



**ABU DHABI NATIONAL OIL COMPANY (ADNOC)**

**GENERAL TERMS AND CONDITIONS**

**FOR THE SALE OF PETROLEUM PRODUCTS**

DECEMBER 2020

AGT EDITION

TABLE OF CONTENTS

Page

PART 1.....	4
1. DEFINITIONS AND INTERPRETATION.....	4
2. PURCHASE AND SALE.....	11
3. CARGO SCHEDULING.....	11
4. RISK AND PROPERTY.....	11
5. QUANTITY AND QUALITY.....	12
6. PRICES.....	13
7. INVOICE AND PAYMENT.....	13
8. DUTIES AND TAX.....	13
9. FAILURE TO TAKE DELIVERY.....	14
10. WARRANTIES.....	15
11. COMPLIANCE WITH LAWS.....	15
12. ANTI-BRIBERY AND CORRUPTION.....	17
13. FORCE MAJEURE.....	18
14. DEFAULT EVENTS.....	22
15. GOVERNING LAW.....	24
16. DISPUTE RESOLUTION.....	24
17. LIMITATION OF LIABILITIES.....	25
18. MISCELLANEOUS PROVISIONS.....	26
19. CONFIDENTIALITY.....	27
20. ASSIGNMENT OF CONTRACT.....	29
21. ENTIRE AGREEMENT, MODIFICATION AND WAIVER.....	29
22. NOTICES.....	29
23. TIME BAR.....	30

PART 2.....	31
OPERATIONAL PROVISIONS.....	31
24. VESSEL(S) AT THE LOADING PORT .....	31
25. SHIPPING TERMS.....	31
26. LAYDAYS .....	32
27. VESSEL NOMINATION REQUIREMENTS .....	33
28. SUBSTITUTION OF VESSEL .....	34
29. ETA .....	34
30. VESSEL COMPLIANCE AND APPROVAL .....	34
31. REJECTION OF NOMINATIONS AND VESSELS.....	35
32. CONSEQUENCES OF REJECTION .....	35
33. ARRIVAL OF VESSEL, BERTH AND LOADING ETC. ....	36
34. LAYTIME, DELAY AND DEMURRAGE .....	40
35. ALLOCATION OF COSTS .....	43
36. BUYER INDEMNITY .....	43
ANNEX A .....	45
VESSEL REQUIREMENTS.....	45
ANNEX B .....	49
SUPPLEMENT FOR ELECTRONIC DOCUMENTS .....	49
ANNEX C .....	51
PROVISIONS APPLICABLE TO THE SALE OF PARAFFINIC NAPHTHA.....	51
ANNEX D .....	53
AGT PAYMENT TERMS .....	53
ANNEX E.....	64
SELLER’S INDEMNITY FORMAT .....	64

## PART 1

The provisions of this Part 1 shall apply to Contracts for the sale of Product between Seller and Buyer.

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. Definitions

For all purposes of these GTCs, the following terms shall have the following meanings:

“**Abu Dhabi**” shall mean the Emirate of Abu Dhabi, United Arab Emirates.

“**ADNOC**” shall mean Abu Dhabi National Oil Company, a company existing under the laws of Abu Dhabi, UAE and whose principal postal address is P.O. Box 898, Abu Dhabi, UAE.

“**ADNOC Group**” means ADNOC and each Person directly or indirectly Controlled by ADNOC.

“**ADNOC Operating Company**” shall mean the Abu Dhabi Company for Onshore Petroleum Operations Ltd trading as ADNOC Onshore (“**ADNOC Onshore**”), or the Abu Dhabi Company for Offshore Petroleum Operations trading as ADNOC Offshore (“**ADNOC Offshore**”), or Abu Dhabi Oil Refining Company (Takreer) trading as ADNOC Refining (“**ADNOC Refining**”) or Abu Dhabi National Oil Gas Industries Limited trading as ADNOC Gas Processing (“**ADNOC Gas Processing**”) or whichever company performs and/or regulates the operations and procedures for the shipment and export of the particular Product that is to be shipped and delivered under this Contract.

“**ADNOC Ship Vetting**” shall mean the approval process undertaken for or on behalf of the relevant ADNOC Operating Company for (i) the vetting of vessels used for the carriage of Product; or (ii) any floating storage facility, other vessel or lighter if the Product is to be loaded from or discharged to a floating storage facility, another vessel via a STS operation or lightering.

“**Affiliate**” means:

- (a) in relation to Seller or a member of the ADNOC Group, each other member of the ADNOC Group; and
- (b) in relation to Buyer, any other Person that, now or hereafter, directly or indirectly, Controls, is Controlled by, or is under common Control with, Buyer.

“**Applicable Law(s)**” shall mean all applicable national and international laws, including governmental, local, port authority or terminal operator laws and regulations and any other laws and regulations or requirements in force of whatever nature and howsoever communicated.

“**Authorised Recipients**” has the meaning given to it in Article 19.4.

“**Barrel**” means forty-two (42) United States standard gallons each of two hundred thirty-one (231) cubic inches at sixty degrees (60°) Fahrenheit;

“**Business Day**” means any day other than a Friday, Saturday or public holiday in the UAE.

“**Buyer**” shall mean the party defined in the Sales Confirmation as the “**Buyer**”.

“**Certificates of Quantity and Quality**” shall mean the certificates of quantity and quality that document the quantity and quality of each Shipment of Product as determined by the processes set forth in this Contract.

“**Commercially Reasonable Endeavours**” shall mean the efforts that a prudent Person would use in similar circumstances to ensure that its obligations are fulfilled expeditiously without incurring additional costs beyond what it would have had to incur in the usual circumstances.

“**Confidential Information**” shall mean:

- (a) the existence and content of this Contract and any other documents relating to the sale and purchase of Product, including drafts of such documents, and the existence and contents of any negotiations prior to their execution;
- (b) all commercial, fiscal, financial, technical, operational or other information relating to the sale and purchase of Product, the Parties or their respective Affiliates and their respective business affairs (including information on assets, records, data, samples, business plans, production forecasts, actual production, budgets, financial statements, customers, clients, suppliers, plans, intentions and opportunities) which is obtained, whether before, on or after the date of this Contract, by a Party or any of its Authorised Recipients from the other Party, any of the other Party’s Affiliates or any of their respective Personnel, professional advisers (including financial advisers, legal counsel, auditors and accountants) or Contractors, in any form (including orally, in writing, in electronic form or otherwise) and for whatever purpose (including for the purposes of the performance of this Contract or in connection with the negotiation of this Contract); and
- (c) any report, analysis, compilation, study or other document prepared by, on behalf of or for any Party or its Affiliates which contains, derives from or otherwise reflects any information described in sub-paragraphs (a) and (b) above, whether provided or obtained before, on or after the date of this Contract,

but excludes any information which:

- (i) at the time of its supply by (or on behalf of) a Party, is in, or subsequently comes into, the public domain, except by the breach of any of the undertakings set out in this Contract;

- (ii) subsequently comes lawfully into the possession of either Party or any of its Authorised Recipients from a Third Party who does not owe the Party to which the Confidential Information relates an obligation of confidence in relation to such Confidential Information;
- (iii) was independently developed by a Party or any of its Authorised Recipients without any reliance on any part of the Confidential Information; or
- (iv) the Parties agree in writing is not confidential.

“**Contract**” and references herein to this “**Contract**” shall mean these General Terms and Conditions together with the Sales Confirmation.

“**Contractors**” means contractors, agents and representatives.

“**Control**” means, in relation to a Person:

- (a) having, directly or indirectly, the power to vote fifty percent (50%) or more of the voting stock (other than directors’ qualifying shares or other *de minimis* holdings required by Applicable Law to be held by other Person(s)) of such Person;
- (b) ownership, directly or indirectly, of fifty percent (50%) or more of the equity interests (other than directors’ qualifying shares or other *de minimis* holdings required by Applicable Law to be held by other Person(s)) in such Person; or
- (c) having, directly or indirectly, the ability to direct or procure the direction of the management and policies of such Person, whether through the ownership of shares, by contract or otherwise,

and the terms “**Controlling**”, “**Controlled by**” and “**common Control with**” shall be construed accordingly.

“**Day**” shall mean a calendar day in Abu Dhabi, unless otherwise stated in the Contract.

“**Delivery Period**” shall mean the period or each of the periods of time during which Product is to be delivered pursuant to this Contract and listed against the heading “Delivery Period(s) and Quantity” in the Sales Confirmation.

“**Delivery Point**” shall mean in respect of a Shipment, the junction point of the connecting flange connecting the delivery hose of the loading installation or Vessel with the receiving manifold of the Vessel at the Loading Port.

“**Destination Port**” shall mean the port, terminal or refining system at which the Product to be delivered hereunder is to be discharged, consistent with that listed against the “Destination Port(s) / Terminal(s)” heading in the Sales Confirmation.

“**Destination Port Limits**” shall mean the port limits (as prescribed by the Port Authority) at the Destination Port.

“**Dispute**” shall have the meaning ascribed thereto in Article 16.1.

“**DoS**” shall have the meaning ascribed thereto in Annex A of this Contract.

“**ETA**” shall mean the expected date and time of arrival (in local time) of the Vessel at the Loading Port.

“**Fax**” shall mean an electronic facsimile transmission, including “**E-Fax**”.

“**FOB**” or “**Free on Board**” shall have the meaning ascribed thereto in the Incoterms, except as modified by this Contract.

“**Force Majeure Event**” shall have the meaning ascribed thereto in Article 13.

“**Free Berth Basis**” means on the basis that Laytime shall commence upon the Vessel commencing loading.

“**Full Cargo**” means a quantity of Product under the Contract which is loaded and transported on a Vessel without other cargo.

“**Gas Oil Components**” are a Product and means Gas Oil Components, produced at the Plant.

“**Gasoline**” is a Product and means Gasoline, produced at the Plant.

“**Governmental Authority**” means any governmental authority of Abu Dhabi, the UAE or any jurisdiction in which Seller or Buyer operates or conducts business (including the SPC), and any political subdivision, agency, department, commission, board, bureau, court or other authority, or any quasi-governmental or private body exercising, or purporting to exercise, any executive, legislative, judicial, administrative, police, regulatory or taxing authority or power of any nature, or any company (other than a member of the ADNOC Group) or instrumentality owned or controlled by any governmental authority, in each case of one of the foregoing.

“**General Terms and Conditions**” and “**GTCs**” shall mean these general terms and conditions for the sale of Product, together with all Annexes thereto.

“**Incoterms**” shall mean the international commercial terms for the sale of goods promulgated by the International Chamber of Commerce entitled Incoterms® 2020.

“**ISGOTT**” shall mean the International Safety Guide for Oil Tankers and Terminals (5th edition), as amended or supplemented from time to time.

“**ISPS**” shall mean the International Ship and Port Facility Security Code and the relevant amendments to Chapter XI of SOLAS (2003 edition), as amended or supplemented from time to time.

“**Laytime**” shall mean the time allowed to the Seller for loading pursuant to Article 34.1.

“**Lifting Month**” shall mean, in respect of a particular delivery of Product, the Month in which the first Day of the Laydays occurs.

“**Loading Port**” shall mean the port to which Product shall be delivered by Seller.

“**Loading Port Limits**” shall mean (a) Gasha Pilot Station, if the Loading Port is Jebel Dhanna; or (b) the Pilot Boarding Station at the Port of Fujairah, if the Loading Port is Fujairah loading terminal; (c) Gasha Tower Beacon, if the Loading Port is Ruwais; or the port limits, as prescribed by the Port Authority for any other Loading Port.

“**Loading Terminal**” means the Loading Port and the delivery facilities at which the Product is to be loaded.

