



**TOTAL PETROCHEMICALS & REFINING SA/NV**

**GENERAL TERMS AND CONDITIONS**

**FOR SALES AND PURCHASES OF**

**PETROCHEMICAL PRODUCTS**

**2019 edition**



## CONTENTS

<b>PART 1 - FOB DELIVERIES</b> .....	<b>6</b>
<b>SUB-PART 1: IN RESPECT OF FOB DELIVERIES BY VESSEL</b> .....	<b>6</b>
SECTION 1 -DELIVERY TERMS AND PASSING OF RISK AND PROPERTY .....	6
SECTION 2 -VESSEL NOMINATION AND OTHER REQUIREMENTS.....	6
SECTION 3 -ARRIVAL OF VESSEL AT THE LOADING TERMINAL.....	8
SECTION 4 -LOADING OF VESSEL AT THE LOADING TERMINAL .....	8
SECTION 5 -LAYTIME AND DEMURRAGE.....	9
SECTION 6 -QUANTITY AND QUALITY DETERMINATION.....	11
SECTION 7 -DOCUMENTS.....	12
<b>SUB-PART 2 : IN RESPECT OF FOB DELIVERIES BY BARGE</b> .....	<b>13</b>
SECTION 8 -APPLICABILITY .....	13
SECTION 9 -BARGE NOMINATION AND OTHER REQUIREMENTS FOR BARGES.....	13
SECTION 10 - LAYTIME AND DEMURRAGE FOR BARGES.....	14
SECTION 11 - ADN TRANSPORT DOCUMENT.....	15
SECTION 12 - DOCUMENTS .....	15
<b>PART 2 - CIF, CFR AND DAP DELIVERIES</b> .....	<b>16</b>
<b>SUB-PART 1: IN RESPECT OF CIF,CFR AND DAP DELIVERIES BY VESSEL</b> .....	<b>16</b>
SECTION 13 - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY.....	16
SECTION 14 - CONTRACT OF CARRIAGE AND INSURANCE.....	16
SECTION 15 - NOMINATION OF VESSEL AND OTHER REQUIREMENTS .....	17
SECTION 16 - ARRIVAL AND DISCHARGE OF VESSEL AT THE DISCHARGE TERMINAL.....	19
SECTION 17 - LAYTIME AND DEMURRAGE .....	20
SECTION 18 - QUANTITY AND QUALITY DETERMINATION .....	21
SECTION 19 - DOCUMENTS .....	22
<b>SUB-PART 2: IN RESPECT OF CIF, CFR AND DAP DELIVERIES BY BARGE</b> .....	<b>24</b>
SECTION 20 - APPLICABILITY .....	24
SECTION 21 - BARGE NOMINATION AND OTHER REQUIREMENTS FOR BARGES.....	24
SECTION 22 - LAYTIME AND DEMURRAGE FOR BARGES.....	25
SECTION 23 - DOCUMENTS .....	25
<b>PART 3 - EX TANK, INTO TANK, IN SITU (STOCK TRANSFER), FIP AND EX-PIPELINE DELIVERIES</b> ....	<b>26</b>
SECTION 24 - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY.....	26
SECTION 25 - NOMINATION.....	26
SECTION 26 - QUANTITY AND QUALITY DETERMINATION .....	26
SECTION 27 - DOCUMENTS .....	27
<b>PART 4 - FCA ROAD TANKER AND RAIL TANK CARS DELIVERIES</b> .....	<b>28</b>
SECTION 28 - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY.....	28
SECTION 29 - NOMINATIONS.....	28
SECTION 30 - ACCEPTANCE OF ROAD TANKER(S)/RAIL TANK CARS.....	29
SECTION 31 - LOADING.....	29
SECTION 32 - QUANTITY AND QUALITY DETERMINATION .....	29
SECTION 33 - DOCUMENTS AND OTHER CONDITIONS.....	30

<b>PART 5 - CPT, CIP, DAP OR DDP ROAD TANKER AND RAIL TANK CARS DELIVERIES .....</b>	<b>31</b>
SECTION 34 - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY .....	31
SECTION 35 - NOMINATIONS .....	31
SECTION 36 - ACCEPTANCE OF ROAD TANKERS/RAIL TANK CARS .....	32
SECTION 37 - LOADING AND DISCHARGE .....	32
SECTION 38 - QUANTITY AND QUALITY DETERMINATION .....	33
SECTION 39 - DOCUMENTS, INSURANCE AND OTHER CONDITIONS .....	33
<b>PART 6 - APPLICABLE TO ALL DELIVERIES.....</b>	<b>34</b>
SECTION 40 - GENERAL DELIVERY TERMS .....	34
SECTION 41 - QUALITY .....	34
SECTION 42 - INVOICING AND PAYMENT .....	34
SECTION 43 - CLAIMS.....	36
SECTION 44 - DESTINATION .....	37
SECTION 45 - EXCEPTIONS - FORCE MAJEURE .....	37
SECTION 46 - TERMINATION .....	38
SECTION 47 - ASSIGNMENT .....	39
SECTION 48 - REACH .....	40
SECTION 49 - TRADE RESTRICTIONS AND INTERNATIONAL ECONOMIC SANCTIONS .....	41
SECTION 50 - ANTI-CORRUPTION.....	42
SECTION 51 - WAIVER.....	43
SECTION 52 - NOTICES .....	43
SECTION 53 - HEALTH, SAFETY AND ENVIRONMENTAL INFORMATION .....	43
SECTION 54 - APPLICABLE LAW AND JURISDICTION .....	43
SECTION 55 - PRECURSOR GOODS FOR DRUGS.....	44
SECTION 56 - ETHICS AND BUSINESS PRINCIPLES .....	44
SECTION 57 - VALUE ADDED TAX AND EXCISE DUTY, EU DOCUMENTATION.....	44
SECTION 58 - GENERAL .....	46

## DEFINITIONS

In the Agreement (as hereinafter defined), the following terms shall have, unless the context otherwise requires, the meaning defined below:

- **ADN** The latest version of the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways adopted on 26 May 2000 on the occasion of a Diplomatic Conference held under the joint auspices of the United Nations Economic Commission for Europe (UNECE) and the Central Commission for the Navigation of the Rhine (CCNR).
- **Affiliate** Any company or other legal entity directly or indirectly controlling or controlled by a party to the Agreement or controlled directly or indirectly by any company or other legal entity having direct or indirect control over that party.
- **AFRA** The Average Freight Rate Assessment or, if applicable, the Average Single Voyage Rate Assessment, as both published by the London Tanker Brokers' Panel Limited. The applicable rate shall be the rate published at the beginning of the month in which the Vessel loads, irrespective of the reference period mentioned in the publication.
- **Agreement** The present General Terms and Conditions together with the Specific Terms and any agreed amendment(s) thereto.
- **Applicable Laws** All laws, statutes, regulations, ordinances, codes, rules, guidelines, orders, and permits of any governmental authority that apply to the parties or the subject matter of this Agreement.
- **Aromatics** Toluene, mixed xylene, orthoxylene, paraxylene, benzene, benzene heart cut, pygas, styrene or ethylbenzene.
- **Banking Day** A day upon which major banks are open for banking business in the place(s) where payment is required to be received hereunder.
- **Barge** Means (a) a self-propelled craft or towed/pushed dumb craft employed in port areas and sheltered waterways which is not classified as a sea-going vessel (inland barge), and/or (b) a towed/pushed dumb craft classified for sea-going trade (sea-going barge).
- **Berth** A berth, buoy, dock, anchorage, submarine line, single point or single berth mooring facility, offshore location, alongside vessels or lighters, floating storage or any other loading or discharge place as may be indicated by the party in question.
- **CET** Central European Time or Central European Summer Time, as appropriate.
- **CFR/CIF/CPT/CIP/DAP/FCA/FOB/DDP** Shall have the meaning ascribed thereto in the Incoterms<sup>®</sup> 2010 Rules (as amended from time to time), except as modified by the Agreement. If there is any inconsistency or conflict between the Incoterms and the Agreement, the Agreement shall prevail.
- **CIM** Refers to the Uniform Rules concerning the Contract of International Carriage of Goods by Rail.
- **CMR** Refers to the Convention on the Contract for the International Carriage of Goods by Road.
- **Credit Support** Any form of financial support as designated by Sellers, including but not limited to (1) an irrevocable standby letter of credit, (2) an irrevocable documentary letter of credit, (3) payment in advance (which shall be based on the Seller's estimated value of the Product plus 10%), (4) guarantee; or (5) any similar security, at Seller's sole discretion.
- **Day** Calendar day.

- <b>Discharge Dates</b>	The day or range of days in which the Seller's nominated Vessel must tender N.O.R. at the Discharge Terminal.
- <b>Discharge Terminal</b>	The place in a safe berth/safe port and/or the receiving facilities at which the Product is discharged or is to be discharged.
- <b>ETA</b>	ETA means the estimated time of arrival. For Barges, ETA shall constitute one whole calendar day.
- <b>EMCS</b>	The Excise Movement Control System as established pursuant to the European Council Directive 2008/118/EC, any amendments thereto and any other subsequent successor or subordinate legislation.
- <b>Importer of Record</b>	The entity responsible for ensuring that Products are imported in accordance with the law of the import jurisdiction.
- <b>Incoterms® 2010 Rules</b>	ICC Rules for the Use of Domestic and International Trade Terms, ICC Publication no. 715E, 2010 Edition. In case of inconsistency between said Incoterms and the Agreement, the Agreement shall prevail.
- <b>Indicative Discharge Dates</b>	For CFR or CIF deliveries, the date or range of dates within which the Vessel shall arrive at the Discharge Terminal.
- <b>In writing</b>	A letter, email or comparable means of communication.
- <b>Insolvency Laws</b>	Any bankruptcy, liquidation, insolvency, or similar laws.
- <b>FIP</b>	Free Into Pipeline.
- <b>Full Cargo Lot</b>	A quantity of Product under the Agreement which occupies all or nearly all of a Vessel or Barge's capacity and is loaded and carried without other cargo.
- <b>Laytime</b>	The period of time allowed for loading/discharging the Product (as applicable).
- <b>Loading Dates</b>	The day or range of days (or part thereof) in which the nominated Vessel must tender a valid N.O.R. at the Loading Terminal. Loading Dates shall be either as specified for delivery in the Specific Terms or as established in accordance with the procedures set out, or referred to, in the Specific Terms or if not so specified or established, as notified by Seller to Buyer.
- <b>Loading Terminal</b>	The loading port or facility where the Product is loaded or is to be loaded.
- <b>Locomotive</b>	A self-propelled vehicle that runs on rails and is used for moving Rail Tank Cars.
- <b>Terminal Operator</b>	Any legal entity which at the time of loading/discharge is the operator of the loading/discharge facilities where the Product is i) loaded or is to be loaded; or ii) discharged or is to be discharged.
- <b>L.O.I.</b>	Letter of Indemnity.
- <b>Month</b>	Calendar month.
- <b>NCTS</b>	New Computerised Transit System.
- <b>N.O.R.</b>	Notice that the Vessel has arrived at the Loading/Discharge Terminal and is in all respects ready to load/discharge the Product.
- <b>Part Cargo Lot</b>	A quantity of Product under the Agreement which is loaded and carried on a Vessel or Barge together with other product which is not bought or sold under the Agreement.
- <b>Product</b>	Such petrochemical product(s) and/or any other product as more specifically described in the Specific Terms and sold or nominated to be sold under the Agreement.
- <b>Rail Tank Car</b>	The rail tank car(s) and all equipment on the rail tank car(s).
- <b>Rail Tank Car Requirements</b>	The requirements (including, but not limited to contractual and legislative requirements) that the Rail Tank Cars and Locomotive(s) must comply with at the

Loading Terminal and/or Discharge Terminal, as applicable and in force. Such requirements shall include but not be limited to those relating to i) health, safety, security and the environment; ii) personal protective equipment or technical requirements relating to the Rail Tank Cars and Locomotive(s); and iii) the required configuration(s) of the Rail Tank Cars and Locomotive(s).

- **REACH** Regulation (EC) n°1907/2006 of the European Parliament and the Council of 18 December 2006 concerning the Regulation, Evaluation, Authorisation and Restriction of Chemicals substances (REACH), and its latest amendments.
- **RID** Refers to the Regulation concerning the International Carriage of Dangerous Goods by Rail.
- **Road Tanker** The road tanker vehicle, any trailer attached to the vehicle, and all equipment on the vehicle including but not limited to hoses, pipes and pumps.
- **Road Tanker Requirements** The requirements (including, but not limited to contractual and legislative requirements) that the Road Tanker and the driver must comply with at the Loading Terminal and/or Discharge Terminal, as applicable and in force. Such requirements shall include but not be limited to those relating to i) health, safety, security and the environment; ii) personal protective equipment or technical requirements relating to the Road Tanker and its driver; and iii) the required configuration(s) of the Road Tanker.
- **SDS** Safety Data Sheet containing the information set out in REACH and in CLP.
- **Supplier** Any legal entity supplying, or expected by a party to supply, to that party directly or indirectly the Product, services or ancillary goods necessary to deliver the Product to the other party.
- **Shipment** Any specific quantity of Product delivered or to be delivered under the Agreement as a Full Cargo Lot or a Part Cargo Lot.
- **SOLAS** The International Convention for the Safety of Life at Sea 1974 (as amended).
- **Specific Terms** All the specific terms relating to a particular sale or purchase which has been agreed upon orally or in writing, whether in the form of a written agreement, letter or other written form of communication (including e-mail or pdf document), in which the present General Terms and Conditions are incorporated.
- **Ton** Metric ton or tonne. One thousand (1,000) kilograms.
- **TTB** Tankschiff Transport Bedingungen rules (latest edition).
- **Vessel** Any mechanically propelled seagoing vessel including but not limited to tankers, ships, and coasters used for the transportation of Products over sea.
- **Working Day** A day other than a Saturday or Sunday or a public holiday in the jurisdiction of Seller's principal office.
- **Worldscale** The New Worldwide Tanker Nominal Freight Scale as current on the day of commencement of loading the Vessel in question at the Loading Terminal.

## PART 1 - FOB DELIVERIES

### SUB-PART 1: IN RESPECT OF FOB DELIVERIES BY VESSEL

#### SECTION 1 - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY

- 1.1. The Product shall be delivered to Buyer in bulk FOB at the Loading Terminal, onto Vessel(s) to be provided by Buyer. In any event, risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Loading Terminal, at which point Seller's responsibility shall cease.
- 1.2. Without limiting any other provisions of the Agreement, any loss of, or damage to, the Product occurring during or after the loading operations, which is caused by the Vessel, the Vessel's owner, or Buyer or any of their respective contractors, agents or employees, shall be for the account of Buyer.
- 1.3. Any claim made against Seller by Seller's Supplier or by the loading Terminal Operator or by any third party in respect of damage to any property of Seller's Supplier or any facilities at the Loading Terminal or to any property of any third party which is caused by the Vessel, the Vessel's Owner or their crew, or Buyer or any of their independent contractors, subcontractors, agents or employees shall be borne by Buyer. Buyer shall indemnify (including for the legal costs and disbursements which Seller incurs or becomes liable to pay), release and hold Seller harmless from liability for any and all claims or demands arising out of the above.
- 1.4. If the Product delivered hereunder forms an unascertained part of a larger bulk, payment for the Product delivered shall, solely for the purposes of enabling property in such Product to pass pursuant to Section 20(A) of the Sale of Goods Act 1979, be deemed to have been made as the Product passes the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Loading Terminal. Nothing in this section shall be deemed to relieve Buyer from its payment obligations pursuant to the Agreement.

#### SECTION 2 - VESSEL NOMINATION AND OTHER REQUIREMENTS

- 2.1. Each Vessel which is to load Product under the Agreement (including, for the avoidance of doubt, any substituted Vessel) shall be nominated by the Buyer in the form specified below (the "**Vessel's Nomination**"). Such Vessel's Nomination shall be received by Seller no later than five (5) Working Days prior to the first day of the Loading Dates. In the event that the Agreement is entered into after the above deadline but prior to the first day of the Loading Dates, then the nomination must be received by the Seller as soon as practically possible.

The Vessel's Nomination must be given to Seller between 9:00 and 15:00 CET on Mondays, Tuesdays, Wednesdays, Thursdays and between 9:00 and 14:00 CET on Fridays or on the day preceding any days which are not Working Days. If the Vessel's Nomination is received after that time on the day in question, it shall be deemed to have been received at 09:00 CET on the following Working Day.

Unless otherwise specified in the Specific Terms, the Vessel's Nomination shall be made only by email. Vessel Nominations made by phone or made by any other means of communication will be deemed not to have been received. Seller is entitled to treat any amended nomination as a new nomination if, in its sole discretion, such amendment might cause a delay for loading of the Vessel at the Loading Terminal.

- 2.2. The Vessel's Nomination shall specify:
  - (a) The Vessel's name and specifications including but not limited to, the Vessel's flag, date built, length overall, beam, cargo tank capacity excluding slop tanks, draught and summer deadweight. TBN nomination not acceptable;

- (b) The quantity and grade of the Product to be loaded and details of the cargo on board or to be co-loaded if the Vessel is to load a Part Cargo Lot;
- (c) The vessel's updated Q-88 form;
- (d) The ETA;
- (e) The port(s) of discharge and country(ies) of destination;
- (f) Full written instructions needed by Seller to issue documents in accordance with regulations, including any export regulations in force, including but not limited to, an Accompanying Administrative Document ("AAD") where relevant;
- (g) The applicable demurrage rate. For the avoidance of doubt, the demurrage rate indicated in the Vessel's Nomination is given for information only and shall be without prejudice to sub-section 5.5;
- (h) The specifications of the last three cargoes;
- (i) Full documentary instructions regarding the particulars and destination to be inserted into the bills of lading and such other customary Loading Terminal documentation which may be required;
- (j) Written confirmation that the Vessel complies with the requirements of Appendix 2 hereto; and
- (k) Any other information reasonably requested by Seller or as may be required by the loading Terminal Operator from time to time, including, but not exclusively, in light of developments in law, statute, regulation or equivalent; and in any event in accordance with the applicable regulations in force at the Loading Terminal.

If the Vessel's Nomination is not received by Seller within the notice period specified above, Seller shall use reasonable efforts to obtain acceptance of such late nomination by the Loading Terminal or Seller's Supplier, but always without guarantee. In any event, Buyer shall be liable for all costs and losses resulting from any delays in loading the Product under the Agreement.

Where applicable, nominations will be deemed not to have been received until the time and date when Credit Support required under the Agreement or by the Seller has been received and agreed by the Seller.

