence of right delivery of the entire cargo as described in the bill of lading; further, that upon failure or refusal by the Charterer or its representative to execute or except to the ullage reports prepared by the vessel, the figures stated in said ullage reports shall be deemed prima facie correct and binding upon the parties hereto.

8. PRODUCTS EXCLUDED. FLASHPOINT.

- (a) No product shall be shipped which fails to meet one or the other of the two following requirements. (1) The vapor pressure at one hundred degrees Fahrenheit (100deg. F.) shall not exceed thirteen pounds (13 lbs.) as determined by the A.S.T.M. Method (Reid Method) identified as D-323 current at the time shipment is made. (2) The distillation loss shall not exceed four per cent (4%) and the sum of the distillation loss and the distillate collected in the receiving graduate shall not exceed ten per cent (10%) when the thermometer reads one hundred twenty-two degrees Fahrenheit (122deg. F.). Note--The distillation test shall be made by A.S.T.M. Method identified as D-86 current at the time shipment is made. When products other than Naphtha or Gasoline are tested, the distillation loss may be determined by distilling not less than twenty-five per cent (25%) and deducting from one hundred per cent (100%) the sum of the volumes of the distillate and the residue in the flask (cooled to a temperature of sixty degrees Fahrenheit (60deg. F.)).
- (b) No petroleum or its products having a flashpoint under 150 deg. Fahrenheit (Closed Cup Abel Test) shall be loaded from lighters but this clause shall not restrict the Charterer from loading or topping off crude oil from vessels or barges inside or outside the bar at any port or place where bar conditions exist.

9. FREIGHT.

- (a) Full freight to the discharging port named in Part I or declared by the Charterer in accordance with this Charter shall be completely earned on all cargo as loaded and the Owner shall be entitled to receive and retain such freight irrevocably under all circumstances whatsoever ship and/or cargo lost or not lost, whether or not the cargo is damaged or unsound, or in the event the voyage is abandoned or broken up.
- (b) The freight shall be at the rate stipulated or incorporated in Part I based on the intake quantity as shown by the Inspector's Certificate of Inspection, the services of the Inspector to be arranged and paid for by the Charterer who shall furnish the Owner's Agent with a copy of the Inspector's Certificate.
- (c) Freight, less any advances made to the Master at the port or ports of loading, shall, unless otherwise agreed in Part I, be paid in full without discount in United States currency to the Owner's Agent at the Agent's place of business upon receipt by the Agent of figures indicating the quantity of cargo loaded as provided in sub-paragraph (a) above. No deduction in freight shall be made for water and/or sediment contained in the oil.

10. DEADFREIGHT.

Charterer will load as much oil as, in the opinion of the Master is required to fill the tank or tanks (whether such quantity be less than or in excess of the tonnage stated in Part I hereof), filling which Charterer shall pay deadfreight on the quantity short of Master's requirements, or if, as a result of the Charterer's failure to deliver on board the quantity required by the Master, there is in the tank or tanks not sufficient to render it, in the opinion of the Master, safe for the voyage, he shall be at liberty to require Charterer to remove the oil loaded at Charterer's expense and risk and Charterer agrees to pay deadfreight at the rate per ton stipulated in Part I hereof on the full oil capacity of the tank or tanks.

11. DEMURRAGE.

- (a) Charterer shall pay demurrage per running hour and pro rata for a part thereof at the rate stipulated in Part I for all time that loading and discharging and used laytime as elsewhere herein provided exceeds the allowed laytime herein specified. If, however, (demurrage shall be incurred at ports of loading and/or discharge because of fire or explosion in or about the plant, or because of breakdown of machinery or loading or discharging facilities of the Charterer, shipper or consignee of the cargo, the rate of demurrage shall be reduced to one-half the rate stipulated in Part I hereof per running hour and pro rata of such reduced rate for part of an hour for demurrage so incurred.
- (b) Where commingled or separate shipments are loaded or discharged at the same installation, demurrage shall be apportioned among such shipments in proportion to the ratio which each bears to the aggregate thereof; provided, however, that where the cause of the delay results from the act of any specific Charterer or shipper, the total demurrage on the vessel shall be charged against such Charterer or shipper and such shipment.
- (c) Dispatch--No dispatch money shall be payable under this Charter Party

12. DUES, WHARFAGE, TAXES.

The vessel shall be free of any wharfage, dockage, quay dues or similar charges at all loading and discharging ports. Entrance and clearance fees whether measured by the volume of cargo or not, towing and tug charges, pilotage, dues, and other usual port charges on the Vessel shall be paid by the Owner. All other dues, taxes, assessments, and charges on the cargo shall be paid by the Charterer including but without limitation any habilitation tax, Customs overtime, taxes on freight at loading or discharging ports as well as any unusual taxes, assessments or governmental charges whether in effect at present or whether imposed on the Vessel or freight in the future and whether or not measured by the volume of the cargo, shall be paid by the Charterer.

13. ICE.

The Vessel shall not be ordered to or bound to enter any ice-bound port or place or any place where lights, lightships, marks or buoys on Vessel's arrival are or are likely to be withdrawn by reason of ice or where there is risk that ordinarily the Vessel will not be able on account of ice to enter, reach or leave the place. The Vessel shall not be obliged to force ice. If on account of ice the Master considers it dangerous to enter or remain at any loading or discharging place for fear of the Vessel being frozen in and/or damaged, he shall have the liberty to sail to another place or port which is free from ice and at which there are facilities for loading or discharging cargo and there await Charterer's further instructions. The whole of the time occupied from the time the Vessel is diverted by reason of ice or other conditions until her arrival at an ice-free port as well as any detention by reason of ice or any of the above causes shall be paid for by the Charterer at the demurrage rate stipulated in Part I.

14. QUARANTINE.

- (a) Should the Charterer send the Vessel to any port or place where a quarantine exists, any delay thereby caused to the Vessel shall count as used laytime; but should the quarantine not be declared until the Vessel is on passage to such port, the Charterer shall not be liable for any resulting delay. The Owner shall be entitled to all the liberties specified in Clause 29.
- (b) If the Vessel, prior to or after entering upon this Charter, has docked or docks at any wharf which is not rat-free or stegomyia-free, she shall before proceeding to a rat-free or stegomyia-free wharf, be fumigated by the Owner at his expense, except that if the Charterer ordered the Vessel to the infected wharf he shall bear the expense of fumigation

15. CLEANING.

Prior to loading, Charterer shall inspect the designated tanks for the purpose of determining that they are in suitable condition for the loading and carriage of the cargo specified hereunder. Acceptance of the tanks by Charterer's representative shall be conclusive as to their suitability for such purposes. If Charterer's representative does not accept the tanks as suitable for the cargo, the Owner shall have the right, at its option, to cancel this Charter Party, without any resulting liability on the part of either party, or to again clean the tanks, subject to inspection as above.

16. HEATING.

- (a) If heating of the cargo is requested by the Charterer, the Owner shall exercise due diligence to maintain the temperatures requested. Notwithstanding any other provisions herein the Owner shall not be responsible if such temperatures are not maintained by reason of any cause beyond the Owner's control and the laytime and demurrage provisions herein shall remain in full force and effect. The burden of proving the failure to exercise due diligence shall be on the Charterer or person claiming damage or other relief. Whenever the Owner's failure to maintain temperatures is excused under this or any other provision of this Charter, Charterer shall assume all risks of delay during discharge due to the nature or condition of the cargo and shall pay demurrage if any.
- (b) Unless agreed to in writing by Owner, the Vessel is not under any obligation to heat the cargo, but Owner reserves the right to heat the cargo to facilitate discharge.

- (c) If Charterer decides that heat ought to be applied to the cargo, Charterer's instructions to Owner will be in the following form: "Please instruct the Master hours before arrival at discharge port to apply heat to cargo so that on arrival at discharge port the temperature about two feet above the coils shall be about degrees Fahrenheit and to maintain approximately that temperature during discharge."