“**LR1 Vessel**” means a Long Range oil tanker of up to 85,000 cbm.

“**LR2 Vessel**” means a Long Range oil tanker of up to 125,000 cbm.

“**Master**” shall mean the master, captain or commander of a Vessel.

“**Month**” shall mean a period of time beginning on the first Day of a calendar month (Gregorian calendar) and ending on the last Day of such calendar month and “**Monthly**” shall be construed accordingly.

“**MR Vessel**” means a Medium Range oil tanker of up to 55,000 cbm.

“**MT**” shall mean a metric tonne, being equal to 1,000 kilograms or 2,204.62 pounds.

“**NOR**” shall mean the valid notice of readiness to load (such validity including the Vessel being in all respect ready to load), as given by the Master of the Vessel (or his/her representative) to the Seller (or its representative) at the Loading Port.

“**Part Cargo**” means a quantity of Product under the Contract which is loaded and transported on a Vessel together with other cargo which is bought or sold by Third Parties.

“**Party**” shall mean either Seller or Buyer, and together the “**Parties**”.

“**Person**” means an individual, partnership, corporation (including a business trust), company, trust, unincorporated association, joint venture or other entity, whether a body corporate or an unincorporated association of persons, or a government or any political subdivision or agency or instrumentality thereof and “**Persons**” shall be construed accordingly.

“**Personnel**” shall mean, in relation to a Person, the senior executives, directors, officers, employees or secondees of such Person.

“**Plant**” shall mean the ADNOC Operating Company’s fractionation plant at Ruwais, Abu Dhabi.

“**Port Authority**” shall mean, with respect to Das Island, Jebel Dhanna, Ruwais and Zirku Island, the Petroleum Ports Authority, and, with respect to Fujairah loading terminal, the Port of Fujairah, or such other group or organization which at any time assumes the responsibilities of the Petroleum Ports Authority or the Port of Fujairah, respectively, with respect to the regulation of the Loading Port; and with respect to the Destination Port, such group or organization which at any time has or assumes the responsibilities with respect to the regulation of the Destination Port (as applicable).

“**Price**” shall mean the price agreed between the Parties in the Sales Confirmation.

“**Product**” shall mean any petroleum product (excluding LPG) of the grade specified in the Sales Confirmation.

“**Quantity**” shall mean the quantity, in Barrels or MTs (as applicable), of Product to be purchased for each Delivery Period, as set out against the heading “Delivery Period(s) and Quantity” in the Sales Confirmation.

“**Safely Afloat**” means that the Vessel shall at all times be water-borne in compliance with the Loading Port clearance requirements (including underkeel clearance) and shall be able to remain at the Berth without risk of loss or damage from wind, weather or other craft which are being properly navigated.

“**Sales Confirmation**” shall mean the sales confirmation entered into between Seller and Buyer with respect to the sale of Product which forms a part of this Contract.

“**Seller**” shall mean the member of the ADNOC Group defined in the Sales Confirmation as the “Seller”.

“**Seller Schedule**” shall have the meaning ascribed thereto in Article 3.1 of these GTCs.

“**Shipment**” shall mean a quantity of Product in Full Cargo or Part Cargo to be delivered under this Contract.

“**SOLAS**” shall mean the International Convention for the Safety of Life at Sea of 1974 and the related Protocol of 1978, both as amended or supplemented from time to time.

“**SPC**” means the Supreme Petroleum Council established pursuant to Law No. 1 of 1988 of Abu Dhabi.

“**Third Party**” shall mean any Person other than Seller and Buyer.

“**US Dollars**” or “**US\$**” shall mean the lawful currency of the United States of America.

“**VAT Law**” shall mean all applicable laws relevant to the imposition of taxes on the supply or deemed supply of goods and services at each stage of the production and distribution, as may be applicable under the Contract, including but not limited to the Federal Decree-Law No (8) of 2017 on Value Added Tax in the United Arab Emirates.

“**Vessel**” shall mean any ship or vessel designed, constructed, equipped and maintained to safely load and carry Product.

“**Working Day**” shall mean any Day of the Year other than a Friday, Saturday or a public holiday in Abu Dhabi, United Arab Emirates.

“**Year**” shall mean a period of time beginning on the first Day of a calendar year (Gregorian calendar) and ending on the last Day of such calendar year and “**Yearly**” shall be construed accordingly.

## 1.2. Interpretation

- (a) The Annexes attached are incorporated herein by reference and form a part of this Contract.
- (b) The headings in this Contract are for convenience only and shall not be interpreted in any way to limit or change the subject matter of this Contract.
- (c) As used in this Contract, the words “**include**” and “**including**” shall be read respectively as “include, without limitation” and “including, without limitation”, unless expressly provided otherwise.
- (d) Unless otherwise expressly stated in this Contract, all references in this Contract to Articles, Schedules and Annexes shall be to the Articles, Schedules and Annexes of this Contract.
- (e) As used in this Contract, except where the context otherwise requires, the singular includes the plural and vice-versa.
- (f) As used in this Contract, references to this Contract or any other contract or document shall be construed as a reference to such agreement, contract or document as amended, novated, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, novates, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms.
- (g) As used in this Contract, references to any statute, law or statutory instrument shall be construed as a reference to such statute, law or statutory instrument as the same may have been, or may from time to time be, amended or re-enacted and all instruments, orders, plans, regulations, by-laws, permissions and directions at any

time made thereunder.

- (h) As used in this Contract, a reference to a Party or to a Person includes a reference to its successors, permitted transferees and assigns.
- (i) References to any legal term used in this Contract for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any other legal concept or thing shall, in respect of any jurisdiction, be deemed to include what most nearly approximates such legal term in that jurisdiction.
- (j) Unless where otherwise stated, in the event of a conflict or inconsistency between the body of these GTCs and any of its Annexes, the body of these GTCs shall prevail, and in the event of a conflict or inconsistency between these GTCs and the Sales Confirmation, the Sales Confirmation shall prevail.

## **2. PURCHASE AND SALE**

- 2.1. Subject to all of the terms and conditions of this Contract, Buyer shall purchase FOB from Seller, take delivery of, and pay for, and Seller shall sell and deliver FOB to Buyer Product of the types, in the quantities, and at the Price(s) set forth in the Contract.

## **3. CARGO SCHEDULING**

- 3.1. Subject to the provisions of Article 3.2, not later than the twenty-fifth (25<sup>th</sup>) Day of the second Month preceding each Month of each Delivery Period, Seller shall provide written notice to Buyer of the following (“**Seller Schedule**”):
  - (a) the required Lifting Month (M);
  - (b) the type(s) of Product to be lifted; and
  - (c) the Quantity of each type of Product to be lifted in the Lifting Month (including notice of the exercise of any option granted to Seller herein or in the Sales Confirmation in respect of the Quantity).
- 3.2. Where Seller has pursuant to the terms of the Sales Confirmation the option to deliver different specifications in respect of a Product, the Seller shall, not later than the last Business Day of the second Month preceding each Month of each Delivery Period, provide written confirmation to Buyer of the specifications of such Product to be lifted in the Lifting Month.

## **4. RISK AND PROPERTY**

- 4.1 The property in the Product delivered under this Contract shall pass from Seller to Buyer as the Product passes the Vessel's permanent hose connection at the Delivery Point. The Buyer

assumes all risk of, and full responsibility for, any loss, deterioration, evaporation and damage of whatsoever nature to or in respect of the Product howsoever caused arising after the Product passes the Vessel's permanent hose connection at the Delivery Point.

## **5. QUANTITY AND QUALITY**

### **5.1. Measurement and Sampling**

- (a) Measurement of the quantities and the taking of samples and analysis thereof for the purposes of determining the compliance of the Product with the quality and quantity provisions of the specifications set out in the Sales Confirmation shall be carried out by the Loading Terminal's own qualified inspector(s) in accordance with the good standard practice at the Loading Terminal at the time of shipment, except where the Buyer and Seller jointly agree to an independent Third Party inspector in which case, by the independent Third Party inspector in accordance with good standard practice at the Loading Terminal.

### **5.2. Certificates of Quantity and Quality**

- (a) Provided always the Certificates of Quantity and Quality (or such other equivalent documents as may be issued at the Loading Port) of the Product comprising the Shipment are issued in accordance with Article 5.1 of this Contract then they shall, except in cases of manifest error or fraud, be final and binding on the Seller and Buyer.
- (b) Any certificate of quantity and quality issued by an independent Third Party inspector pursuant to Article 5.1 of this Contract shall record that the independent Third Party inspector did witness, or himself undertook, the taking of samples, the analysis of such samples and the measurement of quantity. For the avoidance of doubt, the Parties agree that a certificate of quantity and quality countersigned by an independent Third Party inspector confirming these matters shall be a certificate of quantity and quality for the purposes of Article 5.2(a).

### **Quality and claims in respect of quality and quantity**

- 5.3. Without prejudice to Article 5.2 above, any claim as to the deficiency of quantity or of quality of the Product shall be admissible upon condition only if it is notified in writing to Seller within thirty (30) Days of the completion of discharge and if such a claim is accompanied by evidence fully supporting the complaint.
- 5.4. In the event that the Certificate of Quality shows that the Product does not conform to its specification as provided in the Sales Confirmation, Buyer shall not be entitled to reject the Product and the parties shall negotiate an adjustment amount, and in the event that the parties fail to agree such amount within ten (10) Days of Seller's receipt of Buyer's claim for an

adjustment, either party shall refer the determination of such amount to an independent expert. The expert shall be appointed by the ICC International Centre for ADR as soon as reasonably practicable following receipt of a written request to do so. The expert shall act as an expert and not as an arbitrator. The cost of the expert's determination shall be shared equally and the expert's determination shall be final and binding on the parties. Buyer's rights under this Article 5.55.4 shall be its sole and exclusive remedy in the event that the Product does not conform to its specification as provided in the Sales Confirmation.

## **6. PRICES**

The Price(s) of the Product shall be as set out in the Sales Confirmation.

## **7. INVOICE AND PAYMENT**

Unless otherwise provided in the Sales Confirmation, the Invoicing and Payment terms shall be as set out in Annex D.

## **8. DUTIES AND TAX**

### **Buyer's Responsibilities**

- 8.1. Buyer shall be liable for all duties, taxes, imposts, levies, wharfage, landing fees and other port and marine service charges imposts, fees, and dues of every description imposed or levied by any Governmental Authority or port authority in relation to the Product delivered, its export including the delivery, transportation, ownership, sale or use after the Delivery Point.

### **Seller's Responsibilities**

- 8.2. Seller shall be liable for all duties, taxes, imposts, levies, wharfage, landing fees and other port and marine service charges imposts, fees, and dues of every description imposed or levied by any Government Authority or port authority in relation to the Product at any stage before the Delivery Point.

### **Value Added Tax**

- 8.3. The consideration payable in respect of any supplies made under this Contract (the "**Consideration**") is exclusive of value added tax ("**VAT**").

- 8.4. Where VAT is or becomes applicable to any supplies made or provided by Seller under this Contract, Seller shall be entitled to charge VAT in addition to the Consideration. The VAT for such supply will be calculated as follows:

$$A \times R$$

Where:

*A* is the Consideration payable for the supply; and  
*R* is the applicable rate of VAT under the VAT Law

- 8.5. If Seller charges VAT pursuant to Article 9.4 above, Seller shall:
- (a) include the VAT amount as an additional line item in the applicable invoice for the payment of the supply (or, if such invoice was issued without VAT, in a separate tax invoice in accordance with the VAT Law);
  - (b) provide to Buyer information that may be reasonably required to establish Seller's liability for VAT under the relevant VAT Law; and
  - (c) do such things and provide such information and documents as may reasonably be required by Buyer to enable Buyer to claim an input tax credit under the VAT Law.