- 2.3.** Each Vessel which is to load Product under the Agreement (including, for the avoidance of doubt, any substituted Vessel) shall be subject to Seller's and Loading Terminal's acceptance (including vetting). Unless otherwise specified in the Specific Terms, Seller shall notify Buyer no later than two (2) Working Days after receipt of Vessel's Nomination whether Seller accepts or refuses such nomination. In case of rejection, Buyer shall promptly nominate an alternative Vessel.

Notwithstanding any prior acceptance of such Vessel, Seller shall have the right (which right may be only exercised prior to the passing of risk and property hereunder) to reject the Vessel (i) if the Loading Terminal rejects the Vessel; or (ii) on any reasonable ground if such Vessel is involved in an incident or more recent information regarding such Vessel becomes available to Seller at any time after such prior acceptance.

In the event of a rejection or a delay of the Vessel or other restriction suffered in respect of the Vessel by virtue of the application of any regulations or other applicable requirements of this Section 2:

- (a) The Seller shall not be liable for the consequences of rejection, delay or restriction of the Vessel, including demurrage;
- (b) The Buyer shall be liable for any costs and/or damages incurred by the Seller arising out of any such rejection of, delay to or restriction of the Vessel; and
- (c) The Buyer's obligations under the Agreement to nominate a suitable Vessel and to ensure that it tenders N.O.R. at the Loading Terminal in accordance with sub-section 3.2 shall be unaffected.

- 2.4.** Buyer may, or if necessary to perform its obligations must, nominate a substitute Vessel whose size and capacity are equivalent to those of the Vessel originally nominated or agreed. The loading quantity and



the Loading Dates in respect of the Vessel originally nominated or agreed shall apply to the substitute Vessel.

If required, Buyer shall promptly answer or cause the Vessel's owner to answer any questionnaire for the nominated or substituted Vessel as submitted by Seller. If any response as provided by, or on behalf of, Buyer proves to be inaccurate, Seller shall be entitled at any time to reject forthwith a previously accepted Vessel and Buyer shall indemnify Seller and/or Seller's Supplier against any losses and costs incurred by Seller and/or Seller's Supplier, including but not limited to, any demurrage payable in respect of other Vessels waiting at the Loading Terminal.

- 2.5.** Buyer confirms that for each Vessel nominated to load a Shipment it is familiar with the latest vessel size limitations/restrictions, including but not limited to, deadweight, draught, beam, overall length and any other vessel limitations/restrictions in force at the Loading Terminal at the time of nomination and at the time of arrival, and Buyer is solely responsible to ensure that the Vessel will not exceed, or otherwise fail to comply with, such limitations/restrictions.
- 2.6.** If the date of the Agreement is later than any of the dates for notification, nomination(s) and procedures specified in the Specific Terms or this Section 2, then both parties shall make best efforts to complete as soon as practically possible any outstanding time limited requirements, notifications, nominations and procedures on such party which would have preceded the date of the Agreement aforesaid. Any loss, cost and/or expense arising out of the failure to comply with this sub-section shall be borne by the responsible party.
- 2.7.** All taxes, duties, fees, charges (including, without limitation, pilotage, mooring and towage expenses) and dues (including, without limitation, quay dues) of any description whatsoever in respect of the Vessel incurred at the Loading Terminal shall be for the account of Buyer. Buyer shall likewise assume and be responsible for payment of any taxes, duties, fees, charges and dues of every description whatsoever imposed or levied by any governmental, local or port authority on, or applicable, attributable or related to, the Product or its delivery, transportation, ownership, sale or use, in respect of any stage after the risk in such Product has passed to Buyer and the amount of the same shall be for the account of Buyer.
- 2.8.** The Vessel shall comply with (a) The Applicable Law(s) at the Loading Terminal; and (b) the applicable requirements set out in Appendix 2.

### **SECTION 3 - ARRIVAL OF VESSEL AT THE LOADING TERMINAL**

- 3.1.** Buyer shall advise the loading Terminal Operator (copy to Seller) of the ETA of the Vessel at the Loading Terminal at least seventy-two (72), forty-eight (48), and twenty-four (24) hours before arrival, or as otherwise required by the rules and regulations applicable at the Loading Terminal.
- 3.2.** Buyer shall ensure that the Vessel shall, within the Loading Dates and within any time limit prescribed in the regulations, procedures and requirements referred to in sub-section 1.10 of Appendix 2: (i) arrive at the Loading Terminal, complete formalities and in all respects be ready to load the Shipment, and (ii) tender a N.O.R. to Seller and Loading Terminal. Compliance with sub-section 1.10 of Appendix 2 will be a condition on the validity of the N.O.R. tendered by the master or his representative.
- 3.3.** The Buyer or its representative shall notify the Seller or its representative of any change or changes in the ETA notified pursuant to sub-section 3.1, but the Loading Dates shall be revised only with the Seller's specific written agreement. The giving or withholding of such agreement shall be at Seller's absolute discretion.

### **SECTION 4 - LOADING OF VESSEL AT THE LOADING TERMINAL**

- 4.1.** Subject to compliance by Buyer and its nominated Vessel with all requirements (including but not limited to characteristics, dimensions and draught) from time to time in force at the Loading Terminal, the loading berth nominated by Seller or its representative shall be fit for the Vessel to proceed thereto, lie thereat, load the Product and depart therefrom, always afloat. Seller may, at its sole discretion, require the Vessel to shift berth, in which case the costs of shifting berth shall be for Seller's account and the

time used for shifting shall be counted as used Laytime or if the Vessel is on demurrage as time on demurrage. In any event, any shifting which has become necessary due to any Vessel's compliance failure will be at the cost and/or time of Buyer.

**4.2.** Subject to Buyer complying with the provisions of sub-section 3.2 above, Seller, having regard to the regulations, procedures and requirements referred to in sub-section 1.10 of Appendix 2 and the time when Buyer complied with the provisions of sub-sections 3.1 and 3.2 above, shall commence loading as soon as reasonably practicable, even if this means that loading is effected or completed outside the Loading Dates.

**4.3.** Notwithstanding anything else to the contrary in the Agreement and in addition to any other rights of Seller, in the event of:

- (a) Any breach by Buyer of the obligations set out in sub-section 3.2 above; or
- (b) Any withdrawal of a Vessel already scheduled and accepted; or
- (c) Seller's availability of the Product being lost or curtailed due to any breach of Buyer's contractual obligations;

Buyer shall indemnify Seller for all costs, losses, damages and/or expenses (including those to be paid by Seller to Seller's Supplier and loading Terminal Operator) incurred by Seller and/or Seller's Supplier as a result thereof and Seller shall be under no obligation to supply any undelivered quantity of Product. At Seller's option, the undelivered quantity of Product shall be deducted from the total quantity of Product deliverable under the Agreement.

**4.4.** Either party may request to load the Vessel from lighters. Subject to the acceptance of the loading Terminal Operator, the non-requesting party may accept such request and acceptance should not to be unreasonably withheld.

**4.5.** In the event of lightering requested by the Buyer in accordance with sub-section 4.4, any cost of such lightering shall be for the Buyer's account, including but not limited to any additional costs in excess of those provided for in Section 5 (including but not limited to additional steaming and/or waiting time (weather or sea conditions permitting or not). All time spent for or in connection with any such lightering shall count as running hours for the purposes of calculating the liability for demurrage under the provisions of Section 5, unless lightering is requested by Seller. The Seller shall notify Buyer of the place of lightering which shall be subject to Buyer's approval, such approval not to be unreasonably withheld. The place of lightering shall be deemed the Berth for the purposes of Sections 4 and 5 and all references therein to the Berth shall be construed accordingly.

**4.6.** Any lightering operations shall be carried out in accordance with the procedures set out in the ICS/OCIMF Ship-to-Ship transfer guides and MARPOL 73/78 Annex 1, Chapter 8, Regulations 40, 41 and 42, 'Prevention of Pollution During Transfer of Oil Cargo Between Oil Tankers at Sea', as amended by Resolution MEPC.186(59) or any modifications thereto from time to time in force.

## **SECTION 5 - LAYTIME AND DEMURRAGE**

**5.1.** Unless otherwise specified, Seller shall be allowed Laytime at each Loading Terminal as follows:

- (a) In the case of Vessels of fifteen thousand (15,000) tons summer deadweight or less, twenty-four (24) running hours; or
- (b) In all other cases, thirty-six (36) running hours.

Sundays, holidays and nights included, unless loading on Sundays, holidays or during the night is prohibited by the laws, regulations or procedures in force at the Loading Terminal.

**5.2.** Subject to the regulations, procedures and requirements referred to in sub-section 1.10 of Appendix 2 and strict compliance by Buyer and Vessel with all provisions of the Agreement, Laytime shall start running:

- (a) If the N.O.R. is tendered within the Loading Dates, (i) six (6) hours after N.O.R. is tendered; or (ii) upon commencement of loading, whichever occurs first;

- (b) If the N.O.R. is tendered before the beginning of the Loading Dates, (i) at 6:00 a.m. local time on the first day of the Loading Dates, or (ii) upon commencement of loading; whichever occurs first.

Without prejudice to any other rights of Seller under the Agreement, if the N.O.R. is tendered after the last day of the Loading Dates, then Seller shall be under no obligation to supply the Product which would have been loaded on Buyer's Vessel unless Seller specifically agrees to do so, in which case Laytime shall begin upon commencement of loading.

- 5.3.** Laytime or time on demurrage shall end on disconnection of loading hoses after completion of loading. The Vessel shall vacate her loading Berth as soon as loading hoses have been disconnected after completion of loading. In the event of failure to do so, Buyer shall pay Seller for any resulting demurrage, losses, damages, costs and/or expenses which Seller may incur including, without limitation, any demurrage as may be incurred by Seller or Seller's Supplier due to resulting delay to other vessels awaiting their turn to load.
- 5.4.** Any time spent and/or lost due to any of the following events shall not count as used Laytime or, if on demurrage, as time on demurrage:
- (a) The inward passage to the loading Berth until the Vessel is securely moored at the Berth and its gangway, if it is to be used, is in place;
  - (b) Any delay in the Vessel reaching or clearing her Berth which is caused by reasons beyond Seller's control;
  - (c) Awaiting tide, tugboats, pilot or daylight;
  - (d) Delay caused by the Vessel, including without limitation, delay due to the inability of the Vessel to load the Shipment within the time allowed;
  - (e) Buyer, owner, charterer or master of the Vessel or any government, local or port authorities at the Loading Terminal prohibiting loading at any time;
  - (f) Delay on account of weather, sea conditions or strike;
  - (g) Discharging of ballast, bilges, slops or bunkering if not carried out concurrently with loading operations;
  - (h) Awaiting customs, immigration clearance, free pratique or other local administrative requirements;
  - (i) Cleaning, inerting or inspecting the Vessel's cargo tanks, pumps or pipelines;
  - (j) Time to conduct additional analyses of Product that are requested by the Buyer;
  - (k) Seller is prevented from, or delayed in delivering all or part of the Product by any reason as provided for in Section 45; or
  - (l) Delay in loading is occasioned by Buyer's failure to timely comply with the provisions of Section 42 and all other requirements regarding payment under the Agreement.
- 5.5.** Seller shall pay demurrage to Buyer per running hour and pro rata for a Part Cargo Lot for all time used in excess of the allowed Laytime as provided for in the Agreement. Unless a demurrage rate is specified in the Specific Terms, the applicable demurrage rate shall be determined as follows:
- (a) The demurrage rate per day provided for in the charter party entered into for the loading Vessel; or
  - (b) Where there is no charterparty rate:
    - (i) if the Shipment actually loaded on board the Vessel constitutes a Full Cargo Lot, the demurrage rate per day, as published in Worldscale and corrected by AFRA, which applies for a Vessel of the same type, size and capacity; or
    - (ii) if the Shipment actually loaded on board the Vessel does not constitute a Full Cargo Lot, the demurrage rate per day shall be as published in Worldscale and corrected by AFRA, which applies for a Vessel of the same type with a size and capacity equivalent to a summer deadweight equal to the weight of the Shipment plus five (5) percent.

The demurrage rate referred to in the above paragraph (b) of this sub-section 5.5 shall be used when the Vessel is owned, demise chartered or time chartered by Buyer.

If other than a Full Cargo Lot is delivered and such delivery is loaded together with Product being delivered to the Buyer by another supplier at the same Berth, the Seller shall only be liable for that proportion of the demurrage equal to the ratio of the volume delivered by the Seller to the total volume loaded onto the Vessel at that Berth.

- 5.6.** The right of Buyer to demurrage in accordance with the provisions of the Agreement shall constitute Buyer's sole remedy in respect of any delay of any kind arising from any cause whatsoever, whether arising out of or in connection with any failure of Seller to provide a berth or otherwise, howsoever and without limitation. Seller shall not be liable for any other direct or indirect costs, damages and/or losses whatsoever arising out of any such delay, whether arising out of the Agreement or otherwise.
- 5.7.** In no event shall Seller pay any amount in respect of demurrage in excess of the demurrage actually paid by Buyer in respect of the Vessel's voyage and which relates to the Product delivered by Seller, and evidence of payment by Buyer of such amount and the basis of its calculation shall be provided to the Seller as a pre-condition of the Seller's obligation to pay demurrage.

## **SECTION 6 - QUANTITY AND QUALITY DETERMINATION**

- 6.1.** Unless otherwise agreed between the Parties, where the Loading Terminal is operated by Seller (or Seller's Affiliate)
- (a) The measurement of the quantities and the taking of samples and analysis thereof shall be carried out by the Terminal Operator in accordance with the standard practice in use at the Loading Terminal at the time of loading, unless otherwise provided for in the Specific Terms. The Terminal Operator will issue a certificate of quality and quantity (or such other equivalent documents) which shall be final and binding on both parties, except in case of fraud or manifest error.
- (b) Where the Specific Terms provide for the appointment of an independent inspector at the Loading Terminal, the quality and/or quantity of the Product as ascertained or witnessed by such independent inspector shall, except in case of fraud or manifest error, be final and binding on both Parties and the provisions stipulated in sub-section 6.2 below shall apply.
- 6.2.** Where the Loading Terminal is not operated by Seller (or Seller's Affiliate)
- (a) The measurement of the quantities and the taking of samples and analysis thereof shall be ascertained or witnessed by an independent inspector jointly appointed by the Buyer and Seller in accordance with approved industry practice. Certificates of quantity and quality so issued shall be final and binding on both parties, except in case of fraud or manifest error.
- (b) The Seller shall use all reasonable endeavours to enable the independent inspector so appointed to have full access to the facilities at the Loading Terminal necessary to perform his duties. The independent inspector's report shall be made available to both Parties and all charges in respect of such inspection shall be shared equally between the Parties, unless otherwise provided for in the Specific Terms.
- 6.3.** Notwithstanding sub-sections 6.1(b) or 6.2, if no independent inspector is mutually agreed or if no independent inspector is in attendance through no fault of the Seller, the determination of the quality and quantity shall be made by the Terminal Operator whose findings shall be final and binding on both parties, save fraud or manifest error.
- 6.4.** The quantity of Product as determined in accordance with this Section 6 (or, where applicable, the Specific Terms) shall be inserted in the certificate of quantity for the Product as per standard practice at the Loading Terminal at the time of loading and that quantity shall be used to calculate Seller's invoice.
- 6.5.** The Seller provides no guarantee, warranty, condition or undertaking that the Product shall remain of the quality, specification, condition or quantity so determined at any time after the quality is determined pursuant to this Section.

**SECTION 7 - DOCUMENTS**

Seller shall deliver to Buyer original bills of lading and certificates of quantity, quality and a commercial invoice. Upon Buyer's request, Seller shall also provide a certificate of origin as well as any relevant tax document(s). Original bills of lading shall be delivered by courier and email, and the other documents shall be provided by email or other electronic means. In the event that the original bills of lading or other contractual shipping documents are not delivered to Buyer on or before the due date for payment, Buyer undertakes to pay Seller upon presentation, by means of courier or email, of an invoice and of Seller's L.O.I. in the form set out in Appendix 1.

## SUB-PART 2 : IN RESPECT OF FOB DELIVERIES BY BARGE

### SECTION 8 - APPLICABILITY

Where the Agreement is to sell and deliver Product on FOB terms on board a Barge, the provisions of Sub-Part 1 of PART 1 of the General Terms and Conditions shall apply, where appropriate, subject to the additions and amendments set out in this Sub-Part 2.

For the purposes of this Sub-Part 2, all references to a Vessel or Vessels in Sub-Part 1 shall refer to a Barge or Barges. All references in Sub-Part 1 to tendering or receiving N.O.R. shall mean making or receiving the Barge master's announcement of the Barge's arrival at the Loading Terminal when the Barge is at the customary waiting area at the Loading Terminal. All references to bill of lading shall mean the transport document issued by the master of the Barge.

### SECTION 9 - BARGE NOMINATION AND OTHER REQUIREMENTS FOR BARGES

**9.1.** Each Barge which is to load Product under the Agreement (including, for the avoidance of doubt, any substituted Barge) shall be nominated in writing by Buyer to Seller (the "**Barge Nomination**"). Barge Nomination shall be received by Seller no later than:

- (a) Three (3) Working Days prior to the ETA in the case of Shipments of Aromatics; or
- (b) Two (2) Working Days prior to the ETA in all other cases.

The Barge Nomination must be given as per sub-section 2.1 above. Any amended nomination received will be treated as a new nomination.

**9.2.** The Barge Nomination shall specify:

- (a) Name of Barge and its registration number (TBN nomination not acceptable);
- (b) Barge owner's name and address and Barge chartering company's name and address;
- (c) The quantity (including any applicable tolerance) and the Product to be loaded;
- (d) The specifications of the last three cargoes;
- (e) The destination of the Barge, including full details necessary to comply with the requirements of EMCS, and must include (without limitation) full details (name, address and excise license number) of the relevant excise license holder (authorised warehouse keeper) and the tax warehouse itself;
- (f) Where the Product has not been released for free circulation in the EU (i.e. has T1 status), the Buyer must provide sufficient information about the Product's destination as to enable the Seller to comply with the EU Community Transit rules, including by the use of the NCTS;
- (g) Buyer's VAT number and country of such VAT registration;
- (h) Fiscal agent (if applicable);
- (i) ETA of the Barge at the Loading Terminal (only one day acceptable);
- (j) Demurrage rate applicable for the performing Barge. For the avoidance of doubt, the acceptance of the Barge Nomination shall not entail acceptance of the demurrage rate indicated by Buyer and shall be without prejudice to the provisions of Section 10; and
- (k) Any other necessary information (fiscal or otherwise) reasonably requested by the Seller including, but not limited to, information required by law, statute or regulation from time to time in force.

**9.3.** Each Barge which is to load Product under the Agreement (including, for the avoidance of doubt, any substituted Barge) shall be subject to Seller's and Loading Terminal's acceptance (including vetting). Unless otherwise specified in the Specific Terms, Seller shall notify Buyer in a timely manner whether

Seller accepts or refuses such nomination. In case of rejection, Buyer shall promptly nominate an alternative Barge for Seller's acceptance or rejection.