17. GENERAL EXCEPTIONS CLAUSE.

- (a) Neither the Vessel nor the Master or Owner shall be or shall be held liable for any loss of or damage or delay to the cargo or for any failure in performing hereunder arising or resulting from:-- Any act, neglect or default of the Master, pilots, mariners or other servants of the Owner in the navigation or management of the Vessel; barratry; fire, unless caused by the personal design or neglect of the Owner; collision; stranding; perils, dangers or accidents of the seas or other navigable waters; saving or attempting to save life or property; wastage in weight or hulk or any loss or damage arising from inherent defect, quality or vice of the cargo; any actor omission of the Charterer, shipper, consignee, owner of the goods or holder of the bill of lading, their agents and representatives; insufficiency of packing; insufficiency or inadequacy of marks; explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery, equipment or appurtenances; unseaworthiness of the Vessel whether existing at the beginning of the voyage or developing during the voyage unless caused by want of due diligence on the part of the Owner to make the Vessel seaworthy or to have her properly manned, equipped, and supplied; leakage; shrinkage; evaporation; change in quality of the cargo; handling or transportation losses; difference between actual or reported intake and out-turn quantities; stowage or contact with or leakage from other cargo; discoloration; contamination; deterioration; any consequence arising out of shipping more than one grade of cargo; or from any other cause arising without the actual fault or privity of the Owner. And neither the Vessel, her Master or Owner, nor the Charterer shall, unless otherwise in this Charter expressly provided, be responsible for any loss of or damage or delay to or failure to discharge or deliver the cargo arising or resulting from:--Act of God; act of war; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people; seizure under legal process provided bond is promptly furnished to release the Vessel or cargo; strikes, lockouts, stoppage or restraint of labor from whatever cause whether partial or general; or riot or civil commotion. No exemption afforded the Charterer under this clause shall relieve the Charterer of or diminish its obligations for payment of any sums due the Owner under other provisions of this Charter.
- (b) The tanks having been inspected by the charterer's inspector as to tightness and cleanliness, notwithstanding any other provision of this Charter, neither the Vessel nor the Owner shall be liable for loss or damage due to contamination, deterioration, discoloration or change in quality or characteristics, or leakage, unless there is negligence on the part of the Vessel.

18. JASON CLAUSE.

The event of accident, danger, damage, or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which the Owner is not responsible by statute, contract, or otherwise, the cargo, shippers, consignees, or owners of the cargo shall contribute with the Owner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the cargo. If a salving ship is owned or operated by the Owner, salvage shall be paid for as fully as if the salving ship or ships belong to strangers.

19. BOTH TO BLAME COLLISION CLAUSE.

If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss at or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set-off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

20. GENERAL AVERAGE.

General average shall be adjusted, stated and settled, according to York-Antwerp Rules 1950, at such port or place in the United States as may be selected by the Owner, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such adjustment, disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the Owner, must be furnished before delivery of the cargo. Such cash deposit as the Owner or his agents may deem sufficient as additional security for the contribution of the cargo and for any salvage and special charges thereon, shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the Owner before delivery. Such deposit shall, at the option of the Owner, be payable in United States money, and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the general average and refunds or credit balances, if any, shall be paid in United States money.

21. DEVIATION CLAUSE.

The Vessel shall have liberty to call at any ports in any order, to sail with or without pilots, to tow or to be towed, to go to the assistance of vessels in distress, to deviate for the purpose of saving life or property or of landing any ill or injured person on board, and to call for fuel or stores at any port or ports in or out of the regular course of the voyage. Any salvage shall be for the sole benefit of the Owner.

22. OTHER PORTS.

If this Charter Party is for a part cargo;--

- (a) Owner has the right, either before or after loading cargo covered by this Charter Party, to load or discharge cargo belonging to the Charterer or others in any ports, rotation of ports to be at Owner's option;
- (b) Owner has privilege of discharging the cargo covered by this Charter Party at any port and to transship it at Owner's risk and expense by any vessel or other means of transportation by water, or by rail, to the destination shown in Part I of this Charter Party.

23. LIMITATION OF LIABILITY.

- (a) Any provision of this Charter to the contrary notwithstanding, the Owner shall have the benefit of all limitations of, and exemptions from, liability accorded to the owner or chartered owner of vessels by any statute or rule of law for the time being in force. Nothing in this charter shall operate to limit or deprive the Owner of any statutory exceptions or limitation of liability on the theory of personal contract or otherwise.
- (b) The Owner and the Vessel in all matters arising under this Charter Party or any bill of lading issued hereunder shall be entitled to the like privileges, rights, and immunities as are contained in Sections 3 (6), 4, and 11 of the Carriage of Goods by Sea Act of the United States approved April 16, 1936.
- (c) Neither the Vessel or Owner, nor any corporation owned by, subsidiary to or associated or affiliated with the Vessel or Owner shall be liable to answer for or make good any loss or damage to the cargo occurring at any time and even though before loading on or after discharge from the Vessel, by reason or by means of any fire whatsoever, unless such fire shall be caused by the Owner's design or neglect.

24. BILLS OF LADING.

Bills of Lading in the form appearing below for cargo shipped shall be signed by the Master or Agent as requested. Any bill of lading signed by the Master or Agent of the Owner shall be without prejudice to the terms, conditions and exceptions of this Charter and shall be subject to all such terms, conditions and exceptions. The Charterer shall indemnify the Owner, the Master, and the Vessel from all consequences or liabilities that may arise from the Charterer or its agents or the Master or Vessel's agents signing bills of lading or other documents inconsistent with this Charter or from any irregularity in papers supplied by the Charterer or its agents, or from complying with any orders of the Charterer or its agents.

25. LIEN.

The Owner shall have an absolute lien on the cargo for all freight dead freight, demurrage and costs, including attorney's fees, of recovering the same, which lien shall continue after delivery of the cargo into the possession of the Charterer, or of the holders of any bills of lading covering the same, or of any storageman.

26. AGENTS.

The Owner shall appoint Vessel's agents at all ports.

27. SUBSTITUTION.

Owner has option to substitute another vessel provided she can report within the readiness and cancelling dates, and is suitable for the cargo, shown in Part I hereof.

28. ASSIGNMENT.

Subject to the approval of Owner, the Charterer shall have the option of subletting or assigning this Charter to any individual or company, but the Charterer shall always remain responsible for the due fulfillment of this Charter in all its terms and conditions.

29. LIBERTY CLAUSES.

- (a) In any situation whatsoever and wheresoever occurring and whether existing or anticipated before commencement of or during the voyage, which in the judgment of the Owner or Master is likely to give rise to risk of capture, seizure, detention, damage, delay or disadvantage to or loss of the Vessel or any part of her cargo, or to make it unsafe, imprudent, or unlawful for any reason to continue or proceed on or continue the voyage or to enter or discharge the cargo at the port of discharge, or to give rise to delay or difficulty in arriving, discharging at or leaving the port of discharge or the usual place of discharge in such port, the Owner may before loading or before the commencement of the voyage, require the shipper or other person entitled thereto to take delivery of the cargo at port of shipment and upon their failure to do so, may warehouse the cargo at the risk and expense of the cargo; or the Owner or Master, whether or not proceeding toward or entering or attempting to enter the port of discharge or reaching or attempting to reach the usual place of discharge therein or attempting to discharge the cargo there, may discharge the cargo into depot, lazaretto, craft or other place; or the Vessel may proceed or return, directly or indirectly, to or stop at any such port or place whatsoever as the Master or the Owner may consider safe or advisable under the circumstances, and discharge the cargo, or any part thereof, at any such port or place; or the Owner or the Master may retain the cargo on hoard until the return trip or until such time as the Owner or the Master thinks advisable and discharge the cargo at any place whatsoever as herein provided or the Owner or the Master may discharge and forward the cargo by any means at the risk and expense of the cargo. The Owner may when practicable, have the Vessel call and discharge the cargo at another or substitute port declared or requested by the Charterer. The Owner or the Master is not required to give notice of discharge of the cargo, or the forwarding thereof as herein provided. When the cargo is discharged from the Vessel, as herein provided, it shall be at its own risk and expense; such discharge shall constitute complete delivery and performance under this contract and the Owner shall be freed from any further responsibility. For any service rendered to the cargo as herein provided the Owner shall be entitled to a reasonable extra compensation.