## 9. FAILURE TO TAKE DELIVERY

- 9.1. If for any reason other than the fault of Seller or Force Majeure affecting Buyer, Buyer is unable to or fails to accept or to take delivery of all or any part of the Product to be delivered to Buyer under this Contract (the "**Undelivered Quantity**"), Seller shall, at its sole discretion have the right, after serving notice on Buyer, to sell, at such time(s) and in such amount(s) as Seller deems commercially reasonable, the Undelivered Quantity to a Third Party and the price(s) thereof shall be deemed conclusively to be the best price(s) which Seller could obtain.
- 9.2. In the event of an Undelivered Quantity, Buyer shall pay compensation to Seller in an amount equal to, where such amount is greater than zero:

$$(CP * Undelivered Quantity) - (RP * Undelivered Quantity) + C$$

where:

"CP" = the Contract Price for the Undelivered Quantity;

"RP" = either (i) the realised price in US\$ actually obtained by Seller for the re-sale of the Undelivered Quantity in accordance with Article 9.1; or, in the absence of such a re-sale, (ii) the estimated value of the Undelivered Quantity at the time of Buyer's default; and

“C” = the sum of (i) the reasonable costs and expenses actually incurred by Seller as a result of Buyer’s failure to take delivery of the Undelivered Quantity, including any storage fees, deviation costs and demurrage payable by Seller and/or Seller's supplier in respect of a Vessel or other vessels waiting at the Loading Port and (ii) an amount equal to five percent (5%) of the total Price which would have been paid by Buyer for such Undelivered Quantity.

9.3. Buyer shall settle any amount payable under Article 9.2 within ten (10) Days of Seller’s invoice and in accordance with the payment terms set forth in the Sales Confirmation.

9.4. The remedies set out in this Article 9 shall be Seller’s sole and exclusive remedy for Buyer’s failure to take the Undelivered Quantity, without prejudice however to Seller’s rights under Article 14.

## **10. WARRANTIES**

10.1. Whether set out in these General Terms and Conditions or in the Sales Confirmation neither typicals nor any stipulation as to time of delivery shall form part of the Product's description, quality or fitness for purpose. This Section constitutes the whole of the Seller's obligations with respect to the description, quality and fitness for purpose of the Product and (save to the extent that exclusion of such obligations is not permitted or is ineffective by operation of law) all statutory or other conditions or warranties, express or implied, with respect to the description or satisfactory quality of the Product or its fitness for any particular purpose or otherwise are hereby excluded.

## **11. COMPLIANCE WITH LAWS**

11.1. The laws, rules and regulations issued and revised from time to time by the Government of the United Arab Emirates and Abu Dhabi shall apply to the Shipment of the Product from the United Arab Emirates under this Contract.

### **Destination**

11.2. It is a condition of the Contract that the Product purchased and delivered under this Contract shall not be (or not be permitted to be) discharged or imported (whether by Buyer or others) directly or indirectly and irrespective of the means of carriage, into any destination or to be delivered to any Person or entity which is at the time of such import prohibited under the Applicable Law or is at the time of such import targeted by applicable economic or financial sanctions administered by any relevant sanctions authority (“**Sanctions**”). Buyer shall keep itself informed as to such Applicable Law and Sanctions and acknowledges that, at the time of entering into this Contract and during the Delivery Period, it is informed of all such Applicable Laws and Sanctions.

- 11.3. Buyer undertakes that the Product deliverable hereunder shall not:
- (a) be exported or resold to any Sanctioned Territory;
  - (b) be sold or resold or supplied to any Person or loaded on board a Vessel (i) organized under the laws of, resident in or operating from any Sanctioned Territory; or (ii) otherwise targeted by Sanctions;
  - (c) be sold or resold or supplied to any Person or loaded on board a Vessel for the purposes of any commercial activity carried out in or from any such Sanctioned Territory.
- 11.4. For the purposes of this Article, “**Sanctioned Territory**” shall mean any country, state, territory or region against which there are Sanctions that target, prohibit, restrict, penalize, or condition the Shipment through or thereto of the Product.
- 11.5. Where requested by Seller, Buyer shall provide Seller with all appropriate documentation verifying the final destination of the Product purchased and delivered under this Contract within thirty (30) Days of the request or within such lesser period as will enable Seller to comply with any requirement or request of any government or authority and shall identify the port(s) of discharge, the date(s) of discharge, and the grade and quantity discharged and whether or not the product delivered has been otherwise sold or disposed of. The obligations of Buyer to comply with the requirements of this Article shall not be affected by any sale or disposal of the Product in question by Buyer.
- 11.6. Within ninety (90) Days of the bill of lading date of each Shipment under this Contract, Buyer shall deliver to Seller, a duly certified copy of the official discharge certificate for such cargo in the form required by and acceptable to the Government of the United Arab Emirates and Abu Dhabi.
- 11.7. Where Seller has reasonable grounds to believe that Buyer has not complied with these undertakings, Seller may at its sole discretion, by written notice to Buyer or orally (with written confirmation to follow):
- (a) terminate the Contract immediately or suspend any further delivery of the Product under the Contract until further notice; or
  - (b) decline to commence or complete loading of any Shipment of the Product.
- 11.8. The rights provided to Seller under this Article shall be without prejudice to Seller's common law rights and other rights under this Contract.

## **Trade controls and boycotts**

- 11.9. Buyer agrees to comply with all relevant trade controls, export and re-export controls, embargoes, and Sanctions in a manner in which there is no breach of the aforementioned undertakings of this Article. Notwithstanding anything to the contrary in the Contract, nothing in the Contract is intended, and nothing herein should be interpreted or construed, to induce or otherwise require either Party hereto to act or refrain from acting (or agreeing to act or refrain from acting) in any manner which is penalised, or prohibited under any laws, regulations, decisions, decrees, ordinance, order, demand, request or rules or requirements relating to foreign trade controls, export controls, embargoes, international boycotts or sanctions of any type as applicable to such Party.
- 11.10. Nothing in this Article 11 shall be taken to limit or prevent the operation of the English common law doctrine of frustration (including frustration of the adventure or purpose of the Contract).

## **12. ANTI-BRIBERY AND CORRUPTION**

- 12.1. Buyer and Seller agree and undertake to each other that in connection with this Contract, they will each respectively comply with all Applicable Law(s) relating to anti-bribery and anti-money laundering and that they shall each respectively take no action which would subject the other to fines, or penalties under such laws, regulations, rules or requirements.
- 12.2. Buyer and Seller each represent, warrant and undertake to the other that they shall not, directly or indirectly:
- (a) pay, offer, give or promise to pay or authorise the payment of any monies or the transfer of any financial or other advantage or other things of value to:
    - (i) a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
    - (ii) an officer or employee of a public international organisation;
    - (iii) any 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 organisation;
    - (iv) any political party or official thereof, or any candidate for political office;
    - (v) any director, officer, employee or agent/representative of an actual or prospective counter-party, supplier or customer of Buyer or Seller;
    - (vi) any other person, individual or entity at the suggestion, request or direction of or for the benefit of any of the above-described persons and entities; or

- (b) engage in other acts or transactions;

in each case if this is in violation of or inconsistent with the anti-bribery or anti-money laundering law, rule or regulation of any government including without limitation the US Foreign Corrupt Practices Act, the UK Bribery Act 2010, the UK Anti-Terrorism, Crime and Security Act 2001, the Money Laundering Regulation 2007 and the Proceeds of Crime Act 2002 and the applicable country legislation implementing the Organisation for Economic Cooperation and Development (“**OECD**”) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

- 12.3. In particular, each Party represents and warrants to the other that it has not made any payments or given anything of value to officials, officers or employees of the Government of the United Arab Emirates or any agency, department or instrumentality of such government in connection with the Product which is the subject of the Contract which would be inconsistent with or contravene any of the above-referenced legislation.
- 12.4. Buyer warrants that it has not made or given, and shall not make or give, directly or indirectly, any payment or anything of significant value to any representative of Seller or any other person or entity, to secure or influence the award of the Contract or its terms, performance, administration, extension or termination.
- 12.5. Buyer or Seller may terminate the Contract forthwith upon written notice to the other at any time, if in its reasonable judgment (supported by credible evidence) the other is in breach of any of the above representations, warranties or undertakings in this Article 12.

### **13. FORCE MAJEURE**

#### **General**

- 13.1. Neither Party shall be considered in default of the performance of its obligations under this Contract to the extent that such performance is prevented, hindered or delayed as a direct result of any event or combination of events which is beyond the reasonable control of such Party (such event being a “**Force Majeure Event**”), provided that the Party claiming relief from its obligations under this Contract as a result of a Force Majeure Event (“**Affected Party**”) may only be so relieved if the Affected Party:
  - (a) notifies the non-Affected Party of the Force Majeure Event in accordance with Articles 13.4 and 13.7; and
  - (b) mitigates the effects of the Force Majeure Event in accordance with Article 13.8,and such relief may only be to the extent permitted under Article 13.9.

## **Inclusions**

13.2. A Force Majeure Event shall include, subject to and without limiting the generality of Article 13.1:

- (a) natural disasters such as floods, lightning, storms, typhoons, tornados, earthquakes, tidal waves, landslides, soil erosion, subsidence, washouts, radioactive contamination or epidemics;
- (b) war (whether declared or undeclared), blockade, acts of piracy, terrorist acts, seizure or act of sabotage, imposition of sanctions, embargo or breaking off of diplomatic relations;
- (c) revolution, rebellion, civil war, riot, civil disturbance, civil commotion, insurrection or military uprising;
- (d) trade or labour disputes, boycotts, strikes, lockouts, industrial disturbances, go-slows or occupation of premises;
- (e) failures, explosions, breakages, fires or destruction of tankage, pipelines, refineries, terminals or any kind of installation and, where Seller is the Affected Party, tankers, vessels or any other similar means of transportation of the Product;
- (f) any accidents at, closing of, or any sudden and unforeseeable capacity restrictions (outside of the ordinary course of business) of, mooring facilities, docks, ports, harbours or other similar navigational facilities and, where Seller is the Affected Party, navigational accidents or maritime peril;
- (g) any compliance with Applicable Law; and
- (h) in case of Seller only, any curtailment, reduction in, interference with, failure or cessation of supplies of Product from any of Seller's or Seller's suppliers' sources of supply or by any refusal to supply, whether lawful or otherwise by Seller's suppliers (provided in fact the sources of supply are for the purposes of this Contract), including:
  - (i) a change in the production policies or sales policies of the Emirate of Abu Dhabi; and
  - (ii) any declared force majeure event affecting any of Seller's suppliers under any applicable supply arrangements between Seller and such suppliers.

## **Exclusions**

- 13.3. Notwithstanding anything to the contrary in Article 13.1, a Force Majeure Event shall not include or excuse:
- (a) failure to make any payment of monies due and payable in accordance with this Contract (other than as to any specified means, currency or place of payment);
  - (b) changes in market conditions, including changes that directly or indirectly affect the demand for or price of Product or other commodity produced from refined hydrocarbon products (such as loss of customers or loss of market share), changes to market prices or currency devaluation;
  - (c) financial hardship or the inability of the Affected Party to make a profit or achieve a satisfactory rate of return in relation to or in connection with any activities undertaken pursuant to this Contract; or
  - (d) the ability of either Party to obtain better economic terms from a Third Party.

