

The Winning Bidder / Buyer must return fully executed copy of this Memorandum of Agreement (MOA) within of 24hrs of getting awarded the Sale

**MEMORANDUM OF AGREEMENT  
FOR  
SALE AND PURCHASE OF VESSEL**

Dated as of: \_\_\_\_\_ ("Effective Date")

\_\_\_\_ Inc., a [State] corporation (hereinafter called the "Seller"), with place of business at \_\_\_\_\_ agrees to sell, via Karatzas Marine Advisors & Co. (hereinafter called the "Broker of Record"), with place of business at 200 Liberty Street, 23<sup>rd</sup> Floor, New York, New York, 10281, and, \_\_\_\_\_ (hereinafter called the "Buyer") with place of business at \_\_\_\_\_ agrees to buy:

Vessel Name: Minimum of Eight Open Hopper Barges " " (hereinafter called the "Vessels"), in All-or-None Transaction

**Built:** In 2007 at Caruthersville, MO by Trinity Marine Products

**Official Number:**

**Flag:** U.S.A.

**1. Memorandum of Agreement (MOA)**

Within twenty-four (24) hours of Buyer being notified of getting awarded the sale of the Vessel, Buyer shall return a complete and duly executed copy of this Memorandum of Agreement (this "Agreement") to Broker of Record via email at info@BMKaratzas.com or Basil@BMKaratzas.com with countersigned originals to be exchanged at Date and Place of Sale.

**2. Security Deposit**

As per Terms of Sale For Tank Barge " ", twenty per cent (20%) of the Purchase Price ("Purchase Price") must be received within two (2) business days in New York State in following escrow account \_\_\_\_\_, ABA \_\_\_\_\_, held with \_\_\_\_\_ Bank NA (the "Escrow Agent"), money to be held and released according to Escrow Agreement (attached).

Amount of Security Deposit: US\$ \_\_\_\_\_ (\_\_\_\_\_ U.S. Dollars)

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**3. Purchase Price**

The remaining eighty per cent (80%) of the Purchase Price ( \_\_\_\_\_, U.S. Dollars (US \$ \_\_\_\_\_) ) is due two business days in New York State to same escrow account as per Security Deposit instruction hereabove prior to the Date of Sale, as per Terms of Sale For 35 Jumbo, Raked, Inland River, Open Hopper Barges”.

The Purchase Price is exclusive of any broker's fees incurred in connection with the sale of the Vessel, with the exception as identified in Clause 19 below, and represents the price for purchase of the Vessel as identified herein above.

**4. Payments**

Payments shall be paid in full in immediately-available funds and free of bank charges to the Escrow Account, as outlined hereabove.

**5. Inspection**

Buyer hereby acknowledges that it has inspected the Vessel or waived its right to do so, and agrees to accept the Vessel "As Is / Where is", without any representations or warranties whatsoever, and further agrees to make arrangements to move the Vessel at its own cost and expense immediately upon closing of the sale and tender of the Purchase Price to the Seller.

**6. Time and Place of Delivery**

As per Date and Place of Sale, outlined in the “Terms of Sale For 35 Jumbo, Raked, Inland River, Open Hopper Barges”.

- a) The Vessel(s) shall be delivered and taken over safely afloat at a safe and accessible berth at \_\_\_\_\_.

Delivery Date: February 15, 2021 (estimated)

Cancelling Date: Same as Delivery Date

- b) Should the Vessel become an actual or constructive total loss before delivery, monies deposited into the Escrow Account will be released immediately to Buyer as its sole remedy, whereupon this Agreement shall be null and void and neither party shall be liable to the other in any respect.

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**7. Spares / Bunkers/etc.**

Seller shall deliver the Vessel to Buyer with everything belonging to her on board at the time of Buyer's acceptance of Vessel.

**8. Documentation**

The place of closing would be as per Date and Place of Sale, outlined in the "Terms of Sale For 35 Jumbo, Raked, Inland River, Open Hopper Barges" or other location as mutually agreed between the parties.

Documentary Closing: by circulation of documents.