## SECTION 10 - LAYTIME AND DEMURRAGE FOR BARGES

**10.1.** Unless otherwise specified in the Specific Terms, Seller shall be allowed as Laytime one-half of the total free hours for loading and discharging according to the TTB rules based on Seller's nominated quantity. Partial hours reached in the calculated loading time shall be rounded up to the closest full hour.

In case of "Push and Pull Combination" (Barge – pusher), each unit will be considered separately and the total Laytime available will be the sum of both allowances.

**10.2.** Subject to the regulations, procedures and requirements referred to in sub-section 1.10 of Appendix 2 and strict compliance by Buyer and Barge with all provisions of the Agreement, Laytime shall start:

- (a) If the Barge arrives at the Loading Terminal within the agreed ETA, on the later of:
  - (i) The arrival of the Barge; or
  - (ii) The expiry of the notice period required for nominations set out in Section 9.1 or upon commencement of loading, whichever is earlier;
- (b) If the Barge arrives at the Loading Terminal before the ETA, on the later of:
  - (i) 00:01 a.m. local time on the date of the agreed ETA; or
  - (ii) The expiry of the notice period required for nominations set out in Section 9.1 or upon commencement of loading, whichever is earlier; or
- (c) If the Barge arrives at the Loading Terminal after the agreed ETA and/or after the Loading Dates then time shall not start until commencement of loading.

**10.3.** For the purpose of calculating demurrage due under this Agreement, Laytime allowed to the Buyer shall be treated as reversible and, in particular, any Laytime unused in the discharging operation shall be added to the time allowed for loading.

**10.4.** Laytime or, if the Barge is on demurrage, time on demurrage shall end:

- (a) As soon as loading documents have been placed on board the Barge; or
- (b) If the receipt of documents on board is not recorded on the Loading Terminal timesheet, then two (2) full hours after loading is completed or hoses are disconnected, whichever is the later event recorded on the Loading Terminal timesheet. Under no circumstances shall Laytime or demurrage end after the departure of the Barge as indicated on the Loading Terminal timesheet.

**10.5.** Seller shall pay demurrage to Buyer per running hour and pro rata for any part thereof for all time used in excess of the allowed Laytime. Unless a demurrage rate is specified in the Specific Terms, the applicable demurrage rate shall be determined as follows:

- (a) The demurrage rate per day provided for in the relevant charter party (or other applicable transport agreement) entered into for the loading Barge; or if none
- (b) The demurrage rate calculated in accordance with the following table:

Nominated quantity (MT)	Rate (Euros/hour)
up to 500	60
501 to 1000	80
1001 to 1500	100
1501 to 2000	120
2001 to 2500	140
2501 to 3000	160

3001 to 3500	180
3501 to 4000	200
4001 to 4500	220
4501 to 5000	240
5001 to 5500	260
5501 to 6000	280
6001 to 6500	300
6501 to 7000	320
7001 to 7500	340
7501 to 8000	360
8001 to 8500	380
8501 to 9000	400

The demurrage rate will not be based on the DWT (dead weight tonnage) but on the nominated quantity as mentioned in the nomination.

Notwithstanding the above, in the case where the Shipment actually loaded does not constitute a Full Cargo Lot, the demurrage rate shall be the rate applicable to a Barge with the size and capacity equivalent to a deadweight equal to the weight of the nominated quantity of Product.

- 10.6.** The Barge shall vacate her loading berth as soon as loading documents have been placed on board the Barge or have been received electronically.

## **SECTION 11 - ADN TRANSPORT DOCUMENT**

Buyer will in its contract of carriage and/or in its carrying instructions to the carrier provide that the Buyer appears as the shipper under that contract of carriage and the consignment note issued as well as the consignor under the ADN provisions. At the request of Buyer, Seller may at the risk, expense, liability and as an agent of Buyer only, have the 'ADN transport document for dangerous goods' and/or the transport document (consignment note) issued. Buyer is to fully inform and provide Seller with the required information (ADN- and consignment note- info), such instruction to be executed by Seller or whomever he instructs to that effect.

## **SECTION 12 - DOCUMENTS**

Any document to be provided under Section 7 may be provided by email or other electronic means unless otherwise specifically requested by Buyer.



## PART 2 - CIF, CFR AND DAP DELIVERIES

### SUB-PART 1: IN RESPECT OF CIF, CFR AND DAP DELIVERIES BY VESSEL

#### SECTION 13 - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY

##### 13.2. In the case of CFR and CIF deliveries (including CFR/CIF Outturn deliveries)

- (a) The Product shall be delivered to Buyer in bulk at the Loading Terminal and shipped by Seller CFR or CIF (as applicable) to the agreed destination. In any event (including in case the Product is sold or nominated to be sold afloat), risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Loading Terminal.
- (b) If the Product delivered hereunder forms an unascertained part of a larger bulk, payment for the Product delivered shall, solely for the purposes of enabling property in such Product to pass pursuant to Section 20(A) of the Sale of Goods Act 1979, be deemed to have been made as the Product passes the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Loading Terminal. Nothing in this section shall be deemed to relieve Buyer from its payment obligations pursuant to the Agreement.

##### 13.3. In the case of DAP deliveries

- (a) The Product shall be delivered by Seller to Buyer in bulk DAP at the Discharge Terminal. Except as expressly modified by the Agreement or by the Specific Terms, references to DAP herein shall also refer to DES, as defined in the Incoterms® 2000. Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes from the permanent discharge manifold of the Vessel into the receiving hose at the Discharge Terminal.
- (b) Without limiting any other provision of this Agreement, any loss of, or damage to, the Product occurring before, during or after the discharge operations, which is caused by Buyer or the receiver of the Product or any of their independent contractors, subcontractors, agents or employees, or by the Discharge Terminal, shall be for the Buyer's account.
- (c) Buyer shall be the Importer of Record into the country in which the Discharge Terminal is situated and shall comply with all applicable laws and regulations governing the import of the Product.

#### SECTION 14 - CONTRACT OF CARRIAGE AND INSURANCE

**14.1.** In the case of CFR, CIF, CFR Outturn or CIF Outturn deliveries, Seller shall provide carriage of the Product under bills of lading, which may incorporate terms and conditions from a charter party.

**14.2.** In the case of CFR or CFR Outturn deliveries, the responsibility for securing cargo insurance on any Shipment, whether against marine, war or other risks, and the costs resulting therefrom shall rest wholly and exclusively with Buyer.

**14.3.** In the case of CIF or CIF Outturn deliveries, Seller shall procure and pay for cargo insurance against marine risks for one hundred ten (110) percent of the CIF value of the cargo. Such insurance shall i) operate from shore tank at the Loading Terminal to shore tank at the Discharge Terminal; ii) be contracted with an insurance company of good repute; iii) be in accordance with the minimum cover of the Institute Cargo Clauses (A), the Institute War Clauses (cargo) and Institute Strikes Clauses (Institute of London Underwriters); and iv) cover leakage and shortage howsoever caused subject to a deductible of zero point five (0.5) percent of the insured value.

**14.4.** In the case of CFR, CIF, CFR Outturn or CIF Outturn deliveries:

- (a) Any and all costs in respect of war risk insurance for the Vessel's hull and machinery or for cargo or both in respect of the voyages to any of the ports of loading or discharge or any seas through

which the Vessel has to travel in the performance of the Agreement, in excess of those prevailing at the date the Agreement is entered into, including any additional insurance or war risk insurance premium, as well as crew war bonuses or any other bonuses relating to the Shipment, shall be solely for the account of Buyer.

- (b) Seller reserves the right to refuse at any time:
  - (i) To direct any Vessel to undertake or to complete the voyage to the Loading Terminal or Discharge Terminal if such Vessel would be required 1) to transit or to proceed to or to remain in waters so that the vessel concerned would be involved in a breach of any Institute Warranties (if applicable) or, in Seller's opinion, to risk its safety; or 2) to transit or to proceed to or to remain in waters where there is war (de facto or de jure) or threat thereof;
  - (ii) Prior to the commencement of loading, to direct any Vessel to undertake the voyage to the intended Loading Terminal or Discharge Terminal if such Vessel is required to transit in waters which, in Seller's reasonable opinion, would involve abnormal delay; or
  - (iii) To undertake any activity in furtherance of the voyage which in the opinion of the Vessel's master could place the Vessel, its cargo or crew at risk.
- (c) If Seller agrees to direct a Vessel to undertake or to complete a voyage as referred to in paragraph (b) of this sub-section 14.4, Buyer undertakes to reimburse Seller, in addition to other amounts payable under the Agreement, for costs incurred by Seller in respect of any additional insurance premium (including those referred to in paragraph (a) of this sub-section 14.4) and any other sums that Seller may be required to pay to the Vessel's owner, including but not limited to, any sums in respect of any amounts deductible under such owner's insurance and any other costs and/or expenses incurred by Seller.

## **SECTION 15 - NOMINATION OF VESSEL AND OTHER REQUIREMENTS**

- 15.1.** The Seller shall give to the Buyer a notice of nomination of the Vessel by email either i) at or about the time the Agreement is entered into between the Parties, or ii) as soon as practically possible prior to the first day of the Loading Dates of the Vessel so nominated, whichever is the later (the "Vessel's Nomination").
- 15.2.** The Vessel's Nomination shall specify:
  - (a) The name of the Vessel, date built, summer deadweight and cargo tank capacity excluding slop tanks and flag;
  - (b) The grade and approximate quantity of the Product to be loaded (or the bill of lading quantity, if known);
  - (c) The Loading Dates or the bill of lading date (if known) and the ETA at the Discharge Terminal;
  - (d) The length of the Vessel and its estimated (or actual, if known) sailing draught on completion of loading;
  - (e) The Vessel/charterer's agent at the Discharge Terminal, where known; and
  - (f) Details, if known, of any other cargo on board or to be laden on board if delivery is of a Part Cargo Lot.
- 15.3.** Seller may, or if necessary to perform its obligations hereunder must, nominate as a substitute for the Vessel previously nominated another Vessel whose size and capacity are equivalent to those of the Vessel originally nominated. For CFR and CIF deliveries, the loading quantity and the Loading Dates in respect of the Vessel originally nominated shall apply to the substitute Vessel.
- 15.4.** Each Vessel which is to deliver Product under the Agreement (including, for the avoidance of doubt, any substituted Vessel) shall be subject to Buyer's acceptance (including vetting). Unless otherwise specified in the Specific Terms, Buyer shall notify Seller in writing within one (1) Working Day of a Vessel's

nomination whether Buyer accepts or refuses such nomination, Buyer's acceptance not to be unreasonably withheld.

**15.5. Nomination of Discharge Terminal**

- (a) In case of CFR or CIF deliveries, unless otherwise specified in the Specific Terms, Buyer shall within forty-eight (48) hours from receipt of Seller's Vessel Nomination notify Seller in writing the Discharge Terminal and provide full documentary instructions, including any instructions needed by Seller to issue documents in accordance with the regulations in force at the Loading Terminal (including, but not limited to, any export regulations). Seller shall have the right to issue its own instructions if such instructions are not so provided by Buyer. No change to the Discharge Terminal shall be made without Seller's prior written consent.
- (b) In case of CFR or CIF deliveries, where under the Specific Terms Buyer has discharge port options, Buyer shall exercise any such discharge port options in accordance with the Specific Terms and the terms of the relevant charter party available to Seller. Whenever Buyer exercises such options, the price stated in the Specific Terms shall be adjusted by the freight differential calculated in accordance with the terms of such charter party or as otherwise agreed between the parties. Buyer shall be liable for any additional costs incurred by Seller, including but not limited to, any deviation costs and costs in respect of any additional bunker consumption. In exercising its discharge port options, Buyer must take into account the dimensions and characteristics of the Vessel nominated by Seller.
- (c) In case of DAP deliveries, the Discharge Terminal shall be agreed at the time of the conclusion of the Agreement in the Specific Terms.

**15.6. The delivery of Part Cargo Lots shall be deemed accepted by Buyer.**

**15.7. Loading Dates and Discharge Dates:**

- (a) For CFR and CIF deliveries:
  - (i) Where Loading Dates are specified in the Specific Terms, they shall be the day or range of days in which the Seller's nominated Vessel must tender N.O.R. at the Loading Terminal and loading shall commence and complete as soon as reasonably practicable thereafter, even if this means loading is effected or completed outside the Loading Dates.
  - (ii) Where Loading Dates are specified in the Specific Terms and the Seller provides the Buyer with a date or range of dates either expressly or impliedly indicating the Indicative Discharge Dates, this shall be indicative only. The Seller shall not assume any responsibility for the discharge of the Product at the Discharge Terminal and, save as regards the calculation of Laytime and demurrage as set out in Section 17, the rights and obligations of the parties shall remain unaffected.
  - (iii) Where no Loading Dates are specified in the Specific Terms and the Seller provides the Buyer with Indicative Discharge Dates, this shall be indicative only (provided that the Seller has ensured that the Vessel has tendered N.O.R. at the Loading Terminal at a time consistent with arrival at the Discharge Terminal within the Indicative Discharge Dates, given a reasonable assessment of the customary loading and voyage time and provided the Vessel has not to discharge other parcels of product at other discharge terminals). The Seller shall not assume any responsibility for the delivery of the Product at the Discharge Terminal and, save as regards the calculation of Laytime and demurrage as set out in Section 17, the rights and obligations of the parties shall remain unaffected.
- (b) For DAP deliveries, where delivery dates are specified in the Specific Terms, Discharge Dates shall mean the day or range of days in which the Seller's nominated Vessel must tender N.O.R. at the Discharge Terminal and discharge shall commence and complete as soon as possible thereafter. Unless otherwise agreed in writing by the Seller, the Seller shall not be under any obligation to commence discharge hereunder prior to 06:00 (local time) on the first day of the Discharge Dates.

- 15.8.** As soon as possible after the loading has been completed, the Seller shall, if requested by the Buyer, notify the Buyer of the actual quantity(ies) loaded and the updated ETA of the Vessel at the Discharge Terminal, as advised by the master of the carrying Vessel.
- 15.9.** If the date of the Agreement is later than any of the dates for notification specified in the Specific Terms or this Section 15, then both parties shall make best efforts to complete as soon as practically possible any outstanding requirements, notifications, nominations and other above procedures to allow prompt delivery.
- 15.10.** The Vessel shall comply with (a) the Applicable Law(s) at the Discharge Terminal; and (b) the applicable requirements set out in Appendix 2.

## **SECTION 16 - ARRIVAL AND DISCHARGE OF VESSEL AT THE DISCHARGE TERMINAL**

- 16.1.** For CFR or CIF deliveries, Seller shall notify Buyer as soon as practicable after the loading has been completed, of the ETA of the Vessel at the Discharge Terminal (or port specified by Buyer as destination for orders), and thereafter Seller will keep Buyer updated of changes to the ETA at the Discharge Terminal or destination for orders as soon as practicable after Seller receives such information from the master of the carrying Vessel.
- 16.2.** For DAP deliveries, Seller shall notify Buyer of the ETA of the Vessel at least seventy-two (72) hours prior to its arrival at the Discharge Terminal, and thereafter Seller will keep Buyer updated of changes to the ETA at the Discharge Terminal as soon as reasonably practical after Seller receives such information from the master of the carrying vessel.
- 16.3.** For the discharge of each Vessel hereunder, Buyer shall provide to Seller, free of charge, a Berth suitable for discharging the Product which the Vessel nominated can, when fully laden, approach, reach on arrival, lie thereat and leave always safely afloat. Buyer may, in its sole discretion, require Seller to shift a Vessel at the Discharge Terminal from one safe berth to another safe berth and shall assume all risks and liabilities and pay for all costs, dues and expenses in connection therewith. Time used for shifting berth shall count as used Laytime or, if the Vessel is on demurrage, as time on demurrage.
- 16.4.** It is agreed that Vessel shall not be required to lighter for the purpose of discharging at the Discharge Terminal. However, should any transshipment or lightering ("STS") be undertaken at the request of Buyer, the risks and expenses thereof shall be exclusively for Buyer's account including but not limited to the STS provider's costs and Buyer shall be liable to Seller in respect of any losses, costs, damages and proceedings arising therefrom and shall indemnify Seller in respect thereof. Any time spent or lost in such lightering, including additional steaming and/or any waiting time (weather or sea, conditions permitting, or not) shall count in full as used Laytime or, if the Vessel is on demurrage, as time on demurrage. Buyer shall ensure that any ship-to-ship cargo operations, including lightering, conform to recommendations set out in the latest CDI/ICS/OCIMF/SIGTTO Ship-to-Ship transfer guides. Any Vessel nominated by Buyer to perform STS operations and the STS location are subject to both ship-owners and Seller's prior acceptance. Buyer shall likewise nominate a STS provider acceptable to Seller and charterers to supervise STS operations. Buyer undertakes not to commence STS operation until such approvals are received. Buyer further warrants that, at the STS location, there is no prohibition or restriction on STS operations at the port/place at which the Vessel is ordered to perform STS transfer and further that it has obtained any/all necessary local approvals or licenses to carry out operations at the agreed port/place.
- 16.5.** Buyer shall arrange for each Vessel to be discharged as expeditiously as possible. Buyer shall at all material times and at its own expense provide and maintain or cause to be provided and maintained in good working order all necessary flexible hoses, connections, pipelines, tankage facilities and other facilities or discharging the Vessel.
- 16.6.** For CFR and CIF deliveries, all taxes, duties, fees, charges (including, without limitation, pilotage, mooring and towage expenses) and dues (including, without limitation, quay dues) in respect of the

Vessel incurred at the Discharge Terminal, other than those which are for the account of the Vessel's owner according to Worldscale, shall be exclusively for the Buyer's account.

For DAP deliveries, all taxes, duties, fees, charges (including, without limitation, pilotage, mooring and towage expenses) and dues (including, without limitation, quay dues) in respect of the Vessel incurred at the Discharge Terminal shall be for the Seller's account.

- 16.7.** Buyer shall assume and be responsible for payment of any taxes, duties, fees, charges and dues of every description whatsoever imposed or levied by any governmental, local or port authority on, or applicable, attributable or related to, the Product or its delivery, transportation, ownership, sale or use, in respect of any stage after the risk in such Product has passed to Buyer and/or arising in the country of importation, and the amount of the same shall be exclusively on Buyer's account.
- 16.8.** The Vessel shall vacate her Berth as soon as discharging of Shipment and ballasting have been completed, provided the Vessel can safely do so.