## **Notification of a Force Majeure Event**

- 13.4. As soon as reasonably practicable after the occurrence of the Force Majeure Event becomes known to it, the Affected Party shall notify the other Party in writing of the date on which the Force Majeure Event started, the effects of the Force Majeure Event on its ability to perform its obligations and the likely duration of its delayed performance or non-performance as a result of the Force Majeure Event.
- 13.5. The Affected Party shall bear the burden of proving that a Force Majeure Event has occurred that has so affected it.
- 13.6. If an Affected Party fails to notify the other Party as soon as reasonably practicable in accordance with Article 13.4, such Affected Party may only be relieved from the date of such notification.
- 13.7. The Affected Party shall provide to the non-Affected Party:
- (a) updates on any material developments with respect to any Force Majeure Event, from time to time; and
  - (b) promptly after the end of the Force Majeure Event, written notice that the Force Majeure Event has ended, in which case, the Affected Party shall resume performance of its obligations as soon as reasonably practicable.

### **Mitigation of the Effect of a Force Majeure Event**

13.8. The Affected Party shall use all Commercially Reasonable Endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations (including co-operating with the non-Affected Party to develop and implement a plan of remedial action and reasonable alternative measures to remedy the effects of the Force Majeure Event).

### **Force Majeure Relief**

13.9. Subject to the requirements for relief set out in Article 13.1, if a Force Majeure Event occurs in respect of a Shipment of Product:

- (a) if Seller is the non-Affected Party, Seller may immediately terminate the affected Shipment(s) without liability for damages and other contractual remedies and shall be entitled to dispose of, in its sole discretion, such undelivered Shipment(s); and
- (b) in all other circumstances, the Affected Party may only be relieved from its obligations under this Contract until the earlier of:
  - (i) the end of the Force Majeure Event; or
  - (ii) the expiry of the Laydays,

and, if the Force Majeure Event continues beyond the Laydays, the affected Shipment(s) shall be deemed terminated without liability for damages and other contractual remedies.

### **Obligation of the Non-Affected Party to Co-operate**

13.10. If Buyer is the non-Affected Party it shall use all Commercially Reasonable Endeavours to co-operate with the Seller as the Affected Party in mitigating the effects of any Force Majeure Event (including co-operating to develop and implement a plan of remedial action and reasonable alternative measures to remedy the effects of such Force Majeure Event).

### **No Extension of Time**

13.11. Nothing in this Article 13 shall operate to extend the term of this Contract.

13.12. Nothing in this Article 13 shall be taken to limit or prevent the operation of the English common law doctrine of frustration (including frustration of the adventure, of purpose or of this Contract).

## 14. DEFAULT EVENTS

14.1. The events and circumstances set out below with respect to a Party (the “**Defaulting Party**”) shall constitute “**Default Events**”:

- (a) the Defaulting Party or its immediate or ultimate parent or the party which has issued any credit support (including a letter of credit, performance guarantee or other financial instrument) pursuant to the terms of this Contract in favour of the Defaulting Party:
  - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
  - (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
  - (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
  - (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and is not withdrawn, dismissed, discharged, stayed or restrained within fifteen (15) Days of the institution or presentation thereof;
  - (v) has a resolution passed for its winding up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
  - (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
  - (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) Days thereafter;
  - (viii) causes or is subject to any event which, under the Applicable Law(s) of any jurisdiction, has an analogous effect to any of the events specified in sub-Articles (i) to (vii) above; or

- (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;
- (b) the Defaulting Party commits a repudiatory or renunciatory breach of this Contract;
- (c) Buyer, as the Defaulting Party, fails to deliver to Seller, as the Non-Defaulting Party, any credit support complying with Article 7 of this Contract within the time set out in this Contract;
- (d) without prejudice to the Non-Defaulting Party's rights under Article 14.1(c) above, the Defaulting Party fails to make a payment in full and by the due date of any amount due to the Non-Defaulting Party under this Contract and does not correct such failure within fourteen (14) Days' notice being given by the other Party of such breach; or
- (e) a change of Control of the Defaulting Party occurs.

14.2. In the event of a Default Event, the Party not subject to the Default Event (the “**Non-Defaulting Party**”) may at its absolute discretion, without prejudice to its other statutory or common law rights, by and upon notifying the Defaulting Party by notice in writing:

- (a) identifying the Default Event and requiring that the Default Event be cured to the Non-Default Party's satisfaction within seven (7) Days failing which the Non-Defaulting Party may terminate this Contract by notice under Article 14.2(b); and/or
- (b) terminate this Contract with immediate effect; and/or
- (c) in the case of the Non-Defaulting Party being Seller, suspend delivery of the Product under this Contract until the Default Event has been remedied in full; and/or
- (d) in the case of the delivery of multiple cargoes, terminate an individual cargo; and/or
- (e) set-off monies payable by the Non-Defaulting Party against the liabilities of the Defaulting Party pursuant to this Contract or any other contract between the Non-Defaulting and Defaulting Party.

Provided that where remedies under Articles 14.2(c)-(e) are exercised, should the Default Event continue for at least seven (7) Days, the Non-Defaulting Party may at any time terminate this Contract under Article 14.2(b).

14.3. So long as Buyer is in default of any of its obligations under this Contract (including any default for which a sum of money is payable by Buyer under this Contract), Seller, without relieving Buyer of any of its obligations, shall be fully relieved of any obligation to sell or deliver Product to Buyer under this Contract or under any other contract between the Parties.

14.4. Enforcement of any provisions of this Contract shall not be affected by any previous waiver or course of dealing, and election of any particular remedy shall not be exclusive of any other. The remedies provided in this Contract are in addition to and not by way of limitation upon any other rights and remedies Buyer or Seller has. All rights and remedies are cumulative.

## 15. GOVERNING LAW

15.1. The construction, validity and performance of the Contract and any Dispute in relation thereto shall be governed by and construed in accordance with English law.

## 16. DISPUTE RESOLUTION

16.1. The Parties shall attempt in good faith to amicably settle any dispute, controversy or claim arising out of or in connection with the conclusion, validity, effect, interpretation, performance, termination or dissolution of this Contract and/or any non-contractual obligations arising out of or in connection with this Contract (“**Dispute**”).

16.2. If the Dispute is not settled amicably within sixty (60) Days from the date the Dispute is first notified in writing to the other Party or Parties, such Dispute shall be referred by any Party and finally resolved by arbitration in accordance with the rules of arbitration of the International Chamber of Commerce applicable at the time of conclusion of this Contract (the “**ICC Rules**”) by three (3) arbitrators. Each Party shall nominate an arbitrator for confirmation by the International Court of Arbitration (the “**Court**”) under the ICC Rules. The two arbitrators nominated by the Parties shall nominate the third arbitrator who will act as president of the arbitral tribunal (the “**President**”) within thirty (30) Days from their confirmation by the Court. Failing nomination by the arbitrators of the President within the time limit provided for in this clause or any other time limit agreed by the Parties, the President shall be appointed by the Court. The seat of the arbitration shall be in London, England.

16.3. The arbitration shall be conducted in the English language.

16.4. Either Party may apply to any competent judicial authority for interim or conservatory relief. The application for such measures or the enforcement of such measures ordered by such judicial authority shall not be deemed an infringement or waiver of this agreement to arbitrate and shall not affect the powers of the arbitrator.

16.5. The arbitration proceedings, including all documents, submissions, written and oral evidence, transcripts and correspondence used therein or relating thereto, as well as any order or award issued in connection therewith shall be strictly confidential (“**Confidential Arbitration Information**”). Notwithstanding this provision, but without prejudice to any other confidentiality obligation which may otherwise be applicable, either Party may disclose to a domestic court, for the purposes of setting aside and/or enforcement proceedings

pending before such domestic court, any Confidential Arbitration Information, which it deems necessary for the purposes of those proceedings, after seeking an appropriate confidentiality order from such court, if available under the applicable law.

### **Small Claims**

- 16.6. Notwithstanding Article 16.2 above, the Parties agree, pursuant to Article 30(2)(b) of the ICC Rules, that the Expedited Procedure Rules shall apply, provided the amount in dispute does not exceed US\$ 500,000 at the time of the communication referred to in Article 1(3) of the Expedited Procedure Rules. The seat of the arbitration shall be in London, England.

### **Demurrage Claims**

- 16.7. Notwithstanding Articles 16.2 and 16.6 above, the Parties agree that where the Dispute between them is in relation to demurrage, including the commencement and computation of laytime, then the dispute shall be referred to arbitration to be conducted in accordance with the London Maritime Arbitrators Association (“LMAA”) Terms current at the time when the claiming Party commences arbitration proceedings. The tribunal shall consist of 3 arbitrators, each arbitrator shall be a full Member of the LMAA, and the timetable for constitution of the tribunal shall be in accordance with that laid out in the current LMAA Terms.

## **17. LIMITATION OF LIABILITIES**

- 17.1. Except as specifically provided in this Contract, in no event, including the negligent act or omission on its part, shall either Party be liable to the other, whether under this Contract or otherwise in connection with it, in contract, tort, breach of statutory duty or otherwise, in respect of any indirect or consequential losses or expenses including if and to the extent that they might otherwise not constitute indirect or consequential losses or expenses, loss of anticipated profits, plant shut-down or reduced production, loss of power generation, blackouts or electrical shut-down or reduction, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable.
- 17.2. In addition to the foregoing, in respect of any claims relating to Seller’s failure to supply the agreed quantity, as set out in the Seller Schedule, or with respect to any deficiency of quantity or variation in quality, Seller shall in no circumstances be liable for more than the difference between the market price and the Price for the Product deliverable under the Contract.
- 17.3. The provisions of this Article shall continue to apply notwithstanding the termination or expiry of this Contract for any reason whatsoever.

## **18. MISCELLANEOUS PROVISIONS**

### **Survival of Rights upon Termination**

18.1. The termination or expiration of this Contract shall not discharge or release any rights, duties, obligations or liabilities arising prior to such termination or expiration nor prejudice any right or remedy accruing before, at, or in consequence of such termination or expiration or any proceeding with respect to any such right or remedy including any proceeding by way of arbitration under this Contract.

### **Severability**

18.2. If any provision of the Contract is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, the remainder of the Contract (and of such provision) shall not be affected except to the extent necessary to delete such illegal, invalid or unenforceable provision (or part thereof).

### **Agency**

18.3. Buyer represents that:

- (a) this Contract is entered into without the assistance or intervention, direct or indirect, of any broker, intermediary, commission agent or any similar person, firm or corporation (each hereinafter referred to as an “**Agent**”);
- (b) neither Buyer nor any of its Affiliates, directors, officers, employees, agents, representatives and consultants have engaged the services of any such Agent for the purposes of exercising or obtaining improper influence in connection with this Contract; and
- (c) no Contractors fee or other compensation has been paid or is payable by Buyer or any of its Affiliates, directors, officers, employees, agents, representatives and consultants to any Agent in connection with this Contract.

### **No Partnership**

18.4. The relationship between Seller and Buyer shall be that of independent contractors and nothing in this Contract is intended to, nor shall it, establish any relationship of partnership, joint venture, employment, franchise, agency or other form of legal association between Seller and Buyer or their respective Personnel. Neither Seller nor Buyer shall have, nor represent to any Third Party that it does have, any power or authority to bind the other Party or incur any obligations on the other Party’s behalf.

## **Further Assurance**

18.5. Each Party shall, from time to time, execute such documents and perform such acts and things as either Party may reasonably consider necessary for the performance of this Contract and to give each of them the full benefit of this Contract.

## **Costs**

18.6. Except as otherwise stated in this Contract, each Party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Contract.

## **No Third Party Rights**

18.7. This Contract shall be binding upon and inure solely to the benefit of the Parties and their respective successors and permitted assignees and nothing in this Contract, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever.