In exchange for payment of the Purchase Price, Seller shall furnish Buyer with the following delivery documents:

- a) Duplicate originals of notarized Bills of Sale on Coast Guard Form CG-1340 (the "Bills of Sale"), for the Vessel, in form satisfactory to Buyer for filing and recordation with the United States Coast Guard (the "U.S.C.G.");
- b) Any such additional documents as may reasonably be required by the competent authorities for the purpose of registering the Vessel, provided the Buyer notifies the Seller of any such documents as soon as possible after the date of this Agreement.

At the time of delivery, Buyer and Seller shall sign and deliver to each other a Protocol of Delivery and Acceptance confirming the terms of acceptance and the date and time of delivery of the Vessel from the Seller to the Buyer.

**9. Corporate Representations and Warranties**

There are no claims, demands, actions, suits or other proceedings against Seller or, to the best of Seller's knowledge, the Vessel, including any counter-claim, any arbitration proceeding, any administrative or other proceeding or investigation by or before any governmental agency, nor any order, decree or judgment, whether pending, in effect or, to the best of Seller's knowledge, threatened, (collectively, the "Actions") against or relating to the Seller or the Vessel which could give rise to an adverse claim of title or a lien, attachment, seizure, forfeiture or other encumbrance against the Vessel.

The Vessel is eligible for documentation with the U.S.C.G. and an endorsement for use in the coastwise trade.

Buyer represents and warrants to Seller as follows:

- a) Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of -----

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- b) Buyer has all corporate power and authority necessary to purchase the Vessel pursuant to this Agreement;
- c) The person executing this Agreement on behalf of Buyer has been duly authorized by the Board of Directors of Buyer to execute this Agreement and to consummate the transactions contemplated by this Agreement;
- d) All corporate action necessary for this Agreement to constitute the valid, binding and legal obligation of Buyer, enforceable in accordance with its terms, has been taken.
- e) Should the Buyer has engaged any brokers or finders with respect to the purchase of the Vessels, Buyer shall be solely and unequivocally financially responsible for said broker's commission, finders fee or other compensation in connection with the sale and purchase of the Vessel, and Seller, Broker of Record or their agents shall under no circumstances shall be responsible for such broker's commission, finders fee or other.

**10. Encumbrances and Claims**

Seller warrants that, at the time of delivery, the Vessel is free from all claims, charters, encumbrances, mortgages and maritime liens or any other debts whatsoever. Seller hereby undertakes to defend, indemnify and hold harmless Buyer from and against all claims, costs, damages, losses, liabilities, and expenses (including payment or reasonable attorney's fees and costs of litigation), including, without limitation, title claims and claims for personal injury or death or loss of or damage to property, pollution and contamination (all of the foregoing "claims") that Buyer may howsoever suffer, sustain, pay or incur as a direct result of Seller's prior ownership and operation of the Vessel prior to closing, whether under contract, tort or strict liability. Notwithstanding the foregoing, Seller expressly disclaims any liability for the condition, seaworthiness or fitness for any particular purpose of the Vessel, as the sale contemplated hereby is "as-is, where-is".

**11. Taxes, etc.**

Any taxes, fees and expenses in connection with the sale and re-documenting of the Vessel in Buyer's name shall be for Buyer's account.

**12. Condition of delivery**

The Vessel shall be delivered to Buyer in substantially the same condition as when inspected by Buyer, fair wear and tear excepted. In all other respects, the Vessel shall be delivered to and taken over by Buyer on an outright basis **"as is, where is," without any representation, agreement or warranty whatsoever, express or implied, as to their**

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class, physical condition, outfit, equipment, spare parts, seaworthiness, merchantability or fitness for any purpose whatsoever.

Notwithstanding the foregoing, Buyer hereby releases and forever discharges and agrees to hold harmless Seller from and against all claims, costs, damages, losses, liabilities, and expenses (including without limitation claims for personal injury or death or loss of or damage to property, pollution and contamination, and consequential loss) (all of the foregoing "claims") that Buyer may howsoever suffer, sustain, pay or incur in connection with its ownership or operation of the Vessel, whether such claims arise under contract, tort or strict liability, and Buyer shall indemnify, defend, release and save the Seller completely harmless from all such claims (including payment or reasonable attorney's fees and costs of litigation). Buyer's obligations contained in this article 12 shall extend to the Seller and shall inure to the benefit of Seller and its affiliated companies, and the officers, directors, stockholders, partners, managers, representatives, employees, consultants, agents, servants and insurers of each.