## **SECTION 17 - LAYTIME AND DEMURRAGE**

- 17.1.** Upon arrival at the Discharge Terminal, the master or his representative shall tender N.O.R. to Buyer or Buyer's representative, berth or no berth.
- 17.2.** The time allowed to Buyer for discharging each Vessel shall be thirty-six (36) running hours or, if different, the time set out in the Specific Terms, pro rata for part cargoes (i.e. based on that proportion of such time which the Shipment bears to the total quantity of cargo loaded on the Vessel at the loading port or ports), Sundays, holidays and nights included.
- 17.3.** Laytime shall commence:
- (a) Berth or no berth, six (6) hours after N.O.R. is tendered at the Discharge Terminal by Vessel to Buyer or its representative, or
  - (b) Upon the completion of berthing of the Vessel when Vessel is all fast, if this occurs less than six (6) hours after tendering N.O.R. at the Discharge Terminal.

For DAP deliveries, if N.O.R. is tendered before the first day of the Discharge Dates running hours shall commence at 00:01 on the first day of the Discharge Dates Range or on commencement of discharge, whichever is the earlier.

In all cases, Laytime or, if the Vessel is on demurrage, time on demurrage shall end when the delivery hoses are disconnected after completion of discharging or, if the Vessel's departure is delayed for Buyer's purposes, until the termination of such delay.

- 17.4.** Any time spent and/or lost due to any of the following events shall not count as used Laytime or, if the Vessel is on demurrage, as time on demurrage:
- (a) The inward passage to the discharge berth;
  - (b) Any delay due to fault, failure or inefficiency of the Vessel;
  - (c) Handling of ballast or slops or bunkering when not concurrent with discharge operations;
  - (d) Restrictions imposed by the Vessel's owner, charterer or master of the Vessel;
  - (e) Any breakdown of the Vessel's equipment or failure to comply with the requirements of the Discharge Terminal with respect to equipment aboard or any other matter causing delay or restriction to discharge operations; or
  - (f) Any on board strike by members of the crew.
- 17.5.** If the Shipment is not discharged within the Laytime allowed in the Agreement, Buyer shall pay Seller demurrage per running hour and pro rata for any part thereof for all time used in excess of the allowed laytime. The applicable demurrage rate shall be (in order of priority):
- (a) The demurrage rate specified in the Specific Terms; or, in the absence of such rate;

- (b) The demurrage rate per day (or pro rata for part of a day) provided for in the charter party entered into for the carriage of the Product hereunder; or, in the absence of such rate; or
- (c) The demurrage rate per day, as published in *Worldscale* and corrected by AFRA, which applies for a Vessel of the same type, size and capacity.

**17.6.** It is agreed that Buyer's obligation as to Laytime and liability as to demurrage shall be absolute and not be subject to qualification by the provisions of Section 45. However, if demurrage shall be incurred at the Discharge Terminal by reason of fire, explosion, or by a strike, lockout, stoppage or restraint of labour or by breakdown of machinery or equipment in or about the receiving facilities of Buyer or its consignee, then, to the extent a similar provision is in force in the charter party for the Vessel, such demurrage shall be calculated at one-half the rate stipulated above (but only to the extent such conditions were not caused by the fault or neglect of Buyer, its consignee or the receiving facilities).

## **SECTION 18 - QUANTITY AND QUALITY DETERMINATION**

**18.1.** In the case of CFR and CIF deliveries:

- (a) Unless otherwise agreed between the Parties, where the Loading Terminal is operated by Seller (or Seller's Affiliate), the measurement of the quantities and the taking of samples and analysis thereof shall be carried out by the Terminal Operator in accordance with the standard practice in use at the Loading Terminal at the time of loading, unless otherwise provided for in the Specific Terms. The Terminal Operator will issue a certificate of quality and quantity (or such other equivalent documents) which shall be final and binding on both parties, except in case of fraud or manifest error. Where the Specific Terms provide for the appointment of an independent inspector at the Loading Terminal, the quality and/or quantity of the Product as ascertained or witnessed by such independent inspector shall, except in case of fraud or manifest error, be final and binding on both Parties and the provisions stipulated in Section 18.1(d) below shall apply.
- (b) Where the Loading Terminal is not operated by Seller (or Seller's Affiliate):
  - (i) The measurement of the quantities and the taking of samples and analysis thereof shall be ascertained or witnessed by an independent inspector jointly appointed by the Buyer and Seller in accordance with approved industry practice. Certificates of quantity and quality so issued shall be final and binding on both parties, except in case of fraud or manifest error; and
  - (ii) Seller shall use all reasonable endeavours to enable the independent inspector so appointed to have full access to the facilities at the Loading Terminal necessary to perform his duties. The independent inspector's report shall be made available to both Parties and all charges in respect of such inspection shall be shared equally between the Parties, unless otherwise provided for in the Specific Terms.
- (c) Notwithstanding sub-sections 18.1(a) and 18.1(b), if no independent inspector is mutually agreed or if no independent inspector is in attendance through no fault of the Seller, the determination of the quality and quantity shall be made by the Terminal Operator whose findings shall, save fraud or manifest error, be final and binding on both parties.
- (d) The quantity of Product determined pursuant to this sub-sections 18.1(a) or 18.1(b), (or, where applicable, the Specific Terms) shall be inserted in the certificate of quantity for the Product and that quantity shall be used to calculate Seller's invoice.
- (e) Where the Shipment is delivered as an unsegregated Part Cargo Lot, the quantity determined above shall be adjusted following completion of discharge of all relevant Part Cargo Lot in order that both Buyer and the receiver(s) of the other lot(s) are allocated a percentage of the total outturn quantity corresponding to the percentage of their respective percentage of the total quantity of Product originally loaded.

**18.2.** In the case of CFR Outturn and CIF Outturn deliveries, the provisions set out in sub-section 18.1 apply subject to the following additions:

- (a) The quantity of the Product discharged at the Discharge Terminal shall be determined for each Shipment in accordance with approved industry practice at the Discharge Terminal at the time of discharge save if otherwise provided for specifically in the Specific Terms. A mutually agreed independent inspector will be appointed at the Discharge Terminal to ascertain or witness such quantity determination. Buyer shall ensure that the independent inspector shall have full access to the facilities at the Discharge Terminal to perform his duties. Unless otherwise provided for in the Specific Terms, the cost of services of the inspector shall be shared equally by both parties;
- (b) The quantity of Product determined pursuant to sub-section 18.1 (or, where applicable, the Specific Terms) shall be inserted in the certificate of quantity for the Product and that quantity shall be used to calculate Seller's invoice. Seller's invoice shall subsequently be adjusted in accordance with the quantity reported by the independent inspector at the Discharge Terminal;
- (c) Notwithstanding the provisions of sub-section 18.1(a) or 18.1(b), Seller shall have the right to submit a claim to Buyer where there is a difference between the quantity loaded and discharged by the Vessel and where in Seller's reasonable opinion, the most likely cause of such difference is due to events occurred, or the nature of operations, at the Discharge Terminal during the discharge of the Product; and
- (d) If the quantity discharged and determined in accordance with the provisions of sub-section 18.2(b) is less than the bill of lading quantity, Seller shall be entitled to retain the bills of lading and (in the case of a CIF sale) the certificate of insurance. In circumstances where the bills of lading and/or the certificate of insurance have already been passed on to Buyer, Buyer shall forthwith upon Seller's request endorse the bills of lading to the order of Seller and pass the above documents back to Seller. In the event that, as a result of the shortage, any proceedings are brought by Seller against the carrier under the bills of lading, Seller will, at the request of Buyer, join into such action any claim against the carrier relating to quality of the cargo (a "Quality Claim"), provided that Buyer shall indemnify Seller and, if requested, provide security to Seller, against all costs and liabilities incurred as a result of, or in connection with, the Quality Claim. If, for whatever reason, Seller resolves not to commence any proceedings against the carrier, Seller shall then be obliged to pass the bills of lading on to Buyer.

**18.3.** In the case of DAP deliveries:

- (a) The quantity and quality of the Product delivered at the Discharge Terminal under the Agreement shall be determined for each Shipment in accordance with approved industry practice in use at the Discharge Terminal at the time of discharge save if otherwise provided for specifically in the Specific Terms;
- (b) A mutually agreed independent inspector will be appointed at the Discharge Terminal to ascertain or witness the determination of the quantity and the quality of the Product and issue a certificate of quality and quantity (or such other equivalent document) which shall be final and binding on both parties, except in case of fraud or manifest error. Unless otherwise provided for in the Specific Terms, the inspector's cost shall be shared equally by both parties;
- (c) For the purpose of quality determination, the independent inspector will draw representative ship's composite samples prior to commencement of discharge. Notwithstanding any other term of the Agreement, no other sample taken at the Discharge Terminal shall be used for the purposes of determining the quality of the Product delivered; and
- (d) Unless otherwise provided for in the Specific Terms, the quantity of Product reported by the independent inspector at the Discharge Terminal shall be used to calculate Seller's invoice.

## **SECTION 19 - DOCUMENTS**

**19.1.** In the case of CFR deliveries, Seller shall deliver to Buyer original bills of lading and certificates of quantity, quality and a commercial invoice. Upon Buyer's request, Seller shall also provide a certificate

of origin as well as any relevant tax document(s). The bills of lading shall be delivered by courier and email, and the other documents shall be provided by email or other electronic means.

- 19.2.** In the case of CIF deliveries, Seller shall deliver to Buyer the documents referred to in sub-section 19.1 and, if requested by Buyer, an original certificate of insurance.
- 19.3.** In the case of CFR Outturn or CIF Outturn deliveries, Seller shall deliver the documents as referred to in sub-section 19.1, and, in the case of CIF Outturn deliveries, the document referred to in sub-section 19.2, as well as a copy of the independent inspector's report at the Discharge Terminal.
- 19.4.** In the case of DAP deliveries, Seller shall deliver a copy of the independent inspector's report at the Discharge Terminal and Seller's invoice, which may be by email (provisional invoice acceptable where the provisions of sub-section 42.7 apply).
- 19.5.** Notwithstanding any other term of the Agreement, in the event that the original bills of lading, when required, or other contractual shipping documents are not delivered to Buyer on or before the due date for payment, Buyer undertakes to pay Seller upon presentation, by means of courier or email, of an invoice and of Seller's L.O.I. in the form set out in Appendix 1.



## SUB-PART 2: IN RESPECT OF CIF, CFR AND DAP DELIVERIES BY BARGE

### SECTION 20 - APPLICABILITY

Where the Agreement is to sell and deliver Product on CFR, CIF, CFR Outturn, CIF Outturn or DAP terms on board a Barge, the provisions of Sub-Part 1 of PART 2 of the General Terms and Conditions shall apply, where appropriate, subject to the additions and amendments set out in this Sub-Part 2.

For the purposes of this Sub-Part 2, all references to Vessel or Vessels in Sub-Part 1 shall refer to a Barge or Barges. All references in Sub-Part 1 to tendering or receiving N.O.R. shall mean making or receiving the Barge master's announcement of the Barge's arrival at the Discharge Terminal when the Barge is at the customary waiting area at the Discharge Terminal. All references to bill of lading shall mean the transport document issued by the master of the Barge.

### SECTION 21 - BARGE NOMINATION AND OTHER REQUIREMENTS FOR BARGES

**21.1.** Each Barge which is to deliver Product under the Agreement (including, for the avoidance of doubt, any substituted Barge) shall be nominated by Seller (the "**Barge Nomination**"). Barge Nomination shall be received by Buyer no later than:

- (a) For CFR and CIF deliveries, two (2) Working Days prior to the ETA at the Loading Terminal;
- (b) For DAP deliveries, two (2) Working Days prior to the ETA at the Discharge Terminal.

Unless otherwise specified in the Specific Terms, each Barge Nomination shall be made by email. Barge Nominations made by phone or made by any other means of communication will be deemed not to have been received. Any amended nomination received will be treated as a new nomination.

**21.2.** The Barge Nomination shall specify:

- (a) The name of Barge and its registration number (TBN nomination not acceptable);
- (b) The Barge owner's name and address;
- (c) The quantity and the Product to be loaded;
- (d) The specifications of the last three cargoes;
- (e) The Loading Terminal;
- (f) For CFR and CIF deliveries, the ETA of the Barge at the Loading Terminal;
- (g) The destination(s) of the Barge, if known; and
- (h) For DAP deliveries, the ETA of the Barge at the Discharge Terminal.

**21.3.** Unless otherwise specified in the Specific Terms, upon receipt of Seller's Barge nomination, Buyer shall (on the same Working Day if Seller's nomination is made on or before 15:00 CET on a Working Day and otherwise on the immediately following Working Day) promptly notify Seller in writing of the following documentary instructions:

- (a) Discharge Terminal name and address;
- (b) Name and reference number of customs office at the Discharge Terminal;
- (c) Buyer's VAT number;
- (d) Receiver's name and address and VAT number;
- (e) Name of fiscal agent (if any);
- (f) Name of surveyor (if any); and
- (g) Accompanying Administrative Document (AAD) details.

Any delay or costs (including, but not limited to, any demurrage incurred in respect of Seller's Barge and any demurrage incurred by Seller or Seller's Supplier in respect of other vessels or barges waiting at the Loading Terminal) arising out of any failure by Buyer to comply with the foregoing shall be for Buyer's account. Seller shall have the right to issue its own instructions if such instructions are not so provided by Buyer. No change to the Discharge Terminal shall be made without Seller's prior consent.

- 21.4.** Where the Seller's nomination has been made in accordance with this Section 21 but no confirmation has been received from the Buyer pursuant to sub-section 15.4, Laytime will commence from 00:01 hours on the ETA specified in Section 22 or expiry of the nomination period as specified in Section 21 whichever is later. The Buyer shall be liable for all costs and expenses resulting from any delays in loading the Product hereunder due to failure by the Buyer to supply its confirmation and relevant documents pursuant to sub-section 21.3 and this sub-section 21.4 in a timely manner. This is without prejudice to any claim for demurrage at the Discharge Terminal by the Seller.

## **SECTION 22 - LAYTIME AND DEMURRAGE FOR BARGES**

- 22.1.** Unless otherwise specified in the Specific Terms, allowed Laytime shall be one-half of the total free hours for loading and discharging according to the transport agreement. If not specified in the transport agreement, the TTB rules (latest edition) or its successor shall apply.
- 22.2.** Laytime shall commence no earlier than expiry of the notice periods required for nominations set out in sub-section 21.1, or on commencement of discharge, whichever is earlier.
- 22.3.** Notwithstanding the TTB Rules and without prejudice to sub-section 22.2, Laytime shall begin upon the Barge's arrival at Berth at the Discharge Terminal or at the Barge's master announcement of the Barge's arrival at the Discharge Terminal when the Barge is at the customary waiting area at the Discharge Terminal, whichever comes first.
- 22.4.** Laytime or, if the Barge is on demurrage, time on demurrage shall end when the delivery hoses are disconnected after completion of discharge or, if the Barge's departure is delayed for Buyer's purposes, at the time in which such delay ends.
- 22.5.** Buyer shall pay to Seller demurrage per running hour and pro rata for a part thereof for all time used in excess of the allowed Laytime as provided for in the Agreement. Partial hours shall be rounded up to full hours. Where not inconsistent with the Agreement, the provisions applicable to the calculation of demurrage shall be as per the TTB Rules. Unless a demurrage rate is specified in the Specific Terms, the applicable demurrage rate shall be the rate set out in the Barge's transportation agreement. If there is no demurrage rate specified in the transportation agreement, then the demurrage rate shall be as provided in the TTB Rules.

## **SECTION 23 - DOCUMENTS**

Any document to be provided under Section 19 may be provided by email or other electronic means unless otherwise specifically requested by Buyer.

## PART 3 - EX TANK, INTO TANK, IN SITU (STOCK TRANSFER), FIP AND EX-PIPELINE DELIVERIES

### SECTION 24 - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY

#### 24.1. Ex Tank deliveries:

The Product shall be delivered to Buyer in bulk at the storage tank designated by Seller. Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the outlet flange of the Seller's designated storage tank, at which point any and all risks to Seller shall cease.

#### 24.2. Into Tank deliveries:

The Product shall be delivered to Buyer in bulk at the storage tank designated by Buyer. Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the inlet flange of the Buyer's designated storage tank, at which point any and all risks to Seller shall cease.

#### 24.3. In Situ deliveries:

The Product shall be delivered to Buyer in bulk by way of stock transfer at the storage tank(s) specified in the Specific Terms. Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer in the designated tank(s) at such time and day specified in the Specific Terms or agreed between the parties prior to the transfer being made and, where applicable, confirmed by the owner/operator of such tank.

#### 24.4. FIP deliveries (or deliveries FCA by pipeline):

The Product shall be delivered to Buyer in bulk at the place specified in the Specific Terms. Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the inlet flange of Buyer's receiving pipeline at the designated place, at which point any and all risks to Seller shall cease.

#### 24.5. Ex-Pipeline deliveries (or deliveries DAP by pipeline):

The Product shall be delivered to Buyer in bulk at the place specified in the Specific Terms. Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the outlet flange of Seller's pipeline at the designated place, at which point any and all risks to Seller shall cease.

#### 24.6. Unless otherwise specifically agreed, delivery of Product will be in one lot.

### SECTION 25 - NOMINATION

25.1. For Ex Tank, Into Tank or In Situ deliveries, nominations shall be made pursuant to the standard operating procedures of the relevant storage company in use at the time of delivery.

25.2. For FIP deliveries (or deliveries FCA by pipeline) or Ex-Pipeline deliveries (or deliveries DAP by pipeline), nominations shall be made pursuant to the standard operating procedures of the relevant pipeline operating company in use at the time and point of delivery.

### SECTION 26 - QUANTITY AND QUALITY DETERMINATION

26.1. The quantity and quality of the Product delivered under the Agreement shall be determined for each lot in accordance with the standard practice in use at the relevant storage company (for deliveries Ex Tank, Into Tank or In Situ) or the relevant pipeline operating company (for FIP or Ex-Pipeline deliveries) at the

time and point of delivery, save if otherwise provided for specifically in the Specific Terms. The Parties agree that the determination reached by the relevant entity pursuant to this Agreement shall be final and binding, except in cases of fraud or manifest error.

- 26.2.** The quantity of Product determined pursuant to sub-section 26.1 (or, where applicable, the Specific Terms) shall be used to calculate Seller's invoice.
- 26.3.** Where the Specific Terms provide for the appointment of an independent inspector, the cost of services of the inspector shall be shared equally by the parties (unless otherwise provided for in the Specific Terms).

## **SECTION 27 - DOCUMENTS**

Seller shall deliver to Buyer with a copy of the certificates of quantity and quality (or equivalent documents), as well as a commercial invoice. These documents may be delivered by email or other electronic means.