18.8. Except where expressly stated to the contrary, the Parties do not intend that any term of this Contract may be relied upon or enforced solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any Person who is not party to it.

## **19. CONFIDENTIALITY**

19.1. For the purpose of this Contract, a Party who discloses Confidential Information shall be a “**Disclosing Party**” and a Party who receives Confidential Information shall be a “**Receiving Party**”.

19.2. Subject to Article 19.4, the Receiving Party shall not, without the prior written approval of the Disclosing Party (such approval not to be unreasonably withheld):

- (a) disclose any Confidential Information to any Person; and
- (b) use the Confidential Information for any purpose other than for the performance of its obligations under this Contract.

19.3. The Receiving Party shall use the same degree of care, but no less than reasonable efforts, to safeguard the confidentiality of any Confidential Information that it would use to safeguard the confidentiality of its own Confidential Information of like kind.

19.4. The Receiving Party may disclose Confidential Information:

- (a) to a Third Party only to the extent such disclosure is limited to operational information and is required to discharge the Disclosing Party’s contractual obligations under this Contract, any related charterparty, or any sales agreement related to the relevant Product;

- (b) to its Personnel who are required to have access to the Confidential Information in order to discharge their functions and contractual obligations under this Contract, provided that such Personnel agrees to abide by the obligations of such Party with respect to the Confidential Information;
- (c) to an Affiliate, provided that the Affiliate agrees to abide by the obligations of such Party with respect to the Confidential Information;
- (d) to a Contractor engaged by or on behalf of such Party or its Affiliates, provided that such Contractor agrees in writing to an undertaking of confidentiality no less onerous than that set out in Articles 19.2 and 19.3, except that under no circumstances shall the Receiving Party disclose any Confidential Information to a Contractor that is a competitor, or Personnel of a competitor, of the Disclosing Party;
- (e) to any professional advisers (including financial advisers, legal counsel, auditors and accountants) of such Party subject to such adviser providing a written undertaking of confidentiality no less onerous than that set out in Articles 19.2 and 19.3, except where such adviser is subject to a professional obligation of confidentiality under its applicable code of practice;
- (f) to the extent required by Applicable Law, by any Governmental Authority with jurisdiction over the subject matter or in connection with any court, judicial or other similar proceedings, provided that the Receiving Party uses its Commercially Reasonable Endeavours to, and only to the extent permitted by Applicable Law:
  - (i) provide the Disclosing Party with prompt notice of such requirement to disclose Confidential Information so as to enable the Disclosing Party to:
    - a. seek an appropriate protective order or other remedy in respect of such disclosure; and/or
    - b. consult with the Receiving Party on taking steps to resist or narrow the scope of such disclosure; and
  - (ii) use Commercially Reasonable Endeavours to disclose only that part of the Confidential Information required to be disclosed and not otherwise subject to a protective order or other remedy,

(the recipients in this Article 19.4 being the “**Authorised Recipients**”).

19.5. Each Party shall be responsible for any breach of the terms of this Article 19 by its Personnel or Affiliates to whom it discloses Confidential Information pursuant to Articles 19.4(b) and 19.4(c), respectively.

19.6. Notwithstanding anything to the contrary in this Contract, Seller may disclose the terms of these GTCs, including to other potential buyers, without the consent of Buyer.

## **20. ASSIGNMENT OF CONTRACT**

20.1. The Buyer may not assign nor transfer its rights and obligations under this Contract directly or indirectly whether by way of merger, consolidation, acquisition or sale of assets to any Third Party or a receiver or trustee in bankruptcy or otherwise without the prior written consent of Seller.

20.2. Any assignment in contravention of this Article 20 shall be void and unenforceable as against Seller and shall give Seller the right to terminate this Contract.

20.3. The Seller shall have the right to assign or transfer its rights and obligations under this Contract directly or indirectly to any Affiliate of Seller without the prior consent of Buyer.

## **21. ENTIRE AGREEMENT, MODIFICATION AND WAIVER**

21.1. This Contract constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements between the Parties, whether oral or written, with respect to such subject matter.

21.2. No amendment, modification or alteration of this Contract or any term or provision herein shall be valid unless reduced to writing and signed by and on behalf of Seller and Buyer.

21.3. No waiver by either Seller or Buyer of any term or provision including any condition or warranty or innominate term or waiver of any breach of such shall be effective unless made in writing and no such waiver shall be construed as waiver of or apply to another term or provision.

## **22. NOTICES**

22.1. Unless otherwise provided elsewhere in this Contract any communication by either Party to the other in connection with this Contract shall be in writing and in the English language. Such communication (other than routine communication for the performance of this Contract) shall be in letter format on the headed paper of the notifying Party and served by receipted hand delivery, Fax transmission, email or registered post or courier to the address of the other Party specified for this purpose in the Sales Confirmation and shall, unless otherwise provided herein, be deemed to have been received as follows:

(a) in case of hand delivery, at the moment it was received at the correct address (for administration purposes only with a copy of the notice to be sent by email transmission);

(b) in case of Fax transmission, if it was transmitted on a Business Day before 1600

hours, on that day; in any other case, on the following Business Day, and always provided that:

- (i) a transmission record is retained by the sender to show that the transmission was correctly completed and that all pages were transmitted; and
  - (ii) a hard copy of the notice or other communication is forwarded by the sender to the recipient on the same day as the Fax transmission by receipted hand delivery or registered post;
- (c) in case of registered post or courier, if delivered on a Business Day before 1600 hours, on that day; in any other case, on the following Business Day (in all cases for administration purposes only with a copy of the notice to be sent by email transmission); and
- (d) in case of email transmission, at the time it was received by the receiving Party, save that if received on a non-Business Day it shall be deemed received on the following Business Day; and the notifying Party bears the risk of a failure in transmission.

22.2. For the purpose of this Article, “**Business Day**” means a day (a period of twenty-four (24) hours starting at 00.00 hours and finishing at 24.00 hours on the same day) on which the office of the Party receiving the relevant communication is ordinarily open for business.

22.3. The Buyer shall immediately notify the Seller, in accordance with Article 22.1, of any alterations to the contacts or addresses specified in the Sales Confirmation.

22.4. Notices may not be given by instant messaging.

## **23. TIME BAR**

23.1. Without derogating from the specific time limits set out in Article 5.4 (complaint of deficiency of quantity or quality), and Article 34.3(d) (submission of demurrage claims), and any other provisions requiring compliance within a given period, all of which shall remain in full force and effect, arbitration proceedings in respect of any claim or Dispute arising under this Contract shall be commenced in accordance with Article 16 within one (1) year of the date on which the Product was delivered or, in the case of a total loss, the date upon which the Product should have been delivered, failing which the claim shall be time barred and any liability or alleged liability of the other Party shall be finally extinguished.

## PART 2

### OPERATIONAL PROVISIONS

#### 24. VESSEL(S) AT THE LOADING PORT

- 24.1. While any Vessel tendered in accordance with this Contract is awaiting berth, proceeding to berth, berthing, unberthing, or proceeding from berth at the Loading Port, each Party shall be responsible for and shall indemnify the other Party in respect of any proven loss, damage or injury whatsoever of or to (a) the Product, (b) the Vessel, (c) the Loading Port or (d) otherwise, (excluding all indirect or consequential damages except as specifically provided in Article 24.2), which may be caused by its act or omission or those of its agents, employees, Contractors or suppliers of services and provided that the Master, crew and agents of the Vessel shall be considered to be the agents of Buyer. In the event of any such damage caused to the Loading Port, Buyer shall cooperate and comply fully with Seller's and the Port Authority's accident procedures then in effect at the Loading Port.
- 24.2. Without limiting the foregoing, in the event that berthing, loading or unberthing of any such Vessel is delayed or causes delay as a result of an act or omission of the Buyer, its agents (where the Master, crew and agents of the Vessel shall be considered to be the agents of Buyer), employees, Contractors or suppliers of services, Buyer shall indemnify and hold harmless Seller against all losses, claims, damages, expenses or liabilities (including liability for demurrage payable to Third Parties) which Seller may suffer or to which Seller may become subject in consequence thereof, and will reimburse Seller in respect of any legal, administrative or other expenses whatsoever incurred by Seller in connection with the investigation or defence of any claims, whether or not resulting in liability, arising out of any such delay.

#### 25. SHIPPING TERMS

- 25.1. Buyer shall pay for and arrange for the lifting of the Product to be delivered under this Contract at the Loading Port and for its carriage to the Destination Port.
- 25.2. Unless it is specifically agreed otherwise, Buyer shall lift FOB at the Loading Port in Shipment sizes of not more than quantity set out in the table below:

GRADES	MAX PARCEL SIZE (MT)
L.S. NAPHTHA – RRW	125,000
L.S. NAPHTHA – RRE	55,000
NAPHTHA	82,500

<b>GRADES</b>	<b>MAX PARCEL SIZE (MT)</b>
GASOLINE 91	55,000
GASOLINE 95	55,000
GASOLINE 98	5,000
GAS OIL 500 PPM S	40,000
GAS OIL 10 PPM S	105,000
JET A-1	105,000
S.R. RESIDUE	99,000
M.S. FUEL OIL 380 CST	45,000
CRACKED FUEL OIL 380 CST	88,000
ALKYLATE	20,000

- 25.3. Whenever Buyer nominates to lift more than one grade of Product in a Shipment, Buyer shall ensure that the Vessel in question is capable of receiving, transporting and discharging the nominated grades without any comingling or contamination of the various grades of Product in question.
- 25.4. Upon completion of loading Buyer shall ensure the Master of the Vessel, or the Vessel's agent on the Master's behalf, signs as presented by or on behalf of Seller a full set of original negotiable bills of lading and returns the same to Seller.
- 25.5. Each Vessel tendered by Buyer for the carriage of Product under this Contract shall be designed, constructed, equipped and maintained to safely load and carry Product.

**26. LAYDAYS**

- 26.1. The Laydays shall be the day or range of days in the Delivery Period in which the Buyer's nominated Vessel must tender NOR at the Loading Port to load a Shipment.
- 26.2. The Laydays for each delivery of Product shall be as set out in the Sales Confirmation or as notified by Seller in accordance with Article 3 of the Contract and the following arrangements:
- (a) The Seller shall, in accordance with Article 3.1 of the Contract, in the Seller

Schedule nominate the firm quantity for delivery in each Lifting Month.

- (b) The Seller shall, in its sole discretion, nominate a rolling two-day delivery date range for each Shipment (forming part of the total firm quantity of each type of Product to be lifted in the Lifting Month so nominated in accordance with Article 26.2(a) above) in the Lifting Month (the “**Laydays**”). Such nomination shall be made by Seller and notified to Buyer not later than thirty (30) days before the first day of the Laydays.
- (c) Where the Buyer submits to the Seller a request to split a Shipment into two cargoes the Seller shall confirm its acceptance of such a request no later than five (5) days prior to the Laydays agreed pursuant to Article 26.2(b). Where such acceptance is provided by the Seller:
  - (i) in respect of the first cargo, the Laydays previously agreed for the full cargo shall remain in place; however
  - (ii) in respect of the second cargo, it will be provided on either a Free Berth Basis or a firm basis subject to Seller approval.