- (b) The Owner, Master and Vessel shall have liberty to comply with any orders or directions as to loading, departure, arrival, routes, points of call, stoppage, discharge, destination, delivery or otherwise howsoever given by the government of any nation or department thereof or any person acting or purporting to act with the authority of such government or of any department thereof, or by any committee or person having, under the terms of the war risk insurance on the Vessel, the right to give such orders or directions. Delivery or other disposition of the cargo in accordance with such orders or directions shall be a fulfillment of the contract voyage. The Vessel may carry contraband, explosives, munitions, warlike stores, hazardous cargo and may sail armed or unarmed and with or without convoy.
- (c) In addition to all other liberties herein the Owner shall have the right to withhold delivery of, reship to, deposit or discharge the cargo at any place whatsoever, surrender or dispose of the cargo in accordance with any direction, condition or agreement imposed upon or exacted from the Owner by any government or department thereof or any person purporting to act with the authority of either of them. In any of the above circumstances the cargo shall be solely at their risk and expense and all expenses and charges so incurred shall be payable by the owner or consignee thereof and shall be a lien on the cargo.

30. PRIORITY.

All agreement of the Owner contained in this Charter Party shall be subject to any orders or instructions of priority or requisition issued by the United States Government or the Government of the flag of the Vessel or any agencies thereof, or the requirement of naval or military authorities or other agencies of Government.

31. ARBITRATION.

Any dispute arising from the making, performance or termination of this Charter Party shall be settled in New York, Owner and Charterer each appointing an arbitrator, who shall be a merchant, broker or individual experienced in the shipping business; the two thus chosen, if they cannot agree, shall nominate a third arbitrator who shall be an Admiralty lawyer. Such arbitration shall be conducted in conformity with the provisions and procedure of the United States Arbitration Act, and a judgment of the Court shall be entered upon any award made by said arbitrator. Nothing in this clause shall be deemed to waive Owner's right to lien on the cargo for freight, dead freight or demurrage.

32. APPROVAL.

If U. S. Government approval is required, this Charter Party is subject to that approval.

ANNEX B

TOMAHAWK MARITIME RIDER CLAUSES

1. Vegoil Voyage Charterparty

Clause 1(b) – all delete

2. York/Antwerp Rules

York/Antwerp Rules 1974, as amended 1994 to apply

3. Freight Payment

Freight is payable in full to Owners bank account within 5 working days but always before breaking bulk. Upon receipt of telex or copy of facsimile freight remittance details from Charterer's remitting bank confirming that freight has been remitted to Owners account, Owners to release "Freight Prepaid" and "Clean onboard" Bills of Lading.

4. Agents

Owners shall appoint Charterer's nominated agents at load and discharge ports provided fees are competitive and such agents shall be employed, instructed, paid in advance and responsible by Owners.

Owners entitled to appoint their own protective agents.

5. Taxes and Dues

Wharfage / Dockage / Freight Tax on vessel / Withholding tax, if any, to be for Owner's account. Likewise if on cargoes to be for charterer's account.

6. Last 3 cargoes

Last 3 cargoes to be clean and unleaded and suitable for carriage of edible oils and/or palm oils.

7. FOSFA Banned List

Immediate last cargo of tank(s) used to load subject cargoes to conform to FOSFA International List of Banned Immediate previous cargoes. Furthermore, last 3 cargoes of tanks are not to be tallow, lard, animal fats and/or alcohol.

8. Tanks cleanliness and inspection

Master / Vessel shall thoroughly clean vessel's tanks/pipelines/pumps to standard suitable to load Charterer's designated cargoes and to Charterer's and/or Shipper's surveyor satisfaction and approval on arrival load port. Should vessel fail to pass the first inspection carried out by charterer's and/or shipper's surveyor, all time and costs incurred for inspection and to re-clean the tanks/pipelines/pumps to be for Owners' account.

9. Fittings

Owners shall not use fittings/lines/pumps/tanks or any other materials containing or made of copper and/or copper alloys when handling/loading subject cargoes.

10. Part and Transshipment

Part shipment and transshipment not allowed unless with Charter's consent if vessel is scheduled for a full ship load.

11. Cargo Segregation

Cargoes to be carried under separate bills of lading are to be kept completely segregated even if of the same grade.

12. Low Flash Cargo

Strictly no low flash cargoes allowed to be loaded.

13. Tank coatings

Cargoes to be stowed in epoxy/stainless steel/marineline coated tanks. Charterers and shippers right to inspect tanks include right to reject tank coatings.

14. Demurrage Claim and Time Bar

Owners to present demurrage claim within 90 days after completion of discharge with all supporting documents otherwise owners shall waive such claim. Demurrage claims to be settled within 30 days upon receipt of Owner's documented claims with complete supporting documents.

15. Classification

Vessel is classed with full member of International Association of Classification Society

16. Heating

Vessel is to heat cargoes in accordance with Charterers/Shippers/Surveyors instructions as received or if otherwise as per IASC or industry heating guidelines and recommendations. For high heat cargo, Owners warrant that vessel can load such cargo and to heat up to temperature of 60 deg C.

17. Early Loading

If vessel is able to, the vessel shall load earlier than commencement of laydays. Time is to count when vessel is all fast at load port.

18. Cancelling

If the vessel is not ready to load by the cancelling date stated in the charterparty or by any new cancelling date mutually agreed, Charterers have option of cancelling this charter which option shall be exercisable within 48 hours after cancelling date.

19. Laycan

If Vessel misses cancelling date and in the event of Charterers not exercising option to cancel the fixture, time to commence to count when Vessel is all fast at loadport or 24 hours after Vessel's arrival, whichever is earlier.

20. Additional Shifting

Charterers shall have the right to shift the vessels within any port of loading and/or discharge from one berth to another or to anchorage for STS. Charterers/Shippers/Receivers shall pay for all expenses incurred and time used to count as laytime or if the Vessel is on demurrage, as time on demurrage.

21. Laytime Used

Time shall not count as laytime or if on demurrage as demurrage due to overflow, breakdown, inefficiency, repairs, contamination or any other cause attributable to the vessel and/or owners, including inability to pump out cargoes as provided for in the pumping clause or discharging ballast water or slops.

22. Cargo Loss

Owners shall not be held responsible for any loss and/or shortage of cargoes incurred outside vessel's manifolds including 0.5% tolerance loss allowable for edible oil trades. However Owners shall still be responsible for full amount of any in-transit loss exceeding 0.5%. In-transit loss is defined as difference between vessel's net volume figure after loading at loading port and before unloading at discharge port after temperature adjusted.

23. Weather

Delays in berthing for loading/discharging and any delays after berthing due to weather or tidal conditions shall count as one half laytime or if on demurrage, at one half demurrage rate.

24. Bills of Lading

Owners to release Bills of Lading marked "Freight as per Charterparty" to shippers immediately upon completion of loading and upon confirmation of freight remittance. Charterers/shippers shall have the option to exchange of local bills of lading for global bills of lading or vice versa. Strictly no double issue of bills of lading is allowed.

Charterers shall have the option for all or part of the Bills of Lading to be released either at loading port or at Shanghai. If there is any issuance of Bills of Lading in Shanghai or switch of Bills of Lading then Owners to appoint their agents who will issue / switch Bills of Lading on behalf of Owners and all cost to be for Charterer's account.

25. Cargo Figures

Master or Master's agent shall sign Bills of Lading as many as presented by Shippers/loading terminal and to lodge a separate protest for any difference between Ship and Shore quantities and/or short supply of cargo. Bills of Lading quantity shall be based on shore supplied quantity to be provided by Shippers/loading terminal. If Ship's figure differs from Shore figure by an amount in excess of 0.5%, Master/Owners/Agent are not to sign Bills of Lading and to contact Charterer's Person-in-Charge immediately and wait for further instructions.

26. Cargo Remaining Onboard

In the event that any cargo remains onboard upon completion of discharge, Charterers shall have the right to claim an amount equal to FOB loading port value plus freight due with respect

thereto, provided that the remaining cargo onboard is pumpable and reachable by the Vessel's fixed pumps.

27. Receivers and consignee responsibility

In addition to the Charterers, the consignee and the receivers of the cargo are also responsible and liable for the payment of demurrage.

28. Oil Pollution

Owners warrant that the Vessel is now and will throughout the duration of the voyage be properly entered with a P&I Club, being a member of the International Group of P&I Clubs with insurance cover in place for oil pollution for the maximum on offer through the International Group of P&I Clubs but always a minimum of USD 500 million or USD 1 billion if the vessel is a tanker.

29. ITOPF

Owners warrant that through the duration of the voyage the vessel will be owned or demise chartered by a member of the ITOPF – International Tanker Owners Pollution Federation.