## **PART 4 - FCA ROAD TANKER AND RAIL TANK CARS DELIVERIES**

### **SECTION 28 - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY**

- 28.1.** The Product shall be delivered to Buyer in bulk FCA at the place designated by Seller, onto Road Tankers or Rail Tank Cars (as applicable) to be provided by Buyer.
- 28.2.** Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the outlet of the Loading Terminal's flexible hose or the outlet flange of the Seller's designated storage tank (as applicable), at which point any and all risks to Seller shall cease.
- 28.3.** Without limiting any other provisions of the Agreement, any loss of, or damage to, the Product occurring during or after the loading operations, which is caused by the Road Tankers, the Rail Tank Cars, the Road Tankers' Owner, or the Rail Tank Cars' owner or Buyer or any of their independent contractors, subcontractors, agents or employees, shall be for the sole account of Buyer.
- 28.4.** Any claim made against Seller by Seller's Supplier or by the Loading Terminal Operator or by any third party in respect of damage to any property of Seller's Supplier or any facilities at the Loading Terminal or to any property of any third party which are caused by the Road Tankers, the Rail Tank Cars, the Road Tankers' Owner or the Rail Tank Cars' owners or Buyer or their independent contractors, subcontractors, agents or employees shall be borne exclusively by Buyer.

### **SECTION 29 - NOMINATIONS**

- 29.1.** Nominations shall be made pursuant to the standard operating terms and procedures of the loading Terminal Operator.
- 29.2.** The Buyer shall provide the following information to the Seller in writing no later than ten (10) Working Days prior to the first day of the Loading Dates:
- (a) Date of arrival at the Loading Terminal;
  - (b) The number of Road Tankers or Rail Tank Cars and their identification numbers;
  - (c) The technical specifications of the Rail Tank Cars;
  - (d) The quantity/net weight of Product to be loaded in each Road Tanker or Rail Tank Car;
  - (e) Destination(s) of the Road Tankers or the Rail Tank Cars, including full details necessary to comply with the requirements of EMCS, and must include (without limitation) full details (name, address and excise licence number) of the relevant excise licence holder (authorised warehouse keeper) and the tax warehouse itself; and
  - (f) Where the Product has not been released for free circulation in the EU (i.e. has T1 status), the Buyer must provide sufficient information about the Product's destination(s) as to enable the Seller to comply with EU Transit rules, including the use of the NCTS.
- 29.3.** Where the Buyer's nomination is made in accordance with sub-section 29.2, the Seller will confirm the nomination and notify the Buyer in writing of the i) Loading Terminal (which shall be in accordance with the Specific Terms); ii) Loading Terminal code; and iii) load code.
- 29.4.** For each Road Tanker, the Buyer shall provide a fully trained driver certified by the Loading Terminal as being qualified to drive Road Tankers within the Loading Terminal. Such driver(s) shall be made available to the Buyer's Road Tankers upon arrival of such Road Tankers at the Loading Terminal.
- 29.5.** Immediately following the completion of loading, the Seller shall place on-board of each Road Tanker the respective carriage documents and SDS. For Rail Tank Cars, the relevant documentation will be provided electronically.
- 29.6.** The Seller shall provide the Buyer as soon as reasonably practicable after the dispatch of the Road Tanker/Rail Tank Cars (as applicable) from the Loading Terminal with a copy of i) the certificate of quality

and quantity, and ii) for Road Tanker deliveries, copies of all CMR consignment notes or other contract(s) of carriage issued.

### **SECTION 30 - ACCEPTANCE OF ROAD TANKER(S)/RAIL TANK CARS**

- 30.1.** The Road Tankers/Rail Tank Cars (as applicable) and their driver(s) shall comply with Applicable Laws and Road Tanker/Rail Tank Car Requirements (as applicable) at the Loading Terminal.
- 30.2.** The Buyer warrants that all means of conveyance, including Road Tankers/Rail Tank Cars made available for the delivery of the Product shall be tendered in a condition that is fit to receive the Product. The Buyer shall hold Seller harmless from all claims and indemnify Seller for all costs arising from any breach of the above.
- 30.3.** Notwithstanding anything to the contrary expressed or implied in the Agreement, the Seller shall have the absolute right (which right may only be exercised prior to the passing of property hereunder) to refuse, on any reasonable grounds, to accept any Road Tankers/Rail Tank Cars nominated by the Buyer. The Seller shall not be liable for any loss or damage which the Buyer may suffer as a result of the Seller exercising such right.
- 30.4.** Notwithstanding any prior acceptance of any Road Tankers/Rail Tank Cars, the Seller shall have the absolute right (which right may only be exercised prior to the passing of risk and property hereunder) to reject the Road Tankers/Rail Tank Cars in question on any reasonable ground if such Road Tankers/Rail Tank Cars are involved in any incident or more recent information regarding such Road Tankers/Rail Tank Cars becomes available to the Seller at any time after such prior acceptance.
- 30.5.** The Road Tankers must at all times have hazardous material documentation on-board. Road Tankers/Rail Tank Cars must clearly display hazardous material or dangerous goods plates or labelling in accordance with Applicable Law(s) and the Road Tanker/Rail Tank Car Requirements at the Loading Terminal.

### **SECTION 31 - LOADING**

Loading of the Road Tankers/Rail Tank Cars must be carried out in a safe and compliant manner in accordance with Applicable Law(s) and Road Tankers/Rail Tank Cars Requirements at the Loading Terminal.

### **SECTION 32 - QUANTITY AND QUALITY DETERMINATION**

- 32.1.** The quantity and quality of the Product delivered under the Agreement shall be determined for each lot by Seller or Seller's supplier representative in accordance with the standard practice in use at the place of delivery, save if otherwise provided for in the Specific Terms. The certificate of quality and quantity (or such other equivalent document so issued) shall be final and binding on both parties, except in case of fraud or manifest error.
- 32.2.** The quantity of Product determined pursuant to sub-section 32.1 (or, where applicable, the Specific Terms) shall be used to calculate Seller's invoice.
- 32.3.** If the Specific Terms provide for the appointment of an independent inspector, the cost of the inspector shall be shared equally by both parties (unless otherwise provided for in the Specific Terms).

**SECTION 33 - DOCUMENTS AND OTHER CONDITIONS**

- 33.1.** Seller shall deliver to Buyer the transport document and certificates of quantity and quality as well as any relevant tax document(s) and an invoice, which may be by means of courier and/or email and/or other electronic means.
- 33.2.** All other conditions relating to the delivery of the Product in bulk into or by Road Tankers or Rail Tank Cars shall, unless otherwise specifically agreed between the parties, be in accordance with the standard operating terms and procedures of the loading Terminal Operator.
- 33.3.** For deliveries in France, Buyer shall ensure carrier is familiar with the provisions of the French décret n° 2017-757 of 3 mai 2017 « portant insertion des articles R.114-7 à R. 114-10 au chapitre IV du titre Ier du livre Ier de la partie réglementaire du Code de la sécurité intérieure ». Buyer shall procure that i) carrier undertakes with regard to all personnel (including drivers) undertaking one of the activities listed in article R.114-7 of the French Interior security code (“Code de la sécurité intérieure”), at the time of any new recruitment or new assignment of such personnel, to have an administrative enquiry as per the terms of article R.114-8-I and R. 114-8-II of the French Interior security code carried out on such personnel. Buyer shall ensure that carrier agrees and undertakes that i) no personnel having received an “avis d’incompatibilité” by the competent Authority shall be assigned to the performance of the services; ii) any affiliate of carrier and its and their subcontractors involved in the performance of the services shall comply with obligations at least as stringent as those contained in the present clause; and iii) carrier shall apply mutatis mutandis the provisions of this clause to services carried out in any country of the European Union or in England where equivalent legislation is introduced. Upon request from Seller, Buyer undertakes to provide evidence of compliance with the above provisions to Seller.

## PART 5 - CPT, CIP, DAP OR DDP ROAD TANKER AND RAIL TANK CARS DELIVERIES

### SECTION 34 - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY

#### 34.1. CPT and CIP deliveries by Road Tankers or Rail Tank Cars

- (a) The Product shall be delivered to Buyer in bulk at the Loading Terminal onto Road Tankers or Rail Tank Cars (as applicable) and transported by Seller CPT or CIP (as applicable) to the agreed destination.
- (b) Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the outlet of the Loading Terminal's flexible hose or the outlet flange of the Seller's designated storage tank (as applicable), at which point any and all risks to Seller shall cease.
- (c) Without limiting any other provisions of the Agreement, any loss of, or damage to, the Product occurring during or after the loading operations, which is caused by the Road Tankers, the Rail Tank Cars, the Road Tankers' Owner, or the Rail Tank Cars' owner or Buyer or any of their independent contractors, subcontractors, agents or employees, shall be for Buyer's account.

#### 34.2. DAP and DDP deliveries by Road Tanker or Rail Tank Cars

The Product shall be delivered to Buyer in bulk at the Discharge Terminal in Road Tankers or Rail Tank Cars (as applicable). Delivery shall be deemed completed and risk and property in the Product and all liabilities with respect thereto shall pass to Buyer:

- (a) for Rail Tank Cars, when they leave the public railway network and enter the private property of Buyer or such other private property as Seller has the right to use, or as agreed between the Buyer and the Seller;
- (b) for Road Tankers, when the Product passes the inlet manifold of the receiving installation at the Discharge Terminal,  
at which point any and all risks to Seller shall cease.

### SECTION 35 - NOMINATIONS

**35.1.** Nominations shall be made pursuant to the standard operating terms and procedures of the operator of the Discharge Terminal.

**35.2.** The Seller shall provide the following information to the Buyer in writing no later than ten (10) Working Days prior to the first day of the Discharge Dates:

- (a) Date of dispatch from the Loading Terminal;
- (b) The number of Road Tankers or Rail Tank Cars and their identification numbers;
- (c) The quantity/net weight of Product to be loaded in each Road Tanker or Rail Tank Car;
- (d) Loading Terminal and Loading Terminal code;
- (e) Load code; and
- (f) For CPT/CIP deliveries, destination(s) of the Road Tankers/Rail Tank Cars.

**35.3.** Where the Seller's nomination is made in accordance with sub-section 35.2, the Buyer will confirm the nomination and notify the Seller in writing of the:

- (a) Discharge Terminal (which shall be in accordance with the Specific Provisions);
- (b) Discharge Terminal code and discharge code;
- (c) Discharge Terminal contact person;



- (d) Destination of the Road Tankers or the Rail Tank Cars, including full details necessary to comply with the requirements of EMCS, and must include (without limitation) full details (name, address and excise licence number) of the relevant excise licence holder (authorised warehouse keeper) and the tax warehouse itself; and
- (e) Where the Product has not been released for free circulation in the EU (i.e. has T1 status), the Buyer must provide sufficient information about the Product's destination(s) as to enable the Seller to comply with EU Transit rules, including the use of the NCTS.

- 35.4.** Immediately following the completion of loading, the Seller shall place on-board each Road Tanker the respective carriage documents and SDS. For Rail Tank Cars, the relevant documentation will be provided electronically.
- 35.5.** The Seller shall provide the Buyer as soon as reasonably practicable after the dispatch of the Road Tankers/Rail Tank Cars (as applicable) from the Loading Terminal with a copy of i) the certificate of quality and quantity, ii) for Road Tanker deliveries, copies of all CMR consignment notes or other contract(s) of carriage issued; and/or iii) for Rail Tank Cars, an RID or CIM consignment note as applicable.

### **SECTION 36 - ACCEPTANCE OF ROAD TANKERS/RAIL TANK CARS**

- 36.1.** The Road Tankers/Rail Tank Cars (as applicable) and their driver(s) shall comply with Applicable Laws and Road Tanker/Rail Tank Car requirements (as applicable) at both the Loading Terminal and the Discharge Terminal.
- 36.2.** Notwithstanding anything to the contrary expressed or implied in the Agreement, the Buyer shall have the right (which right may only be exercised prior to the passing of risk and property hereunder) to refuse, on any reasonable grounds, to accept any Road Tankers/Rail Tank Cars nominated by the Seller.
- 36.3.** Notwithstanding any prior acceptance of any Road Tankers/Rail Tank Cars, the Buyer shall have the right (which right may only be exercised prior to the passing of property hereunder) to reject the Road Tankers/Rail Tank Cars in question on any reasonable ground if such Road Tankers/Rail Tank Cars are involved in any incident or more recent information regarding such Road Tankers/Rail Tank Cars becomes available to the Buyer at any time after such prior acceptance.
- 36.4.** The Road Tankers must at all times have hazardous material documentation on-board. Road Tankers/Rail Tank Cars must clearly display hazardous material or dangerous goods plates or labelling in accordance with Applicable Law(s) and the Road Tanker/Rail Tank Car Requirements at the Discharge Terminal.

### **SECTION 37 - LOADING AND DISCHARGE**

- 37.1.** Loading and Discharge of the Road Tankers/Rail Tank Cars must be carried out in a safe and compliant manner in accordance with Applicable Law(s) and Road Tanker/Rail Tank Car Requirements at the Loading and Discharge Terminal.
- 37.2.** Rail Tank Cars shall be available to the Buyer without charge for a maximum of seventy-two (72) hours between (a) the time that the Locomotive used to haul the Rail Tank Cars from the Loading Terminal to the agreed delivery point is uncoupled from such Rail Tank Cars at the agreed delivery point, and (b) the time at which the empty Rail Tank Cars are made available to Seller at the relevant delivery point for collection by or on behalf of the Seller. All rail tank cars dispatched by the Seller in one delivery shall be returned together.
- 37.3.** Timing for collection of empty Rail Tank Cars will be agreed in writing between Buyer and Seller. The empty Rail Tank Cars will be made available at the relevant delivery point for collection by or on behalf of the Seller on the agreed date. Any time in excess of the 72 hours allowed in Sub-Section 37.2 shall be charged at a rate of 30 Euros per day per Rail Tank Car (pro-rata for part of a day).

## **SECTION 38 - QUANTITY AND QUALITY DETERMINATION**

- 38.1.** The quality and quantity of the Product delivered under the Agreement shall be determined for each lot by Seller or Seller's supplier representative in accordance with the standard practice in use at the Loading Terminal, save if otherwise provided for in the Specific Terms. For CPT and CIP transactions, the certificate of quality and quantity (or such other equivalent document so issued) shall be final and binding on both parties, except in case of fraud or manifest error.
- 38.2.** If Seller and Buyer mutually agree that measurement of the quantities and the taking of samples for the purposes of determining the compliance of the Product with the quality and quantity provisions of the Specific Terms shall be carried out at the Discharge Terminal, this shall be carried out in accordance with approved industry practice at the time and place of delivery.
- 38.3.** The quantity of Product determined pursuant to sub-section 38.1 (or, where applicable, the Specific Terms) shall be used to calculate Seller's invoice.
- 38.4.** If the Specific Terms provide for the appointment of an independent inspector, the cost of the inspector will be borne equally by both parties (unless otherwise provided for in the Specific Terms).

## **SECTION 39 - DOCUMENTS, INSURANCE AND OTHER CONDITIONS**

- 39.1.** As provided in sub-sections 35.4 and 35.5, Seller shall deliver to Buyer the transport document and certificates of quantity and quality as well as any relevant tax document(s) and an invoice, which may be by means of courier and/or email.
- 39.2.** For CIP deliveries, the Seller undertakes to procure and pay for insurance against transit risks for one hundred ten (110) percent of the CIP value of the Product. Such insurance shall i) operate from shore tank at the Loading Terminal to shore tank at the Discharge Terminal; ii) be contracted with an insurance company of good repute; iii) be in accordance with the provisions of a Marine Cargo Insurance Policy subject to Institute Cargo Clauses (A) or any similar clauses, and the benefit thereof shall accrue to the Buyer upon the passing of risk in Product as provided for in the Agreement. If requested by the Buyer, the Seller shall provide the Buyer with the original certificate of insurance or insurance company's cover note.
- 39.3.** All other conditions relating to the delivery of the Product in bulk into or by Road Tankers or Rail Tank Cars shall, unless otherwise specifically agreed between the parties, be in accordance with the standard operating terms and procedures of the loading/discharge Terminal Operator, as applicable.

## PART 6 - APPLICABLE TO ALL DELIVERIES

### SECTION 40 - GENERAL DELIVERY TERMS

- 40.1.** Notwithstanding anything in the Agreement to the contrary, if Buyer fails to take delivery of any quantity of Product made available for delivery, such undelivered quantity shall, at Seller's option and without prejudice to any other rights that Seller may have, cease to be deliverable to Buyer under the Agreement and, in such event, the undelivered quantity shall be deducted from the total quantity of Product to be delivered under the Agreement, without prejudice to any other rights or remedies which Seller may have against Buyer. In such case, Seller shall dispose freely of, and may sell or otherwise dispose of, such undelivered quantity of Product at its sole and absolute discretion. The provisions of this sub-section 40.1 shall apply whether Buyer is to receive one, or more than one, Shipment hereunder.
- 40.2.** If, under the Agreement, Buyer is to receive more than one Shipment, then, unless otherwise provided for in the Agreement, i) each Shipment shall constitute a separate contract and ii) such Shipments shall be evenly spread over the term of the Agreement.
- 40.3.** Unless otherwise expressly provided for in the Specific Terms, no stipulation as to time of delivery shall form part of the description of the Product deliverable hereunder and any obligation to effect or complete shipment by such time is excluded.

### SECTION 41 - QUALITY

There are no representations, duties (whether in negligence or otherwise), conditions, guarantees, warranties or terms, express or implied, whether implied by statute or otherwise, as to the description or satisfactory quality, merchantability, fitness or suitability of the Product for any purpose whatsoever, or otherwise relating to the quality of the Product, which extend beyond the provision(s) relating to the Product appearing in the Agreement. Save to the extent that such exclusion is ineffective by operation of law, all statutory or other terms, conditions or warranties, express or implied, with respect to the description or quality of the Product or its fitness for purpose or otherwise are hereby excluded.

### SECTION 42 - INVOICING AND PAYMENT

- 42.1.** The price of the Product and the due date for payment shall be as specified in the Specific Terms. Payment of the full amount of Seller's invoice shall be made without any discount, deduction, withholding, abatement, set-off or counterclaim in United States Dollars (unless otherwise specified in the Specific Terms) by wire transfer of immediately available funds ("same day funds") on or before the due date (subject to sub-sections 42.4 and 42.8) to the bank and account designated by Seller, against presentation to Buyer of the documents provided for in Sections 7, 12, 19, 23, 27, 33 or 39, as applicable.
- 42.2.** Unless otherwise agreed, the payment of any other costs, expenses or charges which arise under the Agreement shall be made against presentation of Seller's invoice and shall be for immediate settlement by Buyer on or by the date advised thereon.
- 42.3.** Buyer's obligation to pay shall survive the term of the Agreement and shall not be deemed fulfilled for so long as the price of the Product and any other costs, expenses and charges have not been credited in full into Seller's bank account.
- 42.4.** When the due date falls on a Saturday or on a weekday, other than a Monday, which is not a Banking Day, then any such payment shall be made on the nearest preceding Banking Day. When the due date falls on a Sunday or a Monday which is not a Banking Day, then any such payment shall be made on the following Banking Day.