## **27. VESSEL NOMINATION REQUIREMENTS**

27.1. Each Vessel which is to load the Product shall be nominated in writing by the Buyer to the Seller. Such notice 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 Product to be loaded;
- (c) the ETA of the Vessel;
- (d) the destination(s) of the Vessel;
- (e) the length of the Vessel and such other information as may be required by the Loading Port operator from time to time; and
- (f) full written instructions regarding the particulars and destination of the bills of lading and such other customary Loading Port documentation which may be required, including but not limited to the Material Safety Datasheet, or any other documents required in accordance with industry standard practice, (and for the avoidance of doubt, (i) the Buyer shall be liable for all costs resulting from any delays in loading the Refined Products hereunder due to failure by the Buyer to supply such information in a timely manner, and (ii) any such delays shall not count as used Laytime or, if the Vessel is on demurrage, as time on demurrage).

27.2. The nomination shall not be effective unless it is received by the Seller not later than seven (7) days prior to the first day of the Laydays. Notwithstanding the foregoing, if the nomination is received by the Seller after the nomination deadline and is accepted by the Seller in its sole discretion, it shall be effective but shall be provided on a Free Berth Basis. Subject to the provisions of Articles 33.14 and 34.1, running hours allowed to the Seller for the loading of the Refined Products shall not commence until such time as the Vessel has actually commenced loading.

## **28. SUBSTITUTION OF VESSEL**

28.1. In respect of any Vessel named in the nomination, the Buyer may, or if necessary to perform its obligations under the Contract must, substitute therefor another Vessel. The Buyer shall notify the Seller of the substitution, and shall include in such notice of substitution all information listed in Article 27.1 in respect of the proposed substitute Vessel and provided always that:

- (a) the size of the substitute Vessel and the quantity to be loaded shall not, without the prior written consent of the Seller, differ materially from the size of the Vessel previously named and the quantity specified in the nomination;
- (b) the substitute Vessel shall comply with the requirements of Article 30.1;
- (c) the Laydays which would have applied in respect of the Vessel originally nominated shall apply to the substitute Vessel; and
- (d) the Buyer shall give to the Seller notice in writing of the name and the destination(s) of the substitute Vessel within one (1) Business Day of fixing such Vessel "sub-details" or upon receiving notice of an alternative Vessel, but in any event not later than two (2) Business Days prior to the ETA of the substitute Vessel or the ETA of the Vessel originally nominated, whichever is the earlier."

## **29. ETA**

29.1. The Buyer or its representative shall notify the Seller or its representative of any change or changes in the ETA notified pursuant to Article 27.1(c) of this Contract, but the Laydays shall be revised only with the Seller's specific written agreement. The giving or withholding of such agreement shall be at the absolute discretion of the Seller.

## **30. VESSEL COMPLIANCE AND APPROVAL**

30.1. The Vessel shall:

- (a) comply with all Applicable Laws(s) at the Loading Port (including in relation to draft limitations and/or other restrictions);
- (b) be required to satisfy ADNOC Ship Vetting; and

(c) comply with the applicable requirements set out in Annex A.

30.2. Seller shall give written notice accepting or rejecting any Vessel nominated by Buyer within two (2) Working Days of receipt of Buyer's nomination. A Buyer's nomination accepted by Seller shall be known as an "**Accepted Nomination**".

### **31. REJECTION OF NOMINATIONS AND VESSELS**

31.1. Notwithstanding anything to the contrary express or implied elsewhere herein, Seller shall have the right (which right may only be exercised prior to the passing of property hereunder):

(a) to reject any nomination made by Buyer pursuant to Article 27 and/or 28 on any reasonable grounds;

(b) to refuse, on any reasonable grounds, to accept for berthing and/or loading any Vessel named pursuant to Article 27 and/or 28; and

(c) to reject the Vessel in question, notwithstanding any prior acceptance of such Vessel on any reasonable grounds if such Vessel is involved in any incident or more recent information regarding such Vessel becomes available to Seller at any time after such prior acceptance.

31.2. Without derogating from any other reasonable grounds that may be available to Seller, reasonable grounds shall include if the Vessel is determined by Seller to be unacceptable under Seller's documented marine insurance requirements.

### **32. CONSEQUENCES OF REJECTION**

32.1. 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 Article 27 and/or 28 and/or 30:

(a) Seller shall not be liable for the consequences of rejection, delay, or restriction of the Vessel, including demurrage;

(b) Buyer shall be liable for any costs or damages incurred by Seller arising out of any such rejection of, delay to or restriction of the Vessel, including demurrage; and

(c) without prejudice to Seller's rights under this Contract to treat the failure to give a valid nomination as a failure to take delivery under Article 9 and/or as a repudiatory breach of this Contract, Buyer's obligations under this Contract to nominate a suitable Vessel and to ensure that it tenders NOR at the Loading Port in accordance with Article 33.3 shall be unaffected.

### **33. ARRIVAL OF VESSEL, BERTH AND LOADING ETC.**

- 33.1. Buyer shall arrange for the Vessel to notify Seller and the Loading Port by electronic mail or Fax ninety-six (96) hours, seventy-two (72) hours, forty-eight (48) hours, thirty-six (36) and twenty-four (24) hours in advance of the ETA of each Vessel at the Loading Port Limits. Buyer shall notify Seller and the Loading Port immediately upon learning of any reason whereby any such ETA is unlikely to be achieved.
- 33.2. Buyer shall notify Seller by electronic mail or Fax of the Destination Port of the Product to be lifted and the documentation required for each Shipment at least ninety-six (96) hours prior to the first Day of the Laydays.
- 33.3. **Notice of Readiness**
- (a) The Buyer shall ensure that by no later than 23:59 hours (local time) on the last day of the Laydays:
    - (i) the Vessel nominated by the Buyer shall arrive at the Loading Port, complete all formalities and in all respects be ready to commence loading the Product deliverable hereunder; and
    - (ii) NOR has been tendered.
  - (b) Once NOR has been tendered pursuant to Article 33.3(a), the Buyer shall be obliged to receive delivery of the Product.
- 33.4. Subject to the Port Authority's prior approval, (a) clean ballast, that is, ballast free from oil, chemicals and other harmful materials, shall be discharged overboard and (b) dirty ballast, that is, ballast containing any oil, chemicals or other harmful materials, shall be discharged into the shore facilities provided by the Port Authority for this purpose, if any. In its discretion, the Port Authority may require a chemical analysis prior to any discharge. Only clean ballast shall be discharged overboard and Buyer shall be fully and solely responsible for any costs, consequences, penalties or liabilities arising out of any discharge overboard of any dirty ballast.
- 33.5. Before the commencement of loading of any Vessel at each Loading Port, Seller or the relevant ADNOC Operating Company shall have the right to, or instruct the Port Authority at the Loading Port to, inspect and test the same and the tanks therein, and to reject the Vessel if, in Seller's or ADNOC Operating Company's reasonable opinion, such Vessel's condition is such as to give rise to risk of loss, damage or injury ashore or afloat. Buyer shall indemnify Seller on demand against any loss or damage whatsoever arising to Seller from such condition or from such rejection or either of them, and Seller shall be under no liability of any nature whatsoever arising from Seller's inspection of or failure to inspect any Vessel and any subsequent acceptance or rejection thereof.

- 33.6. Buyer shall ensure that no lifting of Product causes the Vessel to exceed the draft limitations and/or other restrictions at the Loading Port.
- 33.7. The Seller shall provide or cause to be provided free of charge to the Buyer (subject to the provisions of Article 8 of the Contract) a Berth to be indicated by the Seller or its representative at which the Vessel can when fully laden safely reach and leave and where it can always lie Safely Afloat.
- 33.8. Buyer shall ensure the Vessel meets all the restrictions regarding overall length, loaded draft, displacement, deadweight tonnage, port and berth conditions and other relevant limitations currently in effect at each Loading Port and shall keep itself familiar with all changes which may occur from time to time in the vessel restrictions in force at each Loading Port and shall not tender any Vessel with specifications not in compliance with the said restrictions.
- 33.9. If, while the Vessel nominated by Buyer is approaching, entering or departing from or is present in the berth, the length, draught or other dimensions of such Vessel shall exceed the length, draught or other dimensions so ascertained for the berth in question for whatever reason, Seller shall not be liable for any loss or damage caused as a result thereof and Seller shall not be obliged to commence or continue loading.
- 33.10. The Seller shall have the right to shift the Vessel from one Berth to another. All costs, including but not limited to damages for delay, shall be for the Seller's account if such shifting is for the Seller's purposes and otherwise shall be for the Buyer's account.
- 33.11. Vessels which have arrived at the Loading Port and have given NOR in accordance with Article 33.3 and other vessels which have been accepted for loading at the Loading Port under arrangements and contracts between Seller or other parties shall be loaded on in accordance with the procedures as applied by the relevant ADNOC Operating Company and/or the Port Authority at the Loading Port as are applied from time to time, which may include on a "first come first served" basis, upon condition that the NOR has been tendered for the Vessel to load within its Laydays and without prejudice to Seller's rights under this Contract. Seller may without liability to Buyer decline to load any Vessel that does not arrive and tender a NOR to load within the appropriate Laydays. Seller will nevertheless endeavour to load such Vessel as soon as it is convenient to do so, consistent with the tanker programme for the Month.
- 33.12. The Vessel shall vacate the berth as soon as loading hoses have been disconnected, provided that such Vessel's departure is not delayed awaiting production of Loading Port documents unless such documents can be delivered to the Vessel at a suitable anchorage or, subject to Buyer's approval, an early departure procedure is applied. If the Vessel fails to vacate the berth, unless for reasons attributable to Seller, any loss or damage suffered by Seller, its supplier or the relevant ADNOC Operating Company resulting from such failure shall be paid by Buyer to Seller.

33.13. Seller shall cause Product to be delivered and Buyer shall receive such Product with due regard for appropriate safety and quality precautions.

**33.14. Loading**

Unless otherwise agreed in writing by the Seller, the Seller shall not be under any obligation to commence loading hereunder prior to 0600 hours (local time) on the first day of the Laydays.

**33.15. Berth Utilisation**

Notwithstanding the provisions of Article 34.1 to 34.3 of this Contract, if at the Loading Port the Seller's supplier or any Third Party (whether or not an Affiliate of the Seller) imposes on the Seller, in respect of the Buyer's Vessel, an excess Berth utilisation charge in accordance with the Loading Port regulations or a contractually agreed or otherwise established scale for any hours of Berth utilisation in excess of the agreed Laytime or such specified period of hours (as may be advised by the Seller to the Buyer from time to time), but does not impose such charge directly on the Buyer's Vessel itself, such charge shall be for the Buyer's account. The foregoing shall not apply where such excess Berth utilisation is caused by the Loading Port, the Seller or the Seller's supplier. For the avoidance of doubt, it is agreed that for the purposes of this Article any technical failure or breakdown on the part of the Vessel shall be a cause within the control of the Vessel and the Buyer.

**33.16. Lightering**

- (a) If the Loading Port requires the Buyer's Vessel to be loaded from a lighter, this shall be subject to the Buyer's Vessel and/or ADNOC Ship Vetting. The Buyer may, on any reasonable grounds and without liability, refuse the use of such lighter for the purpose of loading its nominated Vessel.
- (b) Either Party may request to load the Vessel from lighters with such request subject to acceptance by the non-requesting Party, such acceptance not to be unreasonably withheld.
- (c) In the event of lightering required by the Loading Port in accordance with Article 33.16(a), or requested by the Seller in accordance with Article 33.16(b), the cost of such lightering shall be for the Seller's account. Any additional costs in excess of those provided for in Articles 34.1 to 34.3 below (including but not limited to additional steaming and/or waiting time) shall be for the Seller's account.
- (d) In the event of lightering requested by the Buyer in accordance with Article 33.16(b), the cost of such lightering shall be for the Buyer's account. Any additional costs in excess of those provided for in Articles 34.1 to 34.3 below (including but not limited to additional steaming and/or waiting time) shall be for the Buyer's account.