30. Cargo Commingling

Charterers may instruct the Vessel to commingle the cargo onboard the Vessel while at berth or anchorage only provided that such commingling is within the technical capacity of the Vessel and that the Master considers it safe to do so. All risk and costs directly or indirectly to be for Charterers/Consignee account.

31. BIMCO and ISM

BIMCO standard ISM clauses for voyage charterparty to apply.

32. ISPS

BIMCO standard ISPS clauses for voyage charterparty to apply.

33. Insurance Overage

Any extra insurance on freight and/or cargo due to vessels' age, classification or flag shall be for Owners' account and any such insurance costs to be deducted from freight.

34. STS and Double Banking

The Charterers shall have the right, where and when it is customary and safe to order the vessel to go, lie or remain alongside another vessel or barge of any size or description whatsoever or to order such vessels to come and remain alongside at such safe dock, wharf, anchorage or other place for transshipment, loading or discharge of cargo and/or bunkering.

Time consumed performing such operation shall count as laytime or time on demurrage, laytime shall commence six(6) hours after anchoring or wherever the first barge/craft is all secured alongside.

Charterers shall supply and pay for Yokohama fenders (or equivalent that is locally available) and all other additional equipment required by the Master required for such operation at

Charterer's time and expenses except those that are mandatorily required by local port authority such as Haldia or Calcutta which shall be for Owner's time and expenses.

35. Discharge Port

Upon completion of loading, vessel to proceed directly to discharge port. All Owners formalities including bunkering and taking stores etc are to be completed prior to vessels calling at load port.

36. Time used for Part Cargo

If part cargo, time used for loading or discharge of cargo for other receivers at the same berth/port shall be prorated in accordance with respective cargo quantities for each receiver. Time used for waiting shall be similarly pro-rated unless proven to be attributable to any specific charterer.

37. Strikes and Stoppages

Time lost as a result of strikes, lockout, stoppages or restraint of labour shall count as half laytime or demurrage.

38. Next Employment

After this voyage, Vessel's next employment is at Kaohsiung with strict laycan 1-14 October 2023 for period of 2 years.

39. Substitution

Owner's right to substitute (max one substitution is allowed) is always subject to the description and characteristics of the substituted vessel being at least the same standard and suitability and no extra costs being incurred by Charterers, compared to the initial named vessel. Any substitution request from Owners must be notified to the Charterers latest 10 days before laycan period and is subject to Charterer's approval that is not to be unreasonably withheld. In the event of any substitution, the original laycan to remain unchanged.

40. ETA Notice

Master/Owners to provide Charterers with regular 15/10/7/5/3/2/1 days (where applicable) ETA notice at loading and discharging ports. Charterer's voyage orders from part and parcel of this Charterparty.

41. Ownership

Owners not to change ownership between time of arrival at loading port and completion of voyage. Owners warrant that vessel is free from maritime liens or encumbrances. In case of arrest of Vessel during currency of the Charterparty and voyage Owners and/or managers of Vessel shall take remedial action at once for the Vessel to complete current voyage and discharge cargoes at the intended destinations.

42. Regulations and Compliance

Owners warrant that :

- (a) Vessel shall be in full compliance with all applicable regulations and/or other requirements of the countries of the ports and/or berths/terminals that this Charterparty covers.
- (b) Vessel shall have onboard all certificates, documents and records required for trading to the ports, places and berths that this Charterparty covers.
- (c) Vessel's hull, machinery, boilers, tanks and all equipment shall be in good working order and condition and in every way seaworthy and fit for the carriage of the said cargo.
- (d) Master, officers and crew are duly licensed and employed under the terms and conditions acceptable to the authorities and trade unions in the ports specified herein.

43. Force Majeure

It is mutually agreed that neither party shall be responsible or liable for any loss or damages (including demurrage and other liquidated damages) or delays in discharging or failure to discharge or deliver the cargo arising or resulting from war, terrorist activities, acts of public enemies, rebellion, civil commotion, act of god, government or ports actions, acts of perils or any other hindrance or cause happening beyond the parties' control and not arising from the fault of either party.

44. Re-assign

Charterers shall have the right to assign, sublet part or all of this charter but Charterers shall remain principally responsible for performance of the charterparty terms.

45. Trading Certificates

Owners to ensure that gas free certificate and all other certificates required by Port authorities are obtained before tendering Notice of Readiness for discharging.

46. Cargo Manifests

Owners shall ensure that manifests at discharge ports in India are to be filled by Vessel's agents at least 3 working days prior to Vessel's arrival with all relevant cargo documents to be provided in a timely manner.

47. Charterparty Conflict

Main terms followed by Charterers' rider clauses shall apply if conflicting.

48. Marpol Annex 2

Owners warrant that the Vessel is in all respects eligible to carry vegetable oil / palm oils / edible oils as per the revised Marpol Annex 2 regulations effective 1 January 2007.

49. Interim Voyages

Owners warrant that the Vessel's itinerary as given herein shall remain unchanged except for berthing delay at load and/or discharge ports. Owners are not allowed to perform interim voyages for whatever reasons once this Charter is confirmed. Owners are liable for all direct and indirect damages/costs etc as incurred by Charterers when the Vessel is unable to arrive within the agreed laycan in this Charter when performing interim voyage.

50. Lost Documents

In the event that original Bill of Lading and any other shipping documents are lost in transit, Owners are required to issue new set subject to Charterers furnishing a statutory declaration confirming that the originals have been lost and an indemnity for the Owners to issue new documents.

51. Written Charterparty

The agreed terms and conditions of this Charter as set out in the fixture recap shall be superseded by the amended vegoilvoy terms and these rider clauses which are to be sent to the brokers within 48 hours of the conclusion of the fixture recap and if no party raises any objections.

52. Private and Confidential

This fixture is to be kept strictly private and confidential.

53. BIMCO/IPTA Vegoil Tank Pre-wash Clause

(a) If following discharge of the cargo the Vessel is required to pre-wash its cargo tanks prior to leaving the discharge port in order to comply with MARPOL 73/78 Annex II or any other national or local laws or regulations, the Charterers shall pay compensation in an amount equivalent to the rate of demurrage stipulated in the Charter Party for all time after completion of discharge until the completion of washing and disposal of the tank washings and/or cargo residues. The disposal of tank washings and/or cargo residues shall be the responsibility of and be arranged and paid for by the Charterers.

(b) In the event that the Vessel is ordered to vacate the discharging berth to perform the pre-washing of its cargo tanks as provided under Sub-clause (a), any shifting expenses shall be for the Charterers' account.

54. BIMCO Bunker Supply and Payment Clause for Voyage Charters (Tank Vessels)

If the Vessel requires bunkers at loading and/or discharging port(s), Charterers have the right of supplying such bunkers provided price, condition and specification are competitive with other suppliers on date of lifting, and such bunkers shall be paid for by Owners by deduction of an agreed amount from freight, when payable.

In any case, if requested by Owners, Charterers guarantee to supply bunkers to Vessel's requirements at the port of Owner's choice with 60 days credit.

In the event that payment has not been received within the credit period Charterers have the right to deduct the cost of bunkers from freight with an additional charge of USD 10 per metric ton.

55. BIMCO Electronic Bills of Lading Clause

(a) At the Charterers' option, bills of lading, waybills and delivery orders referred to in this Charter Party shall be issued, signed and transmitted in electronic form with the same effect as their paper equivalent.

(b) For the purpose of Sub-clause (a) the Owners shall subscribe to and use Electronic (Paperless) Trading Systems as directed by the Charterers, provided such systems are approved by the International Group of P&I Clubs. Any fees incurred in subscribing to or for using such systems shall be for the Charterers' account.

(c) The Charterers agree to hold the Owners harmless in respect of any additional liability arising from the use of the systems referred to in Sub-clause (b), to the extent that such liability does not arise from Owners' negligence.

56. New Jason Clause

In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract or otherwise, the goods, Shippers, Consignees or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, Shippers, Consignees or owners of the goods to the Carrier before delivery.

57. Discharge without bills of lading

In the absence of original b/l's at discharge port(s), owners to release the entire cargo to receivers against charterers' LOI without bank guarantee (LOI wording always to be in Owners' P and I Club format).

58. Sanctions

BIMCO Sanctions Clause for Voyage Charter Parties 2020 to apply.

Clauses 59 to 75 deleted.