### **13. Name / Markings**

Upon delivery Buyer shall remove all Vessel markings referring to Seller.

### **14. Default**

- a) Should the Security Deposit or the Purchase Price not be paid in accordance with Clause 2, 3 and 4 (for lack of financing or otherwise), Seller may seek specific performance against Buyer for the enforcement of Buyer's obligations under New York State Law, including, but not limited to, the payment of the Purchase Price.
- b) Subject to Clause 6(b) above, should Seller be unable to complete a valid sale and transfer by the Canceling Date, Buyer may cancel this Agreement as Buyer's sole remedy.

### **15. Risk of Loss**

Risk of loss remains with the Seller until delivery, at which time risk of loss passes to the Buyer. In the event of an actual or constructive total loss of any or all of the Vessel prior to delivery under this Agreement, either party may elect to cancel this Agreement. Upon any such cancellation, and in accordance with Section 6(b) hereof, the Seller shall return the deposit to Buyer, including interest thereon no later than five (5) days after delivery of such notice of cancellation.

In the event that any loss or damage to the Vessel prior to delivery under this Agreement does not render the Vessel an actual or constructive total loss, Seller shall have the option, at its sole discretion, to make reasonable repairs to the Vessel to return same to condition upon Buyer's inspection and such repairs shall be to the satisfaction of Buyer.

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**16. Applicable Law**

To the extent applicable, this Agreement shall be governed by the general maritime laws of the United States and any applicable provisions of the United States Code; and, to the extent inapplicable, by the laws of the State of New York. Any dispute between the parties shall first be referred to non-binding mediation in New York City, New York, with use of a mediator acceptable to both parties. If the parties are unable to select a mediator or are not successful at mediating the dispute, then venue will lie in the United States District Court for the Southern District of New York.

**17. Assignment**

Neither this Agreement nor any right hereunder may be transferred, assigned, pledged or hypothecated by either party hereto without the prior written consent of the other party.

**18. Counterparts**

This Agreement may be executed and delivered by each party in separate counterparts (including execution and delivery by facsimile transmission), each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same agreement, notwithstanding that all parties have not signed the same counterpart.

**19. Brokers**

This Transaction has been arranged by Karatzas Marine Advisors & Co, as Broker of Record. The Seller has engaged and shall alone be responsible for the compensation of the Broker of Record, as per private agreement. Should any additional brokers, if any, be involved in the Transaction, they should be deemed representing the Buyer, and accordingly, Buyer exclusively shall be responsible for their compensation.

**20. Notices**

Any notices required under or pursuant to this Agreement shall be sent via email at [info@BMKaratzas.com](mailto:info@BMKaratzas.com) or [Basil@BMkaratzas.com](mailto:Basil@BMkaratzas.com), or, if in writing to the party hereto to the address listed in the recitals above or to any other such address as a party may request in writing from time to time.

**21. Survival**

It is agreed and understood by the parties that Paragraphs 9 and 12 survive closing.

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**22. Miscellaneous**

This Agreement may be amended or modified in whole or in part only by an agreement in writing executed by both parties and making specific reference thereto.

The failure of either party to enforce any provision of this Agreement shall in no manner affect the right of such party to enforce the same at a later time, and the waiver by either party of any breach of any provision in this Agreement shall not be construed to be a waiver by such party of any succeeding breach of such provision or a waiver by such party of any breach of any other provision.

The section headings of this Agreement are inserted for convenience only and do not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

Seller and Buyer shall execute and deliver to the other such other and further documents and instruments as each may require to more fully effectuate the terms and conditions of this Agreement and the sale and purchase of the Vessel.

In the event that any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Agreement and any other application thereof shall not in any way be affected or impaired thereby.

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**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties hereto have duly executed and delivered this Agreement as of the date first written above.

SELLER:  
c/o

BUYER:

By (Name): \_\_\_\_\_  
Title: \_\_\_\_\_

By (Name): \_\_\_\_\_  
Title: \_\_\_\_\_

**PRIVILEGED DOCUMENT**