- (e) All time expended in connection with any such lightering shall, for the purposes of calculating the liability for demurrage under the provisions of Articles 34.1 to 34.3 below, count as running hours only from the time at which loading hoses are connected and loading is able to commence.
- (f) The Seller shall notify the place of lightering to the Buyer which shall be subject to approval of the Buyer, such approval not to be unreasonably withheld. The place of lightering shall be deemed the Berth for the purposes of Articles 33 and 34 of this Contract and all references therein to the Berth shall be construed accordingly.

### **33.17. Floating Storage and vessel-to-vessel**

- (a) If the Loading Port requires the Buyer's Vessel to be loaded from a floating storage facility or other Vessel by means of vessel-to-vessel transfer, this shall be subject to the Buyer's Vessel and/or the ADNOC Ship Vetting. The Buyer may, on any reasonable grounds and without liability, refuse the use of such floating storage facility or other Vessel for the purpose of loading its nominated Vessel.
- (b) In the event of loading from a floating storage facility or other Vessel by means of vessel-to-vessel transfer being required by the Loading Port in accordance with Article 33.17(a) above, the cost of such loading shall be for the Seller's account. Any additional costs in excess of those provided for by Articles 34.1 to 34.3 below (including but not limited to additional steaming and/or waiting time) shall be for the Seller's account.
- (c) In the event of loading from a floating storage facility or other Vessel by means of vessel-to-vessel transfer being required by the Loading Port in accordance with Article 33.17(a) above, all time expended in connection with such loading shall count as running hours for the purposes of calculating the liability for demurrage under the provisions of Articles 34.1 to 34.3 below.
- (d) Where the Loading Port has required loading from a floating storage facility or other Vessel by means of vessel-to-vessel transfer in accordance with Article 33.17(a) above, the Seller shall notify the place of loading to the Buyer and which shall be subject to approval of the Buyer, such approval not to be unreasonably withheld. The place of loading shall be deemed the Berth for the purposes of Articles 33 and 34 and all references therein to the Berth shall be construed accordingly.
- (e) The Seller and the Buyer may mutually agree that delivery is made by loading from a floating storage facility or other Vessel by means of vessel-to-vessel transfer.

**33.18. Lightering, Floating Storage and vessel-to-vessel Approval**

- (a) Any lighter, floating storage facility or Vessel involved in lightering, loading from floating storage or vessel-to-vessel transfer operation, as applicable, must be acceptable to both the Seller and the Buyer and remain acceptable throughout such operation under the Parties' respective marine assurance requirements and the ADNOC Ship Vetting.
- (b) The provider of any lightering, loading from floating storage or vessel-to-vessel transfer services must be acceptable to both the Seller and the Buyer.

**33.19. Lightering, Floating Storage and vessel-to-vessel Procedures**

Any lightering, loading from floating storage, or vessel-to-vessel transfer operations shall be carried out in accordance with the procedures set out in the ICS/OCIMF Ship-to-Ship transfer guides and MARPOL Annex I as amended by Resolution MEPC.186 (59), Chapter 8: Prevention of Pollution during Transfer of Oil Cargo between Oil Tankers at Sea, Regulations 40, 41, 42 for the transfer of Crude Oil and Petroleum Products or any modifications thereto.

**34. LAYTIME, DELAY AND DEMURRAGE**

**34.1. Time allowed**

- (a) Subject to Article 34.1(d), the time allowed to the Seller for the loading of each quantity of the Product deliverable to each Vessel shall be:

GRADES	PARCEL SIZE (MT)	RUNNING HOURS
( L.S. NAPHTHA GASOLINE 91/95/98 GAS OIL 500 PPM GAS OIL 10 PPM )	400 - 20,000	36
	20,001 - 30,000	50
	30,001 - 50,000	70
	> 50,001	80
( NAPHTHA JET A-1 M.S. FUEL OIL 380 CST S.R. RESIDUE )	400 - 35,000	36
	35,001 - 75,000	60
	> 75,001	70

provided at all times that no single Shipment exceeds 125,000 cbm.

- (b) In respect of Shipments of greater than 125,000 cbm, running hours shall be confirmed by Seller, in its sole discretion, on a case by case basis.
- (c) From time to time, the Parties may amend the number of running hours provided for in Article 34.1(a) by mutual written agreement.
- (d) All days and holidays shall be included unless loading on the day or holiday in question is prohibited by Applicable Law(s) at the Loading Port.

#### 34.2. **Running hours**

- (a) Running hours shall commence Berth or no Berth 6 hours after NOR is tendered, or on commencement of loading, whichever is the earlier, provided always that (i) the Buyer has complied with Article 33.1, and (ii) such NOR is given in accordance with the provisions of Article 33.3.
- (b) If NOR is given for the Vessel before the first day of the Laydays, running hours shall commence at 06:00 hours on the first day of the Laydays or on commencement of loading, whichever is the earlier. If NOR is given for the Vessel after the last day of the Laydays and is accepted for loading by the Seller in its sole and absolute discretion, then, without prejudice to any of the Seller's other rights, running hours shall commence only on commencement of loading.
- (c) For the purposes of calculating running hours, which subject to Article 33.16(e) shall include any time spent lightering or loading from a floating storage facility or vessel-to-vessel transfer, loading shall be deemed to be completed upon disconnection of loading hoses.
- (d) Any delay arising out of or in connection with any of the following situations shall not be counted or included in calculating the time taken by the Seller to load the Product or the time in respect of which the Seller is liable for demurrage (whether or not the Vessel is already on demurrage):
  - (i) awaiting free pratique, tugs, tides, pilot or daylight;
  - (ii) inward passage until the Vessel is securely moored at the Berth and its gangway, if it is to be used, is in place;
  - (iii) adverse weather or sea state;
  - (iv) preparing for and handling or shifting of ballast, bilges, slops or other substances or bunkering unless concurrent with cargo operations;
  - (v) restrictions imposed by the owner, charterer or master of the Vessel;

- (vi) any breakdown of the Vessel's equipment or failure to comply with the requirements of the Loading Port with respect to equipment aboard or any other matter causing delay or restriction to loading operations;
  - (vii) cleaning and/or inspection of the Vessel's cargo tanks (not including inspection of the Product);
  - (viii) time spent complying with any of the regulations and other requirements referred to in Articles 26 and 27, unless the time spent is caused by the negligence, omission or unreasonable conduct of the Seller;
  - (ix) any other delay attributable to the Vessel, the Buyer or agents of the Buyer;
  - (x) any onboard strike by members of the crew.
- (e) Notwithstanding the provisions of Article 13 of the Contract, any delay in loading by reason of a labour dispute, strike, lockout or industrial disturbance of any shoreside workmen essential to loading, shall count as one half Laytime or, if the Vessel is on demurrage, at one half of the demurrage rate provided always that the cause of the delay was not within the reasonable control of the Seller.

### 34.3. Delays

- (a) In the event of any delay resulting from any cause in connection with the scheduling of the Vessel's turn to load (including any change in such scheduling), provision of a Berth for the Vessel, berthing or loading of the Vessel or otherwise howsoever without limitation, and provided always that the Vessel is eventually loaded, any rights of the Buyer against the Seller, however the same may arise and whether or not arising under the Contract, in respect of losses solely incurred due to the delay shall be limited in all circumstances whatsoever to a claim for the payment of demurrage as specified below, and the Buyer shall not be entitled to complain directly or indirectly of any delay except for the purpose of founding a claim to such demurrage.
- (b) If the Product are not loaded within the time allowed in accordance with Articles 34.1 and 34.2 of this Contract, the Seller shall pay to the Buyer demurrage, in respect of the excess time at the appropriate rate per day (or pro rata for part of a day) as set out in Article 34.3(c) below.
- (c) The appropriate rate of demurrage shall be:
  - (i) subject to Article 34.3(c)(iii), the applicable charterparty rate; or
  - (ii) where there is no charterparty rate, or in the Seller's sole opinion the applicable charterparty rate established pursuant to Article 34.3(c)(i) is not

representative of the market rate, the market rate current on the date running hours commence as aforesaid for a Vessel of the size and type used for a single voyage charter from the Loading Port to the Buyer's Destination Port.

If the Parties fail to agree within thirty (30) Days of any claim being made upon such rate under Article 34.3(c)(ii) or (iii), then at the instance of either Party, such rate shall be determined by The London Tanker Brokers Panel Ltd. (or its successors in title), whose decision thereon shall be final and binding and whose costs shall be paid for by the applicant.

- (d) In no event shall the Seller be liable for demurrage unless the demurrage claim has been received by the Seller in writing within forty five (45) days of the date of disconnection of loading hoses, stating in reasonable detail the specific facts upon which the claim is based, provided that any supporting documentation which is not at that time available to the Buyer shall be received by the Seller within ninety (90) days of the date of disconnection of loading hoses. If the Buyer fails to give such notice or fails to provide such documentation within the aforesaid limits, then any liability of the Seller for demurrage shall be extinguished.
- (e) Notwithstanding the provisions of this Article 34.3 or the charterparty (where the Sales Confirmation specifies that laytime and demurrage shall be determined in accordance with the charterparty terms and conditions), the Buyer shall not be entitled to recover demurrage from the Seller except to the extent that the Seller is able to recover and does recover such demurrage from the Seller's supplier and the Seller shall not be obliged to pay any amounts in excess thereof.
- (f) The Seller may only rely on Article 34.3(e) if, and to the extent, that:
  - (i) the Seller's contractually agreed terms with the Seller's supplier include laytime and demurrage provisions so as to allow the recovery of demurrage on terms that are no worse than the Loading Terminal's usual terms; and
  - (ii) the Seller has exercised reasonable endeavours to recover from the Seller's supplier any demurrage for which the Buyer has presented a claim.

### **35. ALLOCATION OF COSTS**

All taxes, fees, imposts, wharfage and duties in respect of the Vessel (not the Product) incurred at the Loading Port shall be for Buyer's account.

### **36. BUYER INDEMNITY**

- 36.1. Buyer shall indemnify Seller against all direct loss, damage, injury or liability of whatsoever nature caused to Seller by or arising out of:

- (a) the fault or negligence of the Vessel while at or off each Loading Port; and
- (b) the failure of Buyer to provide timely notifications or to follow the other procedures set forth in this Part 2.

36.2. Except where otherwise provided, any amount due by Buyer to Seller pursuant to this Part 2 shall be settled within thirty (30) days of Seller's invoice and in accordance with the terms set forth in the Sales Confirmation.

## ANNEX A

### VESSEL REQUIREMENTS

If any Vessel does not meet any of the requirements of this Annex A:

- (a) at the Loading Port, Seller may refuse to berth, load or continue loading such Vessel; and/or
- (b) at the Destination Port, Buyer or Buyer's receiver may refuse to berth, discharge or continue discharging such Vessel.

#### 1. **ITOPF**

Each Vessel shall be owned by or demise chartered to a member or associate member e.g. for non-tankers of the International Tanker Owners Pollution Federation Ltd. (“**ITOPF**”).

#### 2. **ISPS CODE**

##### **A. FOB Provisions**

- (i) Buyer shall procure that the Vessel shall comply 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).
- (ii) The Vessel shall when required submit a Declaration of Security (DoS) to the appropriate authorities prior to arrival at the Loading Terminal.
- (iii) Notwithstanding any prior acceptance of the Vessel by Seller, if at any time prior to the passing of risk and title the Vessel ceases to comply with the requirements of the ISPS Code:
  - (a) Seller shall have the right not to berth such nominated Vessel and any demurrage resulting shall not be for the account of Seller.
  - (b) Buyer shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirements of the ISPS Code and with Article 28 of these GTCs.
- (iv)
  - (a) Seller shall procure that the terminal/installation at the Loading Port shall comply 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).