76. Law and Arbitration

General Average and Arbitration, if any, to be in Guangzhou with three arbitrators and SCMA Rules. English law to apply to the CP.

ANNEX C

Shipped in apparent good order and condition by
Shipper

Tanker Bill of Lading

B/L NO. COW-001A

Good Oil Sdn Bhd
30-00 Loam Road
Kota Kinabalu, Sarawak, Malaysia

FIRST ORIGINAL

Consignee/Order of
Veggies of Earth Banking Ltd. or Order

Notify Party
Gileum Refinery Co., Ltd.
Bldg. 500-500
Sajik-ro-8-gil 96
Jongno-gu, Seoil 75319

| | | |
|------------------------------------|------------------|--------------------------|
| On board the tanker MT. YANGNIU | Flag Liberian | Master CAPT. NGAU TAU |
|------------------------------------|------------------|--------------------------|

| | |
|----------------------------------|---|
| Loaded at the port of Bintulu | To be delivered to the port of Busan |
|----------------------------------|---|

A quantity in bulk said by the Shipper to be:

| COMMODITY (Name of Product) | QUANTITY (lbs., tonnes, barrels, gallons) |
|---------------------------------------|--|
| CRUDE PALM OIL (EDIBLE GRADE) IN BULK | 16,999.01 MT |

CLEAN ON BOARD

"FREIGHT PAYABLE AS PER CHARTER PARTY"

OCEAN CARRIAGE STOWAGE:

This shipment of 16,999.01 Metric tons was loaded on board the Vessel as part of one original lot of 16,999.01
Metric tons stowed in 1P, 1S, 2P, 2S, 3P, 3S, 4P, 4S with no segregation as to parcels. For the whole shipment One (1) sets
Of Bill of Lading have been issued for which the Vessel is relieved from all responsibilities to the extent it would be if one set only would have been issued. The Vessel undertakes to deliver only that portion of the cargo actually boded which is represented by the percentage that the total amount specified in the Bill(s) of Lading bears to the total of the commingling shipment delivered at destination. Neither the Vessel nor the owners assume any responsibility for the consequences of such commingling nor for the separation thereof at the time of delivery.

The quantity, measurement, weight, gauge, quality, nature and value and actual condition of the cargo unknown to the Vessel and the Master, to be delivered to the port of discharge or so near thereto as the Vessel can safely get, always afloat upon prior payment of freight as agreed. Cargo is warranted free of danger to Vessel except for the usual risks inherent in the carriage of the commodity as described.

This shipment is carried under and pursuant to the terms of the Charter dated 01.09.2023

Between Tomahawk Maritime S.A., As Owner and Yu Shipping Ltd. As Charterers,

And all conditions. Liberties and exceptions whatsoever of the said Charter apply to and govern the rights of the parties concerned in this shipment. The Clause Paramount, New Jason Clause and Both to Blame Collision Clause as set out on the reverse of this Bill of Lading are hereby incorporated herein and shall remain in effect even if unenforceable in the United States of America. General Average payment according to the York-Antwerp Rules 1974, as amended 1994.

The Master is authorized to act for all interests in arranging for salvage assistance on terms of Lloyd's Open Form. The freight is payable discountless and is earned concurrent with loading, ship and/or cargo lost or not lost or abandoned.

The Owners shall have an absolute lien on the cargo for all freight. Deadfreight, demurrage, damages for detention and all other monies due under the above mentioned Charter or under this Bill of Lading, together with the costs and expenses, including attorneys fees, of recovering same, and shall be entitled to sell or otherwise dispose of the property lien and apply the proceeds towards satisfaction of such liability.

The contract of carriage evidenced by this Bill of Lading is between the shipper, consignee and/or owner of the cargo and the owner or demise charterers of the Vessel named herein to carry the cargo described above.

It is understood and agreed that, other than said shipowner or demise charterer, no person, firm or corporation or other legal entity whatsoever, is or shall be deemed to be liable with respect to the shipment as carrier, bailee or otherwise in contract or in tort. If, however, it shall be adjudged that any other than said shipowner or demise charterer is carrier or bailee of said shipment or under any responsibility with respect thereto, all limitations of or exonerations from liability and all defences provided by law or by the terms of the contract of carriage shall be available to such other.

All of the provisions written, printed or stamped on either side hereof are part of this Bill of Lading Contract.

In Witness Whereof, the master has signed 3 (THREE) ORIGINALS

Bills of Lading of this tenor and date, one of which being accomplished, the others will be void.

Dated at Bintulu this 4th day of September 2023

AS AGENT FOR AND ON BEHALF OF THE MASTER
(CAPT. NGAU)

Conditions of Carriage

1) All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause, are herewith incorporated.

2) General Paramount Clause.

(a) The Hague Rules contained in the International Convention for the Unification of certain rules relating to Bills of Lading, dated Brussel at the 25th August 1924 as enacted in the country of shipment shall apply to this Bill of Lading. When no such enactment is in force in the country of shipment, the corresponding legislation of the country of destination shall apply, but in respect of shipments to which no such enactments are compulsorily applicable, the terms of the said Convention shall apply.

(b) Trades Where Hague-Visby rules apply.

In trades where the International Brussels Convention 1924 as amended by the Protocol signed at Brussels on February 23rd 1968, the Hague-Visby Rules apply compulsorily, the provisions of the respective legislation shall apply to this Bill of Lading.

(c) The carrier shall in no case be responsible for loss of or damage to the cargo, howsoever arising prior to loading into and after discharge from the Vessel or while the cargo is in the charge of another Carrier, nor in respect of deck cargo or live animals.

3) General Average.

General Average shall be adjusted, stated and settled according to York-Antwerp Rules, 1994 of any subsequent modification thereof, in London unless another place is agreed in the Charter Party.

Cargo's contribution to General Average shall be paid to the Carrier even when such average is the result of fault, neglect or error of the Master, Pilot or Crew, The charters. Shippers and Consignees expressly renounce Belgian Commercial code, Part II Art.148.

4) New Jason Clause

In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract or otherwise, the cargo, shippers, consignees or the owners of the cargo shall contribute with the Carrier in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or Incurred and shall pay salvage and special charges incurred in respect of the cargo.

If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Carrier or his agents, may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall if required, be made by the cargo, shippers, consignees or owners of the goods of the Carrier before delivery.

5) Both-to-Blame Collision Clause

If the vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the Master Mariner, Pilot or the servants of the Carrier in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder will Indemnify the Carrier against all loss or liability to the other or non-carrying vessel or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or non-carrying vessel or her owners to the owners of said cargo and set-off recouped or recovered by the other or non carrying vessel or her owners as part of their claim against the carrying Vessel or the carrier.

The foregoing provisions shall be so apply where the owners, operators, or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.

6) Lien

The Carrier shall have a lien on the Goods and any documents relating thereto for all sums payable to the Carrier under this contract and for general average contributions to whomsoever due. The Carrier shall also have a lien against the shipper, consignees or the owners of the cargo on the Goods and any document relating thereto for all sums due from him to the Carrier under any other contract. The Carrier may exercise his lien at any time and any place in his sole discretion, whether the contractual Carriage is completed or not. In any event any lien shall extend to cover the cost of recovering any sums due and for that purpose the Carrier shall have the right to sell the Goods by public auction or private treaty, without notice to the the shipper, consignees or the owners of the cargo. The Carrier's lien shall survive delivery of the Goods.

7) War Risks

(1) The Master shall not be required or bound or sign Bills of Lading for any blockaded port or for any port which the Master or Owners in his or their discretion consider dangerous or impossible to enter or reach. (A) If any port of loading or of discharge named in this charter or to which the vessel may properly be ordered pursuant to the terms of Bills of Lading be blockaded, or (B) If owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions, or the operation of international law (a) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the Master or Owners in his or their discretion dangerous or prohibited or (b) it be considered by the Master or Owners in his or their discretion dangerous or impossible for the vessel to reach any such port of loading or of discharge.