- 42.5.** In case of delay in payment, Seller shall have the right, by notifying Buyer in writing to increase the amount recoverable with interest at the rate of eight (8) full percentage points per annum above the interest rate applied by the European Central Bank in Euros (or any equivalent fixing in another currency) to its most recent main refinancing operations as applicable on the day payment is due (Directive 2011/7/EC of 16 February 2011 on combating late payment in commercial transactions). The interest shall be due from the date when payment for the Product becomes due until the date of actual and full payment by the Buyer of the purchase price, such interest being in no circumstances to be construed as an agreement by Seller to provide extended credit, and is in addition to any other rights of Seller arising out of such delay.
- 42.6.** In addition to any other rights of Seller, all expenses incurred by Seller, including but not limited to, reasonable legal fees, court costs and collection agency fees, caused by delayed payment or non-payment by Buyer of the full amount of Seller's invoice for each Shipment shall be for the account of Buyer and payable upon demand.
- 42.7.** Where the pricing information available to Seller does not allow for the preparation of a final invoice, Seller may issue a provisional invoice, against which Buyer shall make payment. The provisional price shall, unless otherwise agreed between the parties, be based upon the pricing information available to Seller at the time it issues such provisional invoice. Payment of any balance due by either party shall be made promptly upon receipt of Seller's final invoice, which shall be prepared as soon as practical after all the relevant information becomes available to Seller.
- 42.8.** If security for payment by means of an irrevocable standby letter of credit or an irrevocable documentary letter of credit is not already provided for in the Specific Terms or if the security in place ceases to be satisfactory to Seller, Seller shall be entitled at any time before the due date to demand payment to be secured by Credit Support notwithstanding the method of payment as described in the Specific Terms. Nothing in this sub-section 42.8 shall relieve Buyer of its obligation to pay the total price of each Shipment as and when due under the Agreement.
- 42.9.** When, under the Agreement, or as a consequence of the provisions of sub-section 42.8, payment is to be made by means of an irrevocable standby letter of credit or an irrevocable documentary letter of credit (both referred to herein as "L/C"), the following provisions shall apply unless otherwise provided in the Specific Terms:
- (a) The L/C shall be issued or confirmed by a bank and in a format acceptable to Seller, not later than ten (10) calendar days prior to the first day of the Loading Dates or the Discharge Dates, as applicable, or on such other date and at such time as Seller may in writing require;
  - (b) All fees, commissions, costs and expenses incurred with respect to such payment or L/C shall be borne by Buyer;
  - (c) The L/C shall cover the mean value of the Shipment at the contract price (including, if applicable, any Value Added Tax and/or excise duty) plus ten (10) percent and shall at all times be valid for shipment three (3) days before and seven (7) days after the Loading Dates or the Discharge Dates, as applicable;
  - (d) If for any reason the loading/discharge will not take place within the period for such loading referred to in the L/C, Buyer shall either obtain an extension of such period or provide a new L/C in terms acceptable to Seller; and
  - (e) No term of the L/C (nor any agreed amendment thereto) shall amend, alter, add to, or in any way affect the terms of the Agreement (or any of them) unless Seller and Buyer expressly agree in writing to amend the Agreement accordingly.
- 42.10.** It is a condition of the Agreement that Buyer complies with its payment obligations under the Agreement (including any obligation to provide security in the form specified by Seller as well as any and all obligations under this Section 42) within the time prescribed by Seller and/or by the Agreement. Any failure either in whole or in part by Buyer to comply with any such obligation shall be a breach of condition. On the occurrence of such breach and as relevant for so long as such breach is continuing:
- (a) If the Product has been delivered on board the relevant transport vehicle then, at Seller's option exercisable at any time by written notice by Seller to Buyer, title, but not risk, in the Product shall

revert to and/or remain with Seller and Buyer undertakes at its own cost to order the discharge of the vehicle exclusively to a party notified to Buyer by Seller; and

- (b) In all cases, Seller may at any time by written notice to Buyer and without prejudice to any other legal remedies Seller may have and without any liability whatsoever for any cost, loss or damage (including liabilities to third parties) incurred by Buyer, forthwith (i) cancel delivery of all or any Shipments; or (ii) without prejudice to any other rights of Seller, withhold delivery of Product under the Agreement and/or, if applicable, release of shipping documents or letter of indemnity.

Seller may exercise the rights set out above whether or not nominations have been made or accepted and, if Seller exercises any such right, Seller shall be entitled to dispose freely of any resulting quantity of Product and Buyer shall be liable for, and shall indemnify Seller and/or Seller's Supplier for, any costs, losses and damages incurred by Seller and/or Seller's Supplier as a result of Buyer's breach, including but not limited to, any demurrage payable by Seller and/or Seller's Supplier in respect of the Vessel/Barge or other vessels/barges waiting at the Loading Terminal.

- 42.11.** The parties may agree to net invoices for amounts that are due to each other on the same date. In case the parties agree to do so, prior to the due date the parties shall confirm in writing, the invoice amounts and the balance due, if any, after netting (being the excess of the larger aggregate amount owed over the smaller aggregate amount owed). When the balance due has been confirmed, each party's obligation to make payments to the other will be automatically satisfied and discharged and replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party on the due date, the agreed balance. Notwithstanding the above, payments for any demurrage, quantity, quality or other claims shall not be included in such netting of invoices. Nothing in this sub-section shall be taken as limiting or excluding Seller's rights, including but not limited to, the right to terminate the Agreement in case of Buyer's repudiatory breach.

## **SECTION 43 - CLAIMS**

### **43.1. Quality or quantity claims**

In no event shall Seller be liable for any claim regarding the quantity and/or quality of any Shipment, unless such claim has been made by Buyer against Seller in writing, with full details of the specific facts on which the claim is based and supporting documentation. Such notice of claim will only be validly made if it is received by the Seller within:

- (a) forty-five (45) Days of the date of the relevant bill of lading for Vessels for FOB, CFR and CIF deliveries;
- (b) twenty-one (21) Days of the date of the relevant bill of lading (or equivalent transport document) for Barges for FOB, CFR and CIF deliveries;
- (c) thirty (30) Days of the date of the relevant delivery for any other incoterm.

Notwithstanding the above, in no event shall Seller be liable for the first zero point five (0.5) percent short delivery of the invoiced quantity. However, nothing in this Section 43 is intended to undermine the provisions of the relevant sections of this Agreement in relation to certain documents or findings or equivalent being final and binding save for fraud or manifest error.

Should Buyer fail to submit such claim or provide such details and/or any supporting documentation within the above time limit, then all such claims shall be deemed to have been waived and any liability on the part of Seller shall be forever extinguished.

### **43.2. Demurrage claims**

Any claim for demurrage under the Agreement must be notified in writing as follows:

- (a) for FOB Vessel transactions, within forty-five (45) days (or such period as specified in the Specific Terms) from the completion of loading and for all other Vessel transactions, within forty-five (45) days (or such period as specified in the Specific Terms) from the completion of discharge, and
- (b) for Barges, within thirty (30) days from completion of loading.

Such claim shall be accompanied with full supporting documentation (including, but not limited to, i) for Vessels, invoice and time computation, N.O.R., Vessel's port log, statement of facts, evidence of nomination and charter party rate; and ii) for Barges, Buyer's demurrage calculation, copy of the Barge owner's demurrage invoice, Laytime statement and demurrage calculation (which statement and calculation shall include Discharge Terminal information) or, where the Barge is time-chartered, written confirmation from the Barge owner that the Barge was on time-charter and the Barge owner's running time computation, copy of the nomination including verifiable evidence of the relevant time and date of its transmission, and signed or stamped timesheets from the Loading Terminal and Discharge Terminal (or if not available, a timesheet signed or stamped by a terminal and Barge representative), together with any other documentation that Seller may reasonably require.

Should Buyer fail to give such notice or provide all such documentation within the time agreed above, Buyer's claim shall be deemed to have been waived and any liability of Seller for demurrage will be forever extinguished.

#### **43.3. All other claims**

Without prejudice to the provisions of sub-sections 43.1 and 43.2, any claim other than quality, quantity or demurrage claims shall be waived and any liability shall be forever extinguished unless a claim accompanied with fully supporting evidence is received within one (1) year from the date of the occurrence giving rise to the claim.

### **SECTION 44 - DESTINATION**

**44.1.** Buyer undertakes, and it is a condition of the Agreement, that the Product shall not be

- (a) Shipped directly or indirectly through, or
- (b) Disposed of, directly or indirectly and irrespective of means, by way of resale, exchange, loan or other arrangement for the supply of the Product to any buyer and/or receiver in, any country which is subject to a prohibition by the governmental authorities of the country in which the Product has been produced or loaded. If Buyer is, or is likely to be, prevented by any law, policy, demand or request to which Buyer is subject or any governmental policy, demand or request by which Buyer is bound, from complying with the above, Seller and Buyer shall meet and discuss the implications for Buyer and Seller and, pending resolution of any difficulty which such event causes or is likely to cause, Seller may at its discretion suspend in whole or in part supplies hereunder.

**44.2.** Should Buyer be in breach of any provisions of this Section 44, intend a breach to occur or there are reasonable grounds to infer a breach may occur, Seller may at any time thereafter immediately terminate the Agreement, without any liability of any kind whatsoever to Buyer. Moreover, Buyer agrees to hold Seller harmless from, and indemnify Seller for, any losses, costs, damages, fines and/or penalties incurred by Seller resulting from or in connection with any such breach.

### **SECTION 45 - EXCEPTIONS - FORCE MAJEURE**

**45.1.** Neither party shall be deemed in breach of the Agreement as a result of, or be liable to the other for, any failure, omission or delay in its performance in whole or in part of any of the terms or conditions of the Agreement (except in relation to obligations to make payments or provide security for payment under the Agreement) if such failure, omission or delay arises or results from an event of force majeure.

**45.2.** For the purposes of this Agreement an event of "force majeure" shall include but not be limited to any events or circumstances beyond the reasonable control of a party which prevent or impede the due performance of this Agreement and which by the exercise of all reasonable diligence such party is unable to prevent, including but not limited to acts of war, sabotage, act of piracy, terrorism, riot, rebellion or civil commotion, flood, earthquake, lightning or other natural physical disaster, explosion, fire, expropriation, nationalisation, requisition or other interference by any governmental authority, compliance with any statute, order, by-law or other rule or regulation having the force of law, accident of navigation, strike, lockout, breakdown of or accident or injury in or about the plant of Seller, and failure of or interference with the manufacturing, receiving, handling or delivery of feedstock of Product

as well as the inability to obtain or the curtailment of electric power, water, or fuel. The mere shortage of labour, materials, equipment or supplies shall not constitute force majeure unless caused by events or circumstances which are themselves force majeure. For the avoidance of doubt, force majeure affecting the Seller's plant or Seller supplier's plant producing the Product shall be deemed to affect Seller.

- 45.3.** If either party is prevented from or delayed in performing any of its obligations under this Agreement by an event of force majeure, it shall promptly give written notice to that effect to the other party, stating the particulars of such force majeure and of the obligations thereby affected. A party so affected by an event of force majeure shall use every reasonable effort to minimise the effects of the event upon the performance of this Agreement and shall promptly resume performance as soon as reasonably possible after cessation of the circumstances of the event.
- 45.4.** If a force majeure event occurs, then, at any time thereafter and for so long as the effect of that event continues, Seller shall be entitled to withhold, suspend, reduce or cancel delivery hereunder to such extent as Seller shall in its absolute discretion determine. However to the extent that part of the Product remains available from the Seller's producing plant affected by the event of force majeure, Seller will endeavour to apportion available Product among itself and its purchasers on a reasonable and equitable basis, without incurring any liability for failure to perform under the Agreement. Notwithstanding anything to the contrary, under no circumstances shall Seller be required to purchase or acquire product to replace all or part of the Product supplies disrupted by an event of force majeure.
- 45.5.** Any additional quantity of Product deliverable hereunder that would, but for any withholding, reduction, suspension or cancellation pursuant to the foregoing provisions, have been delivered during the period thereof shall cease to be deliverable under this Agreement.
- 45.6.** If the event of force majeure continues for a period of more than thirty (30) Days, either party shall be entitled to terminate the affected delivery by giving written notice to the other party without any liability save that such termination shall be without prejudice to any other accrued rights and (if applicable) to any other deliveries or transactions.
- 45.7.** Where, under the Agreement, Buyer is to receive more than one Shipment, no withholding, suspension, delay, reduction or cancellation of delivery shall operate to extend the duration of the Agreement; and any quantities of Product deliverable under the Agreement that would, but for any reduction or cancellation pursuant to this Section 45, have been delivered during the period of the Agreement, shall cease to be deliverable by Seller.

## **SECTION 46 - TERMINATION**

- 46.1.** Notwithstanding anything else to the contrary in the Agreement, Seller (without prejudice to any other rights or remedies available to Seller) shall have the right, without being liable for any indemnity to Buyer, to suspend deliveries under the Agreement or to terminate the Agreement immediately upon written notice to Buyer in the event that:
- (a) Buyer does not perform any material provision of the Agreement, including but not limited to the failure by Buyer to pay any amounts owing in full when due or the breach by Buyer of any of its obligations under Section 42;
  - (b) Buyer or any Affiliate of Buyer is generally not paying its debts as they become due, files or consents by answer or otherwise to the filing against it of any petition or case seeking relief under any Insolvency Laws, becomes bankrupt or insolvent, has any petition or proceedings under Insolvency Laws commenced against it which are not dismissed within thirty (30) days after the commencement thereof, makes a general assignment for the benefit of its creditors, applies for, or consents to, the appointment of a custodian, receiver, trustee, conservator or other officer(s) with similar powers over it or over any substantial part of its property; or
  - (c) Buyer is merged with or becomes the subsidiary of a third party other than its existing parent company or ultimate parent company (if any) or Buyer sells, leases or otherwise disposes of all or a substantial portion of its assets, or there is a change of control of Buyer (it being understood that the term "change of control" means, for the purposes of this sub-section 46.1, the acquisition (in

aggregate) by any individual or entity of beneficial ownership of ten (10) percent or more of the outstanding voting shares of Buyer (or the equivalent thereof if Buyer is a non-corporate entity)).

Buyer shall immediately provide written notice to Seller of the occurrence or expected occurrence of any of such events as per sub-sections 46.1(b) and (c). If Seller exercises its right to terminate the Agreement, Buyer shall immediately pay Seller any and all amounts (whether or not then due) owing under the Agreement.

- 46.2.** If any event described in sub-section 46.1 occurs in respect of Buyer, then notwithstanding any other provision of the Agreement to the contrary, including any provision of Section 47, Seller shall be free to assign to any third party any and all of Seller's rights under the Agreement, whether present or future, actual or contingent, including, without limitation:
- (a) Any and all rights that require the due and punctual observance, discharge and performance by Buyer of all its obligations and liabilities under the Agreement;
  - (b) All rights to moneys received or receivable by Seller from Buyer under the Agreement, whether as a payment, compensation, damages or an indemnity; and
  - (c) The right to claim for any sums payable or which become payable under the Agreement.
- 46.3.** Notwithstanding anything elsewhere in the Agreement or in any other agreement to the contrary, if any event described in sub-section 46.1 occurs in respect of Buyer, then Seller shall have the right, exercisable in its sole discretion and at any time, to set off any or all amounts which Buyer owes to Seller (whether under the Agreement or otherwise and whether or not then due) against any or all amounts which Seller or any Affiliate of Seller owes to Buyer (whether under the Agreement or otherwise and whether or not then due), provided that any amount not then due which is included in such set-off shall be discounted to present value at the time of set-off (to take account of the period between the date of set-off and the date on which such amount would have otherwise been due). For this purpose, any amounts may be converted by Seller into the currency in which the other is denominated at the rate of exchange at which Seller would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency. If an obligation is unascertained, Seller may, in good faith, estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained. Seller's rights under this sub-section 46.3 are in addition to, and not in limitation or exclusion of, any other rights which Seller may have (whether by agreement, operation of law, in equity or otherwise). Nothing in this sub-section 46.3 shall be effective to create a charge or other security interest.

## **SECTION 47 - ASSIGNMENT**

- 47.1.** Subject to sub-section 46.2 and 47.2, neither party shall assign its rights and obligations under the Agreement, in whole or in part, without the prior written consent of the other party provided, however, that Seller shall be free to assign its rights and obligations under the Agreement to any of its Affiliates. If such written consent is given and wherever the assignment is made, the assigning party shall remain jointly and severally liable with the assignee for the full performance of its obligations under the Agreement.
- 47.2.** Notwithstanding sub-section 47.1, Seller may without Buyer's consent assign all or a portion of its rights to receive and obtain payment under the Agreement, provided such assignment does not contravene any applicable law, regulation or decree binding upon Buyer. Any payment made by Buyer to the payee specified by Seller in respect of the Product deliverable under the Agreement shall be in full discharge of Buyer's payment obligations to Seller under the Agreement. Any such assignment will not detract from Seller's obligations under this Agreement, excepting the obligation of confidentiality related to such assignment.



**SECTION 48 - REACH**

- 48.1.** Seller warrants that the requirements and obligations of REACH for downstream end-Uses, including those relating to intermediates (if applicable), are fulfilled. Seller agrees to provide evidence of such compliance upon Buyer's request.
- 48.2. Intermediates:** The Product(s) sold and/or the substances contained therein may be registered as a (transported isolated or on-site isolated) intermediate as defined under REACH. In such case, Buyer shall confirm prior to the execution of this Agreement by separate document that it understands the definition of intermediate as defined under article 3 (15) of REACH, and that it shall only use the said Product(s) (hereafter "Intermediate Substances") under "strictly controlled conditions" as defined in article 18(4) of REACH, such that:
- (a) the Intermediate Substance is rigorously contained by technical means during its whole life-cycle including manufacture, purification, cleaning, maintenance of equipment, sampling, analysis, loading and unloading of equipment or vessels, waste disposal or purification and storage;
  - (b) procedural and control technologies are used that minimize emissions and any resulting exposure;
  - (c) only properly trained and authorized personnel handle the Intermediate Substance;
  - (d) in the case of cleaning and maintenance works, special procedures such as purging and washing are applied before the system is opened and entered;
  - (e) in cases of accident and where waste is generated, procedural and/or control technologies are used to minimize emissions and the resulting exposure during purification or cleaning and maintenance procedures; and
  - (f) substance-handling procedures are well documented and strictly supervised by the site operator.
- 48.3.** Buyer also confirms that it has received confirmation from all of its customers and/or the downstream users in its supply chain that they use the Intermediate Substances or Product(s) in accordance with the "strictly controlled conditions" and that they can demonstrate such control. Buyer shall send a copy of such confirmation to Seller.
- 48.4.** In the absence of this confirmation or when Buyer is acting in breach thereof, any sale or sales agreement shall not commence and shall be deemed null and void or shall end immediately without notice period, relating to these substances that have been or will be registered as Intermediate Substances or Products containing such Intermediate Substances.
- 48.5.** In compliance with articles 31 and 32 of REACH and whenever otherwise required, the Seller will make available Product SDS with the applicable Chemical Abstracts Chemical Service (CAS) number to buyer when Buyer purchases the concerned Product for the first time. Such SDS will also be available on the website specified in section 53.1 below or on Buyer's request. If no SDS is required, the Seller will provide the information specified in article 32 of REACH website specified in section 53.1 below or on Buyer's request. If no SDS is required, the Seller will provide the information specified in article 32 of REACH.
- 48.6.** Buyer shall comply with articles 32, 34 and 35 of REACH, and shall
- (a) disclose the SDS, if any, and other relevant health and safety information to its customers and
  - (b) discontinue any Use disclosed by Buyer which is declared unsafe or advised against by Supplier or which is not mentioned in the SDS.