(2) Charterers shall have the right to order the cargo or such part of it as may be effected to be loaded or discharged at any other port of loading or of discharge within the range of loading or discharging ports respectively established under the provisions of the charter (provided such other port is not blockaded or that entry thereto or loading or discharge of cargo thereat is not in the Master's or Owners' discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from Charterers within forty-eight (48) hours after they or their agents have received from Owners a request for the nomination of a substitute port, Owners shall then be a liberty to discharge the cargo at any port which they or the Master may in their or his discretion decide on (whether within the range of discharge ports established under the provisions of the charter or not) and such discharge shall be deemed to be due fulfillment of the Contract or contracts of Affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharge ports established under the provisions of the charter, the charter shall be read in respect of freight and all other conditions whatsoever as if the voyage performed were that originally designated. However, if the vessel discharges the cargo at a port outside the range of discharge ports established under the provisions of the charter, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and/or discharging the cargo thereat shall be paid by Charterers or cargo owners. In this latter event Owners shall have a lien on the cargo for all such extra expenses.

(3) The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any otherwise whatsoever given by the government of the nation under whose flag the vessel sails or any other government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations, anything is done or is not done such shall not be deemed a deviation.

ANNEX D

To: **Tomahawk Maritime S.A.**

3 October 2023

The Owners and/or Managers of the MT "NIUYANG" (IMO No. 392817)

C/O Trust Company Complex

Ajeltake Road, Ajeltake Island,

Majuro, Marshall Islands

MH 96960

Dear Sirs

Vessel: MT NIUYANG

Port of Loading: Bintulu, Malaysia

Port of Discharge: Busan, South Korea

Cargo: 16,999.01 MT of Crude Palm Oil (Edible Grade) in Bulk

Bill(s) of Lading: COW-001A dated 4 September 2023 at Bintulu

The above Cargo was shipped on the above Vessel by Good Oil Sdn Bhd and consigned to Veggies of Earth Banking Ltd or Order for delivery at the Port of Discharge but the Bill(s) of Lading is (are) not currently available to be presented.

We, Yu Shipping Ltd, hereby represent and undertake that we are the party lawfully entitled to delivery of the said Cargo and request you to deliver the said Cargo to Gileum Refinery Co., Ltd or to such party as you believe to be or to represent us or to be acting on behalf of us at Busan, South Korea without production of the original Bill(s) of Lading.

In consideration of your complying with our above request, we hereby agree as follows:

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of delivering the Cargo in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the delivery of the Cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the Cargo as aforesaid, the Vessel, or any other vessel or property in the same or associated ownership, management or control, or any vessel or property in your ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the Vessel or such other vessels or property (whether by virtue of a caveat being entered on the Vessel's or such other vessel's registry or otherwise howsoever):
 - (a) to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of the Vessel or such other vessel or property or to remove such interference;
 - (b) if you have already provided security, to provide on demand equivalent substitute or counter security, whether or not you have made any prior demand upon us and whether or not such security exceeds the value of the Vessel or such other vessel, and
 - (c) to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.

4. If the place at which we have asked you to make delivery is a bulk liquid, dry bulk cargo or gas terminal or other facility, or another vessel, lighter or barge, then discharge or delivery to such terminal, facility, vessel, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.
5. As soon as all original bills of lading for the above Cargo shall have come into our possession, to deliver the same to you, whereupon (always provided that the said bills of lading have been properly tendered by the party to whom the Cargo was actually delivered) our liability hereunder shall cease.
6. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
7. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity submits to the exclusive jurisdiction of the High Court of Justice of England.

Yours faithfully for and on behalf of [insert name of Requestor]

The Requestor

Full name: Baby Shek for and on behalf of Yu Shipping Ltd

Signature [Signed]

IN THE MATTER OF AN INTERNATIONAL ARBITRATION

IN THE MATTER OF AN SCMA ARBITRATION UNDER THE SCMA RULES (4TH EDITION)

BETWEEN

TOMAHAWK MARITIME S.A.

..... CLAIMANT

AND

VEGGIES OF EARTH BANKING LTD

..... RESPONDENT

STATEMENT OF DEFENCE AND COUNTERCLAIM

1. This is the Respondent's Statement of Defence and Counterclaim ("D&CC").
2. Unless otherwise stated, terms used in this D&CC are as defined in the Statement of Claim.
3. The Respondent rejects the Claimant's claims as set out in the Statement of Claim for the following reasons: -
 - A. There is no valid arbitration clause.
 - B. The Claimant is not entitled to claim losses quantified by reference to the negotiated discount for the Vessel's next employment.
 - C. The Respondent is entitled to damages amounting to USD 3,399,820 arising from the Claimant's mis-delivery of the Cargo.

I. LACK OF JURISDICTION

4. The purported arbitration clause incorporated into the Bill of Lading terms provides as follows: -

"General Average and Arbitration, if any, to be in Guangzhou with three arbitrators and SCMA Rules. English law to apply to the CP"

5. As the seat of the arbitration is Guangzhou, the law applicable to determine the validity of the arbitration clause is PRC law.
6. Clause 16 of the Arbitration Law of the People's Republic of China (the "Arbitration Law") provides that an arbitration agreement is an agreement which has the following essential features:
 - (a) the expression of the parties' wish to submit to arbitration;
 - (b) the matters to be arbitrated; and
 - (c) the Arbitration Commission selected by the parties.
7. Clause 10 of the Arbitration Law further provides that: -

"Arbitration commissions may be established in the municipalities directly under the Central Government, in the municipalities where the people's governments of provinces and autonomous regions are located or, if necessary, in other cities divided into districts. Arbitration commissions shall not be established at each level of the administrative divisions. The people's governments of the municipalities and cities specified in the above paragraph shall organize the relevant departments and the Chamber of Commerce for the formation of an arbitration commission. The establishment of an arbitration commission shall be registered with the judicial administrative department of the relevant province, autonomous region or municipalities directly under the Central Government."

8. As the Singapore Chamber of Maritime Arbitration is not an "Arbitration Commission" within the definition of Clause 10 of the Arbitration Law, an essential feature required to constitute an arbitration agreement under PRC law is missing. Accordingly, the purported arbitration agreement is invalid and the Tribunal lacks jurisdiction.

II. THE CLAIMANT IS NOT ENTITLED TO CLAIM FOR THE NEGOTIATED DISCOUNT

9. However, in the event that the Tribunal determines that the arbitration clause is valid, the Respondent's position is as follows.
10. Paragraphs 1 to 15 of the Statement of Claim are admitted.

11. The Respondent is unaware of any correspondence between the Claimant and Carry On Advisors LLP, and accordingly does not plead to Paragraph 16 of the Statement of Claim.
12. Paragraph 17 of the Statement of Claim is admitted.
13. Paragraph 18 of the Statement of Claim is denied. As there is an express term already governing the timeframe for the discharge and delivery of the Cargo, it is unnecessary to imply the term set out in Paragraph 18 of the Statement of Claim.
14. Paragraphs 19 and 20 of the Statement of Claim are denied. For breach of the laytime provisions, the Claimant's claim for losses are limited to a claim for demurrage only.

III. THE MIS-DELIVERY COUNTERCLAIM

15. The Respondent is the financier of the Cargo. The Respondent's customer, Yu Shipping Ltd., purchased the Cargo with payment to be made by way of a letter of credit. The Respondent issued a letter of credit and paid for the Cargo on behalf of Yu Shipping Ltd. In doing so, the Respondent had advanced funds to Yu Shipping Ltd. for payment of the price and looked to the Cargo as security for the loan.
16. The Respondent became the lawful holder of the Bill of Lading on 3 October 2023 when the Shipper delivered the 3/3 set of the original Bill of Lading to the Respondent. The Respondent has remained in continuous possession of the Bill of Lading since 3 October 2023.
17. As lawful holder of the Bill of Lading, the Respondent is the party entitled to delivery-up of the Cargo upon presentation of the Bill of Lading to the Claimant. Correspondingly, the Claimant is under an obligation not to deliver the Cargo except to the lawful holder of the Bill of Lading and only upon presentation of the Bill of Lading.
18. In breach of its obligations, the Claimant has admitted that it delivered the Cargo against a Letter of Indemnity.
19. As a result of the Claimant's mis-delivery of the Cargo, the Respondent has suffered loss and/or damage in the amount of USD 4,249,752.50,

being the invoice price of the Cargo. Alternatively, the Respondent claims damages for the value of the Cargo to be assessed.

IV. CONCLUSION

20. For the reasons stated above, the Respondent humbly asks that the Tribunal terminate this arbitration or, alternatively, that the Claimant's claims are dismissed.