- 48.7.** Seller shall not be liable for any claims or any loss or damage arising from or relating to:
- (a) a Use other than those identified in Seller's SDS;
  - (b) a Use disclosed by Buyer that is declared unsafe or warned against by Seller; and/or
  - (c) non-compliance with the SDS or the specifications and precautions in force at the date hereof or as amended by Seller from time to time.
- 48.8.** The Uses of Product disclosed by Buyer to Seller are deemed to be supplied to Supplier only in order to comply with REACH and shall not constitute, nor be construed as
- (a) an agreement between Parties regarding the required contractual quality of the Products or
  - (b) any kind of guarantees or warranties (express or implied) with respect to the suitability, technical performances or (technical) fitness of the Product for any particular purpose or otherwise.
- Supplier shall not be responsible for specific or new Uses that are not provided for in the SDS.
- 48.9.** Seller shall inform Buyer, as soon as Seller becomes aware of a Products that does not comply with REACH. Notwithstanding anything to the contrary in a sales agreement or order, in case the Product(s) do not comply with REACH, Purchaser shall without prejudice to its right to claim damages (subject to the limitations under sub-section 48.8), have the right to suspend or terminate the sales agreement and/or current orders immediately with respect to the non-compliant Product(s), without paying any indemnity or compensation to Supplier.
- 48.10.** Seller's liability resulting from its non-compliance with REACH including the failure to provide the required SDS or resulting from any misrepresentation regarding said obligations shall in all cases, notwithstanding any other provision in the sales agreements, not exceed the contract price of the quantity of the relevant supplied Product, increased by the maximum of the total freight value for which a claim is filed. Neither party shall be liable for any other losses or damages, whether under warranty, contract or otherwise, direct or indirect, incidental or consequential arising out of REACH.
- 48.11.** For the purpose of this Section 48:
- (a) "**Products**" shall mean the products (if the product is a substance or preparation (mixture or solution composed of two or more substances) as such) or the substances contained therein, sold and/or delivered under these General Terms;
  - (b) "**Purchaser**" shall mean Buyer, Buyer's employees, contractors, agents and Buyer's clients that Use, buy, sell or may be exposed to the Product; and
  - (c) "**Use**" of the Product shall mean any processing, formulation, consumption, storage, keeping, treatment, handling, filling into containers, transfer from one container to another, mixing, production of an article or any other utilization.

## **SECTION 49 - TRADE RESTRICTIONS AND INTERNATIONAL ECONOMIC SANCTIONS**

- 49.1.** All activities under this Agreement shall be conducted in compliance with export control and international economic sanctions laws or regulations that apply to the parties.
- 49.2.** Buyer undertakes that the Product deliverable hereunder shall not:
- (a) Be exported to any Restricted Person or Jurisdiction (as defined below);
  - (b) Be sold or supplied to any natural or legal person in any way connected to any Restricted Person or Jurisdiction; or
  - (c) Be sold or supplied to any natural or legal person or entity for the purpose of any commercial activity carried out with or in connection with any such Restricted Person or Jurisdiction.

For the purposes of this sub-section 49.2, "Restricted Person or Jurisdiction" shall mean any physical person or corporate entity, country, state, territory or region against which there are sanctions imposed by the United Nations or any other sanctions applicable to the Parties or specified in the Specific Terms which prohibit the export of Product thereto.

- 49.3.** At any time, Seller may require Buyer to provide any relevant documents for the purpose of verifying the final destination of the Product, and Buyer undertakes to provide such documents immediately upon request. Compliance by Buyer with this Section shall be a condition precedent to this Agreement.
- 49.4.** Neither party shall be obliged to perform any obligation otherwise required by this Agreement if this would be in violation of, inconsistent with, or expose such party to, punitive measures under any laws, regulations applicable to the Parties relating to export control or international economic sanctions.
- 49.5.** Where any performance by a party would be in violation of, inconsistent with, or expose such Party to punitive measures under international economic sanctions, such party (the "**Affected Party**") shall, as soon as reasonably practical, give written notice to the other party of its inability to perform. Once such notice has been given the Affected Party shall be entitled either (i) to suspend the performance of the affected obligation under this Agreement until such time as the affected party may lawfully discharge such obligation; and/or (ii) to terminate this Agreement where the Affected Party may not lawfully discharge such obligation.

## **SECTION 50 - ANTI-CORRUPTION**

- 50.1.** Buyer and Seller each warrant and undertake to the other that in connection with the Agreement and the performance thereof, they will each comply with any laws, regulations, rules, decrees and/or official government orders applicable to such party relating to anti-bribery or anti-money laundering and that they shall each take no action that would subject the other to fines or penalties under such laws, regulations, rules or requirements.
- 50.2.** Buyer and Seller each represent, warrant and undertake to the other that they shall not, directly or indirectly pay, offer, give or promise to pay or authorize the payment of, any monies or other things of value to any:
- (a) Government official or an officer or employee of a government or any department, agency or instrumentality of any government;
  - (b) Officer or employee of a public international organization;
  - (c) Person acting in an official capacity for or on behalf of any government or department, agency or instrumentality of such government or of any public international organization;
  - (d) Political party or official thereof, or any candidate for political office;
  - (e) Director, officer, employee or agent/representative of an actual or prospective counterparty, supplier or customer of buyer or seller; or
  - (f) Other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities.
- 50.3.** In particular, Seller represents and warrants to Buyer that it has not made any payments or given anything of value to officials, officers or employees of the government of the country in which the Product originated or any agency, department or instrumentality of such government in connection with the Product that is the subject of the Agreement that would be inconsistent with or contravene any of the above-referenced legislation.
- 50.4.** Without prejudice to any other rights or remedies which they may have hereunder or at law, Buyer or Seller may either suspend or terminate the Agreement forthwith upon written notice to the other at any time if, in their reasonable judgment, the other is in breach of any of the representations, warranties or undertakings in this section.

## SECTION 51 - WAIVER

- 51.1.** No delay or omission by either party to exercise any right or privilege herein conferred or to enforce any of the terms and conditions of the Agreement shall be construed as a waiver of any such right, privilege, terms or conditions.
- 51.2.** No waiver or omission by either party to require performance by the other party of any of the terms and conditions of the Agreement and no forbearance or indulgence granted or shown by either party to the other shall release, discharge or in any manner affect or prejudice the right of a party at any time to require strict and full performance by the other of any or all of the terms and conditions of the Agreement to be performed subsequent to any such waiver, omission, forbearance or indulgence.

## SECTION 52 - NOTICES

- 52.1.** Any notice or other communication or document in respect of the Agreement may be given in any manner set forth below (except for the N.O.R. in respect of any Vessel) to the address details provided in the Specific Terms or otherwise previously communicated by the other party and will be deemed effective as indicated below:
- (a) If in writing and delivered in person or by courier, on the date it is delivered and, if a particular department or officer is specified as part of its contact details, if addressed to that department or officer;
  - (b) If sent by email, on the date of the transmission is sent in legible form (it being agreed that the burden of proving lack of receipt will be on the receiver) at the email address provided in the Specific Terms or otherwise previously communicated by the other party; or
  - (c) If sent by certified or registered mail or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer.
- 52.2.** Either party, by giving not less than fifteen (15) days' notice as per the provisions of this Section 52 to the other party, may from time to time change its contact details.

## SECTION 53 - HEALTH, SAFETY AND ENVIRONMENTAL INFORMATION

- 53.1.** Health, safety and environmental information concerning the Product shall be available on [www.quickfds.com/en/index.html](http://www.quickfds.com/en/index.html). Should Buyer experience any difficulties in retrieving such information from the website, it should contact Seller's usual operational contact.
- 53.2.** It is strongly recommended that Buyer passes on to its employees, agents, independent contractors, subcontractors, customers and other persons to whom it supplies the Product delivered hereunder substantially the same information.
- 53.3.** Nothing contained herein or in the above website shall relieve Buyer of its duties in relation to the safe and proper evaluation, storage, use, transportation and disposal of the Product sold under the Agreement.

## SECTION 54 - APPLICABLE LAW AND JURISDICTION

- 54.1.** The Agreement (and Seller's offer) is made under, and shall be governed by, and be construed in all respects in accordance with, the laws of England to the exclusion of any other law which may be or become relevant in accordance with conflict of laws rules applicable in any jurisdiction.
- 54.2.** Moreover, the parties hereto expressly agree that the application of the "United Nations Convention on Contracts for the International Sale of Goods 1980" is hereby expressly excluded pursuant to article 6 of that Convention.

- 54.3.** Subject to sub-section 54.4, the parties expressly agree that all disputes and claims arising out of, or in connection with, the Agreement or the alleged breach thereof shall be submitted to the exclusive jurisdiction of the High Court sitting in London and to service of process by registered mail. However, any decision of the High Court may be enforced in the courts of any country and furthermore, neither party shall be precluded from pursuing arrest, attachment and/or other conservatory actions in the courts of any other country, or exercising any contractual rights in relation to the Vessel/Barge or the Product as provided for in the Agreement.
- 54.4.** Notwithstanding sub-section 54.3 above, where the dispute involves a claim not exceeding one hundred thousand United States Dollars (US\$ 100,000) (excluding interest and costs) it shall be referred to a sole arbitrator, and the arbitration shall be conducted, in accordance with the London Maritime Arbitrators Association (LMAA) Small Claims Procedure. The arbitration proceedings shall be conducted in the English language and in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force. The parties agree that the arbitration decision shall be final and binding.

## **SECTION 55 - PRECURSOR GOODS FOR DRUGS**

Some Products sold hereunder, in particular toluene, are considered as "precursor goods for drugs" as further defined and regulated by EU/EC legislation. In such case, Buyer undertakes to supply to the Seller an import license for the country of destination. If Buyer is unable to provide such licence, Seller shall be entitled to cancel the Agreement without any liability towards the Buyer.

## **SECTION 56 - ETHICS AND BUSINESS PRINCIPLES**

The Seller and the Buyer represent and warrant that they shall perform this Agreement in full compliance with the applicable rules and principles set out in their respective Code of Conduct (a copy of which is available on their respective website or on request). In the absence of such Code of Conduct for one of the party, the Agreement shall comply with the principles of the Code of Conduct of the other party.

## **SECTION 57 - VALUE ADDED TAX AND EXCISE DUTY, EU DOCUMENTATION**

### **57.1. Value Added Tax**

- (a) Where value added tax or similar tax ("VAT") becomes payable under the rules applicable at the Loading Terminal or Discharge Terminal, Seller shall issue an invoice setting out such VAT and the date for its payment. Payment of such VAT shall be made by Buyer to Seller in addition to the contractual price of the Product. Seller's invoice shall be presented in the contractual currency of the Product, converted at the exchange rate prevailing on the date of the tax point into the local currency of the country in which said VAT is payable. Any invoiced VAT amount shall be paid by Buyer to Seller's designated account in full on the date specified by Seller without any discount, deduction, withholding, abatement, set-off or counterclaim.
- (b) The provisions of this sub-section 57.1(b) shall apply where the Loading Terminal is located within the European Union (EU).
- (i) Where the rules applicable at the Loading Terminal allow it, the sale of the relevant Product may be zero (0) rated provided that:
1. If the destination of the Product is within the EU,
    - 1.1 Buyer provides to Seller, prior to commencement of loading/transfer, evidence satisfactory to VAT authorities at the Loading Terminal that Buyer is entitled to zero rating for the Product, including but not limited to a written declaration stating:
      - 1.1.1 a valid VAT registration number of Buyer in an EU member state other than the EU member state in which the Loading Terminal is located; and

- 1.1.2 that an intra community acquisition of the Product will be reported in the country of destination; and
- 1.1.3 that the Product delivered under the Agreement will be transported from the Loading Terminal to the country of destination by the transporter on behalf of Buyer, or in case (i) the delivery between Seller and Buyer takes place in the country where the Products are dispatched for transport ("Country of Dispatch") and (ii) Buyer has requested for a zero (0) percent VAT rate and (iii) Buyer intends to sell the Products to a third party, Buyer shall, prior to delivery to the third party, inform Seller whether or not the delivery between Buyer and the third party takes place in the Country of Dispatch.; and
- 1.2 Buyer provides to Seller, upon demand, evidence satisfactory to the relevant authorities in the EU member states in which the Loading Terminal and discharge port are located that the transportation arrangements for the Product qualify for zero (0) rating; and
- 1.3 Buyer provides to Seller, within thirty (30) days of loading the Shipment, satisfactory evidence to the relevant authorities of the EU member state in which the Loading Terminal is located ("**Loadport Authorities**") that the Product has been received by Buyer, or some other party acting on Buyer's behalf, within another EU member state, or such other evidence as is satisfactory to the Loadport Authorities to allow zero rating of the sale of the Product; or
- 2. If the destination of the Product is outside the EU, Buyer provides to Seller, within thirty (30) days of loading the Shipment, satisfactory evidence to the Loadport Authorities that the Product has been received by Buyer, or some other person on Buyer's behalf, at a destination outside the EU.
  - (ii) Where Seller has issued a zero (0) rated invoice in respect of the Product, if Buyer fails to comply with the above provisions, Seller shall be entitled to issue a further invoice for the amount of any VAT payable together with interest in the contractual currency of the Product, converted at the exchange rate prevailing on the date of the tax point into the local currency of the country in which said VAT is payable. Such further invoice shall be paid by Buyer to Seller's designated account in full within two (2) Banking Days of presentation of such invoice, without any discount, deduction, withholding, abatement, set-off or counterclaim.
- (c) Buyer shall indemnify Seller in respect of any costs or penalties incurred by Seller as a result of Buyer's failure to pay any VAT in accordance with the Agreement.
- (d) If Seller is subsequently able to obtain a credit or repayment from the authorities for any such VAT which has been paid by Buyer, Seller shall within five (5) Working Days reimburse Buyer with the net amount so credited or repaid less any costs, penalties and interest, and Seller shall use all reasonable efforts to obtain such credit or repayment, it being understood that any costs incurred by Seller in doing so shall be borne by Buyer.

## 57.2. Excise duty

Buyer shall indemnify Seller and hold Seller harmless from any and all liability in respect of excise duty or similar tax incurred by Seller, Seller's Supplier or the owner of the bonded premises from which the Product is dispatched, including any interest, penalties or costs arising on such excise duty or similar tax, where the Product is delivered from any bonded premises in the EU, unless, before the fifteenth (15th) day of the month following the month of dispatch of the Product from bonded premises:

- (a) Buyer provides to Seller a properly completed Copy 3 of the AAD together with proof of discharge of the Product;
- (b) Buyer provides to Seller satisfactory evidence to the EU member state where the Product was taken out of bonded premises, that the Product was delivered to a non EU member state; or
- (c) Buyer provides to Seller satisfactory evidence to the EU member state from which the Product was taken out from bonded premises without an AAD, that the Product was delivered into bonded

premises within the EU in circumstances where such delivery allows for suspension of the excise duty or similar tax.

- 57.3.** Notwithstanding the above, Buyer shall indemnify Seller and hold Seller harmless from any and all liability for any excise duty or similar tax claimed by a relevant EU member state in respect of discrepancies between the loaded and discharged quantities.

Where VAT and/or excise duty is payable, Seller reserves the right to request, and Buyer undertakes to immediately issue upon such a request, a letter of guarantee from a bank acceptable to Seller to cover the full estimated amount of such VAT and/or excise duty, such letter of guarantee to be in a format acceptable to Seller.

Any delay in effecting any payment by the due date under this Section 57 shall entitle Seller to receive payment of interest for each day of delay calculated in accordance with sub-section 42.5.

**57.4. EU Documentation**

Where the Loading Terminal is located outside the European Union (EU) and the Specific Terms provide that the Product shall be EU qualified, or where the Loading Terminal is located inside the EU and the relevant vehicle nomination provides that the discharge port(s) are located inside the EU, the provisions of Appendix 3 shall apply.

**SECTION 58 - GENERAL**

- 58.1.** Buyer undertakes to comply with all applicable laws and regulations insofar as these affect the implementation of the Agreement. However, neither Buyer nor Seller shall be required, as a result of the Agreement, to participate in, or co-operate with, any boycott, or to take any related action which would violate the provisions of any applicable law or result in penalties of any kind under such law. Buyer represents and warrants that as of the date of the Agreement, there is no prohibition on purchasing the Product pursuant to the terms of the Agreement in the laws and regulations applicable to Buyer.

- 58.2.** Buyer shall be responsible for obtaining all consents, authorisations, approvals and assurances of whatsoever nature to give effect to the provisions of the Agreement.

- 58.3.** Except as expressly provided for in the Agreement, Seller shall not in any event be liable for

(a) Any loss of profit or anticipated profit, hedging or other derivative losses, use, goodwill, business receipts, contracts or commercial opportunities, market reputation, cost of overheads thrown away or loss resulting from shut-down of any plant of Buyer or of the receiver of the Product, whether or not foreseeable, and/or

(b) Any consequential, indirect or special losses, expenses or damages of any kind,

including, but not limited to, when the above losses, expenses or damages are wholly or partly caused by any breach and/or negligent act or omission on its part, whether in contract, tort, negligence, breach of statutory duty or otherwise, arising out of, or in any way connected with, the conclusion, the performance, the failure to perform or the termination of the Agreement. In addition, Seller shall in no circumstances be liable for more than the difference between the market price and the contract price with respect to the relevant quantity of Product.

- 58.4.** Buyer agrees to indemnify, release and hold Seller and its Affiliates harmless from liability for any and all demands or claims arising from injuries sustained or damages suffered following the passage of risk and property in the Product as hereinabove provided, and which may arise in connection with the transportation, use or handling of any Product or admixture thereof, whether delivery is made to Buyer, its assigns or nominees.

- 58.5.** For the avoidance of doubt, any repetition in the Specific Terms of any section or sub-section of the General Terms and Conditions or any part of the same shall be for emphasis only and shall not, by reason of such repetition, exclude any other provision of these General Terms and Conditions.