Bauhinia Law LLC

16 February 2024

IN THE MATTER OF AN INTERNATIONAL ARBITRATION

IN THE MATTER OF AN SCMA ARBITRATION UNDER THE SCMA RULES (4TH EDITION)

BETWEEN

TOMAHAWK MARITIME S.A.

..... CLAIMANT

AND

VEGGIES OF EARTH BANKING LTD

..... RESPONDENT

STATEMENT OF REPLY AND DEFENCE TO COUNTERCLAIM

1. This is the Claimant's Statement of Reply and Defence to Counterclaim.
2. Unless otherwise expressly stated, the Claimant denies each and every allegation set out in the Defence and Counterclaim dated 16 February 2024 (the "**D&CC**"). Terms used herein are as defined in the Statement of Claim dated 19 January 2024.

A. THE TRIBUNAL HAS JURISDICTION

3. Paragraphs 4, 6, and 7 of the D&CC are admitted.
4. Paragraphs 5 and 8 of the D&CC are denied. The governing law of the arbitration agreement is Singapore law and the seat of the arbitration is Singapore. Rule 32 of the applicable Singapore Chamber of Maritime Arbitration Rules (4th Edition) (the "**SCMA Rules**") provides that: -

"The seat of arbitration shall be Singapore unless otherwise agreed by the parties. Where the seat of the arbitration is Singapore, the International Arbitration Act (Chapter 143A) shall apply unless otherwise agreed by the parties."

5. As the seat of arbitration is Singapore, under Singapore law, the arbitration agreement is completely valid and this Tribunal has jurisdiction to decide the dispute. Alternatively, if the seat of arbitration is Guangzhou, the law governing the arbitration agreement is English law and the arbitration agreement is similarly valid.

B. THE CLAIMANT IS ENTITLED TO CLAIM FOR UNLIQUIDATED DAMAGES IN ADDITION OR AS AN ALTERNATIVE TO DEMURRAGE

6. Paragraphs 12 and 13 of the D&CC are denied.
7. The fact that the Vessel was fixed on a further charterparty with a laycan of 1-14 October 2023 at Kaohsiung was known to the Respondent. In fact, the Charterer had informed the Respondent of the Vessel's next employment and had provided the Respondent with a copy of the Charterparty on 1 October 2023 (see **Annex A** to this Reply).
8. It is therefore appropriate to imply a term that the receivers and/or consignees of the Cargo would procure the discharge of the Cargo within a reasonable time.
9. In any case, there is a breach of an express obligation to discharge the Vessel within laytime. Demurrage serves only to compensate for the additional time spent by the Vessel waiting for discharge to be completed and does not cover consequential losses suffered arising out of the failure to complete discharge within laytime.
10. Given that all parties were aware of the Vessel's next employment and the magnitude of the losses that the Claimant will suffer if the Vessel could not be delivered into the next charterparty at Kaohsiung, the demurrage provisions are to be construed narrowly to only cover time lost until the Vessel completes discharge.

C. THE MIS-DELIVERY CLAIM

11. Paragraphs 15 to 19 of the D&CC are not admitted. In any case, the delivery of the Cargo pursuant to a letter of indemnity tendered by the Charterer did not cause the Respondent to suffer any loss.
12. The Letter of Credit issued by the Respondent provided that payment will be made against presentation of the shipping documents (including the Bill of Lading) or, in lieu of the shipping documents, a letter of indemnity. The Respondent accepted the presentation of a letter of indemnity which expressly states that the Respondent had agreed to make payment for the Cargo without presentation of the Bill of Lading.
13. Moreover, the Respondent was informed of the Vessel's arrival at Busan on 1 October 2023 and that the Charterer would be taking delivery of the Cargo by invoking Clause 57 of the Charterparty. Despite knowing that the Cargo will be delivered to the Charterer, the Respondent failed to take any steps to take delivery of the Cargo itself. In these circumstances, the Respondent could not have viewed the Cargo as security for its loan to the Charterer.

14. The Respondent's conduct was the effective cause of the loss and the Respondent had caused its own loss. For these reasons, the Respondent's claim for mis-delivery should be rejected or otherwise awarded nominal damages only.

Dated this 1st day of March 2024

Beefeater Solicitors LLP

ANNEX A

From: Al Swell
Sent: Thursday, December 22, 2023 3:14 PM
To: Butcher Kim
Cc: Hong Rou
Subject: "NIUYANG" – CP dd. 01.09.2023 – Crude Palm Oil delivery at Busan

Dear Kim,

Please see our replies in red.

Kind Regards

Al

From: Kim Butcher (Tomahawk Maritime)
Sent: Wednesday, December 21, 2023 10:04 PM
To: Al Swell <al!swell@carryon.com>
Cc: Hong Rou <h.rou@beefmakan.com.sg>
Subject: "NIUYANG" – CP dd. 01.09.2023 – Crude Palm Oil delivery at Busan

Dear Al,

I refer to my discussion with you yesterday.

Could the liquidators please provide us with some additional information on our queries below: -

1. Were VOE Bank informed by Yu Shipping that the MT "NIUYANG" had another employment lined-up at Kaohsiung after the voyage to Busan?

L: The records we have show that Yu Shipping informed VOE on 29 September 2023 that the "NIUYANG" had to sail to Kaohsiung by 30 September 2023 and a later email on the same day saying that it was important to discharge the cargo by 7 October 2023. VOE were provided with a copy of the charterparty between Tomahawk Maritime and Yu Shipping dated 1 September 2023.

2. What caused the delay in Yu Shipping giving discharge instructions?

3. VOE have alleged a mis-delivery claim against Tomahawk Maritime. Please let us have some information on VOE's entitlement to the Cargo.

L: We will deal with 2 and 3 together. The records we have show that Yu Shipping purchased the Cargo from Good Oils Sdn Bhd on 14 August 2023 on an FOB basis. The sale contract required Yu Shipping to provide a letter of credit to pay for the Cargo.

Yu Shipping has a trade finance facility with VOE and VOE issued the letter of credit to Good Oils. The letter of credit was payable against shipping documents or a letter of indemnity. Yu Shipping were informed on 3 October 2023 that a Payment LOI (attached) has been presented by Good Oils. Yu Shipping then asked VOE to finance the purchase price which VOE agreed to. VOE accordingly paid Good Oils under the letter of credit.

Yu Shipping was supposed to sell the Cargo and use the sale proceeds to repay VOE. Due to cash flow issues, Yu Shipping wanted to deliver the Cargo to its Korean buyers as soon as possible but VOE was initially not agreeable to releasing the Cargo until it received the Bill of Lading. However, on 3 October 2023, VOE finally told Yu Shipping that *“You must do as you deem fit as Charterers and we will not interfere as long as the loan is repaid.”*

Best

Kim

GOOD OILS SDN BHD

30-00 Loam Road, Kota Kinabalu, Sarawak, Malaysia
(Registration No. 1965182740U)

**TO: VEGGIES OF EARTH BANKING LTD
FOR ACCOUNT OF YU SHIPPING LTD**

3 October 2023

LETTER OF INDEMNITY – SALE OF 17,000 MT OF CRUDE PALM OIL

IN CONSIDERATION OF YOUR MAKING PAYMENT OF USD 4,249,752.50 FOR 16,999.01 MT OF THE CARGO IN ACCORDANCE WITH THE UNDERLYING AGREEMENT AND HAVING AGREED TO ACCEPT DELIVERY OF THE CARGO WITHOUT HAVING BEEN PROVIDED WITH THE FULL SET OF 3/3 ORIGINAL BILLS OF LADING REQUIRED TO BE PRESENTED BY US IN ACCORDANCE WITH THE UNDERLYING AGREEMENT ('THE DOCUMENTS'), WE HEREBY REPRESENT AND WARRANT AS FOLLOWS: -

- (I) THE EXISTENCE AND VALIDITY OF THE DOCUMENTS;
- (II) THAT WE ARE ENTITLED TO POSSESSION OF THE DOCUMENTS;
- (III) THAT WE WERE ENTITLED TO POSSESSION OF THE CARGO;
- (IV) THAT WE HAD GOOD TITLE TO THE CARGO;
- (V) THAT TITLE IN THE CARGO HAS BEEN PASSED AS PROVIDED IN THE AGREEMENT TO YOU FREE OF ALL LIENS, CHARGES OR ENCUMBRANCES OF WHATEVER KIND;
- (VI) THAT YOU WILL HAVE THE BENEFIT OF THE WARRANTY AS TO ENJOYMENT OF QUIET POSSESSION IMPLIED BY LAW IN THE AGREEMENT BUT WITHOUT PREJUDICE TO ANY OTHER WARRANTY SO IMPLIED.

WITHOUT PREJUDICE TO YOUR RIGHTS UNDER THE AGREEMENT WE HEREBY AGREE TO PROTECT, INDEMNIFY AND HOLD YOU HARMLESS FROM AND AGAINST ANY AND ALL DAMAGES, LOSSES, LIABILITIES, COSTS, CLAIMS AND REASONABLE EXPENSES WHICH YOU MAY SUFFER BY REASON OF:

- (A) OUR FAILURE TO PRESENT THE DOCUMENTS TO YOU IN ACCORDANCE WITH THE AGREEMENT; AND/OR
- (B) ANY ACTION OR PROCEEDING BROUGHT OR THREATENED AGAINST YOU BY REASON OF OUR SAID FAILURE AND ANY BREACH OF OUR ABOVE EXPRESS REPRESENTATIONS AND WARRANTIES IN CONNECTION WITH QUESTIONS OF TITLE TO OR THE RIGHT TO POSSESSION OF THE DOCUMENTS OR THE CARGO OR THE PROCEEDS OF EITHER; OR ANY LIENS, CHARGES OR ENCUMBRANCES ASSERTED ON THE DOCUMENTS OR THE CARGO OR ANY OTHER CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE DOCUMENTS.

OUR LIABILITY HEREUNDER SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS AND UNTIL WE PROVIDE YOU WITH THE DOCUMENTS, WHICH WE IRREVOCABLY AGREE TO PROVIDE TO YOU PROMPTLY AFTER THE SAME HAVE COME INTO OUR POSSESSION.

YOURS FAITHFULLY
[SIGNED]
FOR AND ON BEHALF OF
GOOD OILS SDN BHD

Daniel Liang Junhong

From: Turn Ip (VOE)

Sent: Tuesday, October 3, 2023 4:42 PM

To: E-Operations (Yu)

Cc: E-Banker (Yu); Ti Lapia (Yu); Nemo Chan (Yu); Dory Li (Yu); Chai Sim (VOE); Papa Rika (VOE); Trade Finance (VOE)

Subject: LC Application (VOE) – Good Oils

Dear Ariel,

I'm afraid that we cannot accommodate your request and our decisions stands.

If you are afraid of the demurrage accruing, you must do as you deem fit as Charterers and we will not interfere as long as the loan is repaid.

Best Regards,

Turn

From: E-Operations (Yu)

Sent: Tuesday, October 3, 2023 4:27 PM

To: Trade Finance (VOE)

Cc: E-Banker (Yu); Ti Lapia (Yu); Nemo Chan (Yu); Dory Li (Yu); Chai Sim (VOE); Papa Rika (VOE); Turn Ip (VOE)

Subject: LC Application (VOE) – Good Oils

Dear Turn,

The vessel really needs to leave as soon as possible. Can VOE Bank please reconsider granting trust receipt to us.

Best Regards,

Turn

From: Turn Ip (VOE)

Sent: Tuesday, October 3, 2023 4:02 PM

To: E-Operations (Yu)

Cc: E-Banker (Yu); Ti Lapia (Yu); Nemo Chan (Yu); Dory Li (Yu); Chai Sim (VOE); Papa Rika (VOE); Trade Finance (VOE)

Subject: LC Application (VOE) – Good Oils

Dear Ariel,

Due to latest review of Yu Maritime's financials we are unable to grant trust receipt for release of goods until export LC from Korean buyers lodged with us and bills of lading are received from Good Oils.

Payment to be made under the LC by us will be booked as a trust receipt loan for the time being.

Best Regards,

Turn

From: E-Operations (Yu)
Sent: Tuesday, October 3, 2023 3:47 PM
To: Trade Finance (VOE)
Cc: E-Banker (Yu); Ti Lapia (Yu); Nemo Chan (Yu); Dory Li (Yu); Chai Sim (VOE); Papa Rika (VOE); Turn Ip (VOE)
Subject: LC Application (VOE) – Good Oils

Dear Turn,

We accept the documents and we will like to apply for trust receipt as stated previously.

Cargo has been sold to Korean buyers.

Thank you

Ariel

From: Turn Ip (VOE)
Sent: Tuesday, October 3, 2023 3:18 PM
To: E-Operations (Yu)
Cc: E-Banker (Yu); Ti Lapia (Yu); Nemo Chan (Yu); Dory Li (Yu); Chai Sim (VOE); Papa Rika (VOE); Trade Finance (VOE)
Subject: LC Application (VOE) – Good Oils

Dear Ariel,

LOI and Invoice has been presented under LC. Collection Notice for your instructions attached.

Has the cargo been sold yet?

Best Regards,

Turn

From: E-Operations (Yu)
Sent: Friday, September 29, 2023 12:17 PM
To: Trade Finance (VOE)
Cc: E-Banker (Yu); Ti Lapia (Yu); Nemo Chan (Yu); Dory Li (Yu); Chai Sim (VOE); Papa Rika (VOE); Turn Ip (VOE)
Subject: LC Application (VOE) – Good Oils

Dear Turn,

Please process urgently as vessel needs to leave port by 7 October 2023. CP for vessel attached.

Thank you

Ariel

From: Turn Ip (VOE)
Sent: Friday, September 29, 2023 9:58 AM

To: E-Operations (Yu)

Cc: E-Banker (Yu); Ti Lapia (Yu); Nemo Chan (Yu); Dory Li (Yu); Chai Sim (VOE); Papa Rika (VOE); Trade Finance (VOE)

Subject: LC Application (VOE) – Good Oils

Dear Ariel,

We will process trust receipt loan once the documents are presented against LC.

Best Regards,

Turn

From: E-Operations (Yu)

Sent: Friday, September 29, 2023 9:14 AM

To: Trade Finance (VOE)

Cc: E-Banker (Yu); Ti Lapia (Yu); Nemo Chan (Yu); Dory Li (Yu); Chai Sim (VOE); Papa Rika (VOE); Turn Ip (VOE)

Subject: LC Application (VOE) – Good Oils

Dear Turn,

We wish to apply for trust receipt for 16 days.

Please note that the vessel will need to leave Busan by 30 September as it has to fulfil a subsequent employment at Kaohsiung.

Thank you

Ariel

From: Turn Ip (VOE)

Sent: Friday, September 22, 2023 5:23 PM

To: E-Operations (Yu)

Cc: E-Banker (Yu); Ti Lapia (Yu); Nemo Chan (Yu); Dory Li (Yu); Chai Sim (VOE); Papa Rika (VOE); Trade Finance (VOE)

Subject: LC Application (VOE) – Good Oils

Nothing yet...

Best Regards,

Turn

From: E-Operations (Yu)

Sent: Friday, September 22, 2023 5:01 PM

To: Trade Finance (VOE)

Cc: E-Banker (Yu); Ti Lapia (Yu); Nemo Chan (Yu); Dory Li (Yu); Chai Sim (VOE); Papa Rika (VOE); Turn Ip (VOE)

Subject: LC Application (VOE) – Good Oils

Dear Turn,

Any update? Vessel laytime almost expiring.

Thank you

Ariel

From: Turn Ip (VOE)

Sent: Wednesday, September 20, 2023 5:23 PM

To: E-Operations (Yu)

Cc: E-Banker (Yu); Ti Lapia (Yu); Nemo Chan (Yu); Dory Li (Yu); Chai Sim (VOE); Papa Rika (VOE); Trade Finance (VOE)

Subject: LC Application (VOE) – Good Oils

Dear Ariel,

No documents have been presented under LOE yet. We will update you when documents are received.

Best Regards,

Turn

From: E-Operations (Yu)

Sent: Wednesday, September 20, 2023 4:33 PM

To: Trade Finance (VOE)

Cc: E-Banker (Yu); Ti Lapia (Yu); Nemo Chan (Yu); Dory Li (Yu); Chai Sim (VOE); Papa Rika (VOE); Turn Ip (VOE)

Subject: LC Application (VOE) – Good Oils

Dear Chai,

Pleased to inform VOE that the carrying vessel has arrived at Busan. Can we check if documents have been presented under LOE. We would like to apply for trust receipt.

Thank you,

Ariel