- 58.6.** The Specific Terms and the General Terms and Conditions together form the entire agreement between the parties, and no additional terms, conditions, representations or warranties shall be incorporated in the Agreement in the absence of express written consent of each party.
- 58.7.** Where not used to identify the provisions applicable to each type of delivery (e.g. FOB, Ex Tank, etc.), the section headings are for convenience only and shall not be interpreted in any way to limit or change the subject matter of the Agreement.
- 58.8.** The General Terms and Conditions shall apply from the date of Seller's offer or acceptance, whichever occurs first.
- 58.9.** Each party consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording.
- 58.10.** Nothing in the Agreement shall be considered or construed as conferring any right or benefit on a person not a party to the Agreement and the parties do not intend that any term of the Agreement should be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to the Agreement.
- 58.11.** If any provision of the Agreement is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction or either party's compliance with any ruling or resolution of the United Nations or the European Union has a like or similar effect, the remainder of the Agreement (and of such provisions) shall not be affected except to the extent necessary to cure such illegal, invalid or unenforceable provision (or part thereof).
- 58.12.** Each party shall be responsible for obtaining all consents, authorisations, approvals and assurances of whatsoever nature necessary to enable it to comply with its obligations under the Agreement.
- 58.13.** In the event of conflict or inconsistency between these General Terms and Conditions and the Specific Terms, the Specific Terms shall prevail.
- 58.14.** The Agreement shall not be modified unless mutually agreed by the parties, which agreement must be evidenced in writing.
- 58.15.** The Buyer warrants that it has not in connection with the Agreement relied upon any representations, whether written or oral, made by or on behalf of the Seller, but has relied exclusively on its own knowledge, judgment and expertise.

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**APPENDIX 1 - Letter of Indemnity format**

From: (Seller)

To: (Consignee or Buyer of Shipment)

We refer to our contract dated ..... in respect of our sale to (Buyer) of a Shipment of ..... net US barrels/metric tons/cubic metres of (grade) shipped on board the Vessel ..... at the port of ..... with bills of lading dated .....

To date we are unable to provide you with the requisite shipping documents in relation to the said sale, which consist of:

In consideration of your making payment of the full invoiced price of USD ..... for the Shipment at the due date for payment under the terms of the above contract without having been provided with the above documents, we hereby expressly warrant that at the time property passed under the above contract we had marketable title to such Shipment, free and clear of any lien or encumbrance, and that we had full right and authority to transfer such title to you, and that we are entitled to receive these documents from our supplier and transfer them to you.

We further agree to protect, indemnify and save you harmless from and against any and all damages, costs and expenses (including reasonable legal fees) which you may suffer or incur by reason of the original bills of lading and other documents remaining outstanding or breach of warranties given above including, but without prejudice to the generality of the foregoing, any claims and demands which may be made by a holder or transferee of the original bills of lading, or by any third party claiming an interest in or lien on the Shipment or the proceeds thereof.

This Letter of Indemnity shall be governed by and be construed in all respects in accordance with the laws of England, but without reference to any conflict of law rules. Each party expressly submits to the exclusive jurisdiction of the High Court sitting in London and to service of process by registered mail.

The validity of this Letter of Indemnity shall expire upon our presentation to you of the aforesaid shipping documents.

For and on behalf of (Seller)

Name

Title

Authorised signature

[THE BELOW SECTION TO BE COMPLETED AND SIGNED WHERE THE SELLER EXERCISES ITS RIGHT TO REQUIRE A BANK TO COUNTER-SIGN THE LETTER OF INDEMNITY]

Quote

In consideration of your agreeing as aforesaid we the undersigned [BANK NAME] whose customer is [FULL NAME OF SELLER] hereby jointly and severally agree to be bound by the terms of the above letter of indemnity.

By: .....

Bank Authorised Signatory

Unquote

## **APPENDIX 2 - Requirements in respect of Vessels at the Loading or Discharge Terminal**

Under this Appendix 2, the term Vessel shall be deemed to include a Barge unless otherwise provided.

### **1. REQUIREMENTS IN RESPECT OF VESSELS**

- 1.1** If any Vessel does not meet any of the following requirements of this Appendix 2, the Party which is not arranging carriage (hereinafter the "Other Party") may refuse to berth, load/discharge or continue loading/discharging such Vessel.

Notwithstanding any prior acceptance of the Vessel by the Other party and notwithstanding anything to the contrary expressed in this Section 1, if at any time the Vessel fails to comply with any of the requirements of this Appendix 2, then:

- (a) the Other party may at any time refuse to berth or load/discharge or continue to load/discharge the Vessel and all time lost or spent as a result thereof shall not count as used laytime, or if the Vessel is on demurrage, as demurrage;
- (b) the party which is arranging carriage (hereinafter the "Arranging Party") shall be deemed not to have complied with sub-section 3.2 of Part 1 of this Agreement; and
- (c) the Arranging Party shall be obliged to substitute the Vessel with a Vessel whose size and capacity are equivalent to those of the Vessel originally nominated and complying with such requirements.

Any resulting delay or expenses shall be for the Arranging Party's account (including but not limited to, any time lost or demurrage incurred in respect of the Arranging Party's Vessel and any demurrage incurred by the Other Party or the Other Party's Supplier in respect of other Vessels waiting at the Loading Terminal/Discharge Terminal).

### **1.2 ITOPF**

The Arranging Party warrants that the Vessel is owned or demise chartered throughout the entire period of the voyage by a member of the International Tanker Owners Pollution Federation Limited (ITOPF).

### **1.3 P & I CLUBS AND ADN FOR BARGES**

For each Barge specified in, or nominated under, the Agreement, the Arranging Party shall exercise reasonable efforts to ensure that the Barge:

- (a) is entered in and shall remain throughout the entire period of the voyage in a P & I Club which is a member of the International Group of P & I Clubs;
- (b) has in place throughout the entire period of the voyage insurance cover for oil pollution in an amount of no less than the highest standard oil pollution cover available under the rules of the International Group of P & I Clubs; and
- (c) shall have (where applicable) a valid ADN (European Agreement Concerning the International Carriage of Dangerous Goods by Inland Waterways) original certificate of approval on board and has in place security procedures on board in compliance with ADN article 1.10 and shall be equipped with an operational overfill protection system complying with ADN regulations.

### **1.4 CLC, P & I CLUBS FOR VESSELS**

For each Vessel specified in, or nominated under, the Agreement, the Arranging Party shall exercise reasonable efforts to ensure that the Vessel:

- (a) carries on board a valid certificate of insurance as described in the International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969 or, if in force, the 1992 Protocol thereto, as amended;
- (b) is entered in and shall remain throughout the entire period of the voyage at the discharge port(s), in a P & I Club which is a member of the International Group of P & I Clubs; and
- (c) has in place throughout the entire period of the voyage insurance cover for oil pollution in an amount of no less than the highest standard oil pollution cover available under the rules of the International Group of P & I Clubs,

provided always that the Vessel constitutes a "Ship" for the purpose of CLC.

## 1.5 ISM FOR VESSELS

The Vessel shall comply with the requirements of the International Safety Management ("ISM") Code and has on board a valid ISM Code Safety Management Certificate for the Vessel and a copy of the Vessel Manager's Document of Compliance as required by the ISM Code and SOLAS.

## 1.6 ISPS

- (a) The Arranging Party shall procure that the Vessel
  - (i) complies with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to chapter XI of SOLAS ("ISPS Code") and has on board a valid International Ship Security Certificate as well as any other required valid certificates and documents, issued pursuant to the ISPS Code, and
  - (ii) submits, when required, a Declaration of Security to the appropriate authorities prior to arrival at the Loading Terminal.
- (b) The Other Party shall procure that the Loading Terminal/Discharge Terminal shall comply with the requirements of the ISPS Code.

Any costs or expenses in respect of the Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at the Loading Terminal/Discharge Terminal and actually incurred by the Arranging Party resulting directly from the failure of the Loading Terminal/Discharge Terminal to comply with the ISPS Code shall be for the account of the Other Party, including but not limited to, the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS Code.

Save where the Vessel has failed to comply with the requirements of the ISPS Code, the Other Party shall be responsible for any demurrage actually incurred by the Arranging Party arising from delay to the Vessel at the Loading Terminal/Discharge Terminal resulting directly from the Vessel being required by the Loading Terminal/Discharge Terminal Operator, the port authority or any relevant authority to take any action or any special or additional security measures or undergo additional inspections by virtue of the Vessel's previous parts of call.

The Other Party's liability to the Arranging Party under the Agreement for any costs, losses or expenses incurred by the Vessel, the charterers or the Vessel owners resulting from the failure of the Loading Terminal/Discharge Terminal to comply with the ISPS Code shall be limited to the payment of demurrage and costs actually incurred by the Arranging Party in accordance with the provisions of this sub-section 1.6.

## 1.7 ISGOTT, etc.

The Vessel shall be manned, operated and maintained so as to fully comply with (i) the standards set out in ISGOTT or ISGINTT as applicable, (ii) appropriate IMO recommendations, and (iii) the OCIMF Guidelines for the Control of Drugs and Alcohol Onboard Ship (June 1995), each as amended from time to time. (For the purposes hereof, "ISGOTT" means the International Safety Guide for Oil Tankers and Terminals, "ISGINTT" means International Safety Guide for Inland Navigation Tank-Barges and Terminals, as current from time to time, and "IMO" means the International Maritime Organisation.)

## 1.8 CLOSED LOADING AND/OR DISCHARGE

Vessels which are loading a volatile, toxic or noxious cargo must operate at all times in Closed Operations mode. Closed Operations refers to the procedures whereby Vessels conduct cargo transfer and ballasting operations into cargo tanks, with tank apertures closed and with vapours being emitted only by means of the dedicated venting system which is designed to disperse vapour clear of working areas and possible ignition sources. For the purposes of this sub-section:

"**volatile**" shall mean a liquid from which gas evaporates rapidly and shall be taken to include any naturally volatile Product or any Product being carried at a temperature which is higher than the flash point of the Product minus 10 degrees Celsius;

"**toxic**" shall mean a poison which can affect personnel following inhalation, absorption or ingestion and shall be taken to include all Products which give off vapours containing substances for which exposure limits are recommended as they may be hazardous to the health of personnel exposed to them; and

"**noxious**" shall mean harmful to personnel or the environment.

## 1.9 BALLAST

Discharge of dirty ballast, bilges, slops or other substances into water shall be in accordance with MARPOL 73/78, as amended from time to time, and is in any event totally prohibited within the confines of the Loading Terminal/Discharge Terminal.

## 1.10 REGULATIONS

The Vessel nominated under the Agreement shall comply with all applicable governmental, local and port authority regulations, the Other Party's, the Other Party's Supplier's and/or Loading Terminal/Discharge Terminal Operator's regulations, procedures and any other requirement of any nature whatsoever in force at the Loading Terminal/Discharge Terminal at the time of delivery.

## 2. LOADING OR DISCHARGING AT PORTS IN THE UNITED KINGDOM

Where the Loading Terminal/Discharge Terminal is located within the United Kingdom, the Vessel shall observe the Code of Practice relating, inter alia, to recommendations as to routes to be taken by Vessels in certain sensitive locations in UK waters as drawn up by the British Chamber of Shipping in March 1993 and as amended from time to time.

## 3. MARITIME TRAFFIC SCHEMES

The Vessel shall comply with all regulations and recommendations contained in any Maritime Traffic Schemes applicable to the relevant voyage and in particular and as appropriate the Vessel shall comply with the "Turkish Straits Maritime Traffic Scheme Regulations" dated 1<sup>st</sup> September 2018, as amended or re-issued from time to time.

## APPENDIX 3 - EU Documentation

### 1 - IMPORTS INTO THE EU FROM NON-EU MEMBER STATES

The following provisions apply where the Loading Terminal or, where the Product has been declared under the External Community Transit Procedure (T1) or similar procedure in the EU member state where the Loading Terminal is located, the country of origin of the Product, is located outside the European Union (EU) and the Specific Terms provide that the Product shall be EU qualified.

- A - If the Loading Terminal (or, if applicable, the country of origin of the Product) is located in a country with which the EU has a Preferential Agreement whereby the Product enjoys a Generalised Tariff Preference, Seller shall provide to Buyer the relevant original qualifying document (e.g. GSP Form A, EUR 1) allowing Buyer to benefit from such Tariff Preference.
- B - Buyer shall be responsible for providing such original qualifying document to the relevant local customs authorities, at disport.
- C - If Seller is unable to provide the relevant original qualifying document and in consequence Buyer is compelled by the relevant customs authorities to make payment of the corresponding duty, Seller shall reimburse such duty to Buyer against supporting documents, but as soon as the relevant qualifying document is subsequently delivered to Buyer, Buyer shall exercise all reasonable efforts to have it accepted by the relevant customs authorities, whereupon Buyer shall promptly pay to Seller the amount previously paid by Seller in respect of the duty.

### 2 - MOVEMENTS BETWEEN EU MEMBER STATES

The following provisions apply where the Loading Terminal is located inside the EU (except where the Product has been declared under the External Community Transit Procedure (T1) or similar procedure in the EU member state where the Loading Terminal is located) and the Loading Information provides that the discharge port(s) are located inside the EU.

- A - Seller shall provide to Buyer the relevant original document (e.g. an INF3 or an AAD) showing that the Product is EU qualified and therefore in free circulation within the EU and import duty is therefore not payable with respect to such Product.
- B - Buyer shall be responsible for providing such original qualifying document to the relevant local customs authorities, at disport.
- C - If Seller is unable to provide the relevant original qualifying document and in consequence Buyer is compelled by the relevant customs authorities to make payment of the corresponding duty, Seller shall reimburse such duty to Buyer against supporting documents, but as soon as the relevant qualifying document is subsequently delivered to Buyer, Buyer shall exercise all reasonable efforts to have it accepted by the relevant customs authorities, whereupon Buyer shall promptly pay to Seller the amount previously paid by Seller in respect of the duty.

### 3 – PRODUCT IN TRANSIT UNDER THE EXTERNAL COMMUNITY TRANSIT PROCEDURE (T1)

The following provisions apply where the Loading Terminal is located in an EU member state where the Product has been declared under the External Community Transit Procedure (T1) or similar procedure and the Loading Information provides that the discharge port(s) are located inside the EU.

- A - Seller shall provide to Buyer an original copy of the transit declaration (T1).
- B - Buyer shall be responsible for providing such original declaration to the relevant local customs authorities, at disport.
- C - Buyer shall ensure that a copy of the transit declaration, receipt of which is officially acknowledged, is timely returned by the customs authorities in the member state where the discharge port is located to the customs authorities in the country of the Loading Terminal in a form acceptable to the latter, failing which Buyer shall indemnify Seller and hold Seller harmless from any and all liability in respect of any customs duty, excise duty, VAT or other tax or duty incurred by Seller, Seller's Supplier or the owner of the premises from which the Product is dispatched, including any interest, penalties or costs arising on such duties or taxes.

## APPENDIX 4 - Electronic Documentation

In the event that the parties agree in the Specific Terms for electronic documents to be used in the Agreement, the following shall apply.

1. Notwithstanding anything herein contained, any bill of lading, waybill, delivery order, certificate, receipt or other document issued pursuant to, or in connection with, the Agreement may be issued, stored and signed in electronic form and transmitted electronically using a secure system agreed by the parties (the "**eDoc System**") in accordance with the terms and conditions of the eDoc System as amended from time to time in accordance with its terms (the "**Terms of Use**") and the rights, obligations and interests contained in, represented by or evidenced by any such document (each, an "**eDoc**") may be transferred, novated or otherwise dealt with (or the transfer, novation or other dealings with them may be evidenced) electronically in accordance with the terms of the Terms of Use.
2. Any requirement of this Agreement for presentation of one or more originals or copies of a document is satisfied by the presentation of one eDoc.
3. Any applicable requirement of law, contract, custom or practice that any bill of lading, waybill, delivery order, certificate, receipt or other document or communication issued pursuant to, or in connection with, this Agreement (including any negotiation or endorsement thereof) shall be made or evidenced in writing, signed or sealed may be satisfied in electronic form, by an eDoc or by its electronic transfer as appropriate. The parties hereto agree not to contend in any dispute arising out of or in connection with the Agreement that any legal formality requiring any such bill of lading, waybill, delivery order, certificate, receipt or other document or communication issued pursuant to, or in connection with, the Agreement (including any negotiation or endorsement thereof) to be made or evidenced in writing, signed or sealed, has not been met by reason only that the same has been made or performed in electronic form by an eDoc.
4. The parties hereto agree that eDocs which are converted to paper in accordance with the terms and conditions of the Terms of Use ("**Converted eDocs**") and which are presented, issued or otherwise utilised pursuant to, or in connection with, this Agreement shall be given full force and effect according to their tenor and in accordance with the terms and conditions of the Terms of Use, and shall not be rejected on the grounds that they are electronic records which have been converted to paper originals, or that the documents have been produced in accordance with the Terms of Use.
5. Where under the Agreement or by virtue of the provisions of sub-section 42.12 the price is to be paid by means of an irrevocable documentary letter of credit, such documentary letter of credit shall, if so required by the Seller, be opened and confirmed (if applicable) with a bank which participates in the eDocs System and is bound by the Terms of Use. The documentary letter of credit shall include the following provisions in addition to the requirements set out in sub-section 42.14:
  - a. "This documentary credit is subject to The Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (the "**eUCP**") and is also subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision ICC Publication No. 600) to the extent applicable."
  - b. The following shall constitute electronic records (as defined by the eUCP) for the purposes of this documentary credit:
    - I. data created, generated, sent, communicated, received, stored or uploaded to the [insert name of eDocs System], signed electronically by the issuer and digitally signed by the [insert name of eDocs System] to authenticate the apparent identity of the sender, the apparent source of the data contained in it and that it has remained complete and unaltered; and
    - II. original paper documents which have been scanned and uploaded to the [insert name of eDocs System] and which have been certified by the party uploading them as a true copy of the original and digitally signed by the [insert name of eDocs System] for authentication purposes.

Any document which the beneficiary is required to present under this documentary credit may be presented either as a paper document or an electronic record.

Where any of the documents presented under this documentary credit is presented as an electronic record, in addition to the documents required to be presented by the beneficiary in accordance with the terms of this documentary credit, the beneficiary shall also provide a notice to the Bank to which presentation is made signifying when presentation is complete. Presentation is deemed not to have been made if the beneficiary's notice is not received.

Electronic records which are converted to paper in accordance with the provisions of the [insert name of Terms of Use of the eDocs System] and which are presented, issued or otherwise utilised pursuant to, or in connection with, this documentary credit shall be given full force and effect according to their tenor and in accordance with the said provisions, and shall not be rejected on the grounds that they are electronic records which have been converted to paper originals, or that the documents have been produced in accordance with the said provisions.