- (b) Subject always to sub-paragraph (vi) below 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 port and actually incurred by Buyer resulting directly from the failure of the Loading Port to comply with the ISPS Code shall be for the account of Seller, including 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.
- (v) Save where the Vessel has failed to comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code), Seller shall be responsible for any demurrage actually incurred by Buyer arising from delay to the Vessel at the Loading Port resulting directly from the Vessel being required by the port facility or any relevant authority to take any action or any special or additional security measures or undergo additional inspections.
- (vi) If the Loading Port is not operated by Seller or an Affiliate of Seller, Seller's liability to Buyer hereunder for any demurrage, costs, losses or expenses incurred by the Vessel, the charterers or the Vessel owners resulting from the failure of the terminal/installation at the Loading Port to comply with the ISPS Code shall be limited to the payment of demurrage, costs, losses or expenses that Seller is able to recover and does recover from its supplier or other relevant Third Party, and then only to the extent of such recovery. Seller shall, however, use reasonable endeavours so to recover from its supplier or other relevant Third Party.

### 3. **CLC**

The Vessel shall:

- (a) carry on board certificate(s) as required pursuant to the 1992 Civil Liability Convention for Oil Pollution Damage or any Protocols thereto (“**CLC**”); and
- (b) have in place insurance cover for oil pollution no less in scope and amounts than available at that time under the rules of P&I Clubs entered into the International Group of P&I Clubs (currently standard oil pollution cover of US\$ 1,000 million),

provided always the Vessel constitutes a “Ship” for the purpose of CLC.

### 4. **ISM CERTIFICATES**

The Vessel shall have on board at all times a valid ISM certificate and the owners, before and during the voyage, comply with the requirements of the ISM Code. (For the purposes of the Contract, “ISM” means the International Management Code for the Safe Operations of

Ships and for Pollution Prevention.)

5. **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 (1990), 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.)

6. **CLOSED LOADING AND/OR DISCHARGE**

Vessels which are loading/discharging a volatile, toxic or noxious cargo must operate at all times in the 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-paragraph:

“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.

7. **IGS**

If the Product is required to be carried in a Vessel which is both fitted with and actually uses an inert gas system (“IGS”), the following shall apply.

Any Vessel fitted with an IGS will not be permitted to berth or to load or discharge Product unless the IGS is in good order, operative and the cargo tanks inerted.

If an IGS-equipped Vessel arrives with the IGS inoperative, the Vessel will not be berthed until the IGS is operative and the cargo tanks inerted and until that time NOR shall not be given, or if given shall not be valid, and Laytime shall not commence until commencement of loading or discharge, as the case may be.

8. **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 Port or the Destination Port.

9. **PORT REGULATIONS**

The Vessel shall comply with Buyer's regulations (or Buyer's receivers' regulations, as applicable) at the Destination Port.

10. **MARITIME TRAFFIC SCHEMES**

The Vessel shall comply with all regulations and recommendations contained in any Maritime Traffic Schemes applicable to the voyage the subject matter of the Contract and in particular and as appropriate the Vessel shall comply with the "Turkish Straits Maritime Traffic Scheme Regulations" dated 6th November 1998, as amended or re-issued from time to time.

11. **FOB DELIVERY**

Buyer shall ensure that all Vessels tendered for loading hereunder shall be no more than sixteen (16) years old or, if in excess of sixteen (16) years old, shall have been suitably modified to ensure compliance with all Loading Port requirements and regulations, but in no event shall any Vessel exceed twenty-five (25) years in age and always subject to ADNOC Ship Vetting acceptance.

## ANNEX B

### SUPPLEMENT FOR ELECTRONIC DOCUMENTS

In the event that the Parties agree in the Sales Confirmation for electronic documents to be used in the Contract, 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 Contract may be issued, stored and signed in electronic form and transmitted electronically using a secure system agreed by the Parties (the “**Electronic Documents System**”) in accordance with the terms and conditions of the Electronic Documents 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 “**Electronic Document**”) 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 Contract for presentation of one or more originals or copies of a document is satisfied by the presentation of one Electronic Document.
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 Contract (including any negotiation or endorsement thereof) shall be made or evidenced in writing, signed or sealed may be satisfied in electronic form, by an Electronic Document 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 Contract 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 Contract (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 Electronic Document.
4. The Parties hereto agree that Electronic Documents which are converted to paper in accordance with the terms and conditions of the Terms of Use (“**Converted Electronic Documents**”) and which are presented, issued or otherwise utilised pursuant to, or in connection with, this Contract 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 Contract or by virtue of the provisions of the relevant Schedule to the Sales Confirmation pursuant to Article 7, 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 Electronic Documents 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 the relevant Schedule to the Sales Confirmation:

*“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.*

*The following shall constitute electronic records (as defined by the eUCP) for the purposes of this documentary credit:*

- (a) data created, generated, sent, communicated, received, stored or uploaded to the [insert name of Electronic Documents System], signed electronically by the issuer and digitally signed by the [insert name of Electronic Documents 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*
- (b) original paper documents which have been scanned and uploaded to the [insert name of Electronic Documents 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 Electronic Documents 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 Electronic Documents 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.”*

## ANNEX C

### PROVISIONS APPLICABLE TO THE SALE OF PARAFFINIC NAPHTHA

The terms of these GTCs shall apply except as modified by this Annex C.

#### 1. DEFINITIONS & INTERPRETATION

1.1 The provisions of Article 1 shall apply, save as regards the definitions set out below:

**"Loading Port"** shall mean the port at Ruwais, including the Operator's Paraffinic Naphtha terminal therein.

**"Operator"** shall mean Abu Dhabi National Gas Industries Limited trading as ADNOC Gas Processing or whichever company performs and/or regulates the operations and procedures for the Shipment and export of Paraffinic Naphtha that is to be shipped and delivered under this Contract.

**"Paraffinic Naphtha"** shall mean liquid hydrocarbons known as condensate and recovered from natural gas liquids at the Plant, and any reference to Product in this Contract shall include Paraffinic Naphtha.

**"Vessel"** shall mean in respect of Paraffinic Naphtha, any ship or vessel designed, constructed, equipped and maintained to safely load and carry Paraffinic Naphtha.

#### 2. SHIPPING TERMS

2.1 Article 25.2 shall be deleted and replaced with the following:

*25.2 Buyer shall make no nomination involving the lifting of under 25,000 MT of Paraffinic Naphtha, without the prior consent of Seller.*

2.2 Articles 25.3 and 25.4 shall be deleted.

#### 3. VESSEL NOMINATION REQUIREMENTS

3.1 The first sentence of Article 27.2 shall be amended to read:

*27.2. The nomination shall not be effective unless it is received by the Seller not later than fourteen (14) days prior to the first day of the Laydays.*

#### 4. ARRIVAL OF VESSEL, BERTH AND LOADING ETC.

4.1 Article 33.3(a)(ii) shall be amended to read as follows:

*NOR has been tendered to Seller and the Operator.*

5. **LAYTIME, DELAY AND DEMURRAGE**

5.1 Article 34.1(a) shall be amended to read as follows:

*The laytime allowed to Seller for the loading of each Shipment of Paraffinic Naphtha shall be (i) thirty-six (36) running hours for cargoes up to and including 35,000MT or (ii) sixty (60) running hours for cargoes greater than 35,000 MT.*

5.2 The following shall be added at 34.2(d):

*If for any reason a Vessel tendered by Buyer should require purging or cooling-down or both or is, in any other respect, in the judgment of the Operator unable to receive Paraffinic Naphtha upon arrival at the Loading Port, loading may be refused or deferred until in the judgment of the Operator the Tankship is fit and ready to load safely. All costs incurred in consequence, including the cost of purging or cooling-down or both shall be borne by Buyer. The Vessel in all such cases may be instructed by the Operator (in its sole discretion) to vacate the berth and await its turn for loading when fit and ready to load safely. In all such cases, laytime will begin upon the connection of the cargo loading hoses/units for loading when the Vessel is in berth and in the judgment of the Operator fit and ready to load safely, and not before.*

6. **ANNEX A**

6.1 The following shall be added at paragraph 12:

*12. Buyer shall not nominate any Vessel that has previously been used to carry ammonia.*

## ANNEX D

### AGT PAYMENT TERMS

#### 1. INVOICE AND PAYMENT

- 1.1 Except where paragraph 1.2 of this Annex D applies or as expressly provided elsewhere in the Contract, payment shall be made by the Buyer to the Seller without any discount, deduction, withholding, offset or counterclaim by wire transfer of same day funds on or before the due date as applicable in accordance with section 6 of this Annex D.
- 1.2 Where any Applicable Law requires a deduction or withholding in respect of tax to be made, the Buyer shall inform the Seller of that requirement and will pay such additional amount to the Seller as will **ensure** that the net amount received by the Seller is equal to the full amount that the Seller would have received had the deduction or withholding not been required.

#### 2. PAYMENT DOCUMENTS

- 2.1 Promptly after completion of each delivery of Product, the Seller shall prepare and issue a commercial invoice identifying the type (or types) and quantity (or quantities) of Product delivered and the applicable Price as determined in accordance with the provision of the Sales Confirmation. Except as expressly provided elsewhere in the Contract, payment shall be made against presentation to the Buyer of:
- (a) the Seller's faxed or emailed commercial invoice (provisional invoice acceptable where the provisions of paragraph 4.2 of this Annex D apply); and
  - (b) 3/3 original bills of lading issued or endorsed to the order of the Buyer; and
  - (c) original certificate of quantity, quality and origin (or equivalent documents issued at the Loading Terminal).

#### 3. THE SELLER'S INDEMNITY IN LIEU OF SHIPPING DOCUMENTS

- 3.1 If the documents referred to in section 2 of this Annex D are not available for presentation to the Buyer on or before the payment due date, the Buyer agrees to pay the Seller upon presentation to the Buyer of:
- (a) the Seller's emailed commercial invoice (provisional invoice acceptable where the provisions of paragraph 4.2 of this Annex D apply); plus
  - (b) the Seller's emailed indemnity in the format set out in Annex E.

#### 4. **THE SELLER'S INVOICE**

4.1 The Seller's invoice shall be prepared on the basis of the certificates of quantity and, where applicable, quality (or equivalent documents issued at the Loading Terminal).

4.2 Except where the provisions of section 13 of this Annex D apply, where the applicable pricing mechanism does not allow for the preparation of a final invoice prior to the payment due date, the Seller may issue and the Buyer shall make payment against a provisional invoice. The provisional invoice shall, unless otherwise agreed between the Parties, be based upon:

- (a) the pricing information available to the Seller at the time it issues such provisional invoice; or
- (b) the mean of any minimum or maximum quantity specified in the Sales Confirmation; or both.

4.3 Payment of any balance due by either Party to the other shall be made within three (3) New York banking days of receipt of the Seller's final invoice which shall be prepared as soon as practicable after all the relevant pricing and quantity information becomes available to the Seller.

#### 5. **OTHER COSTS, EXPENSES AND CHARGES**

Unless otherwise agreed, the payment of any other costs, expenses or charges which arise under the terms of the Contract shall be made against presentation of the invoice and shall be for immediate settlement by the payer on or before the date specified on the invoice.

#### 6. **PAYMENT DUE DATE**

6.1 The payment due date shall be as specified in the Sales Confirmation.

6.2 Where no payment due date is specified in the Sales Confirmation, payment shall be due three (3) New York banking days after the date property in the Product passes to the Buyer.

#### 7. **PAYMENTS DUE AT WEEKENDS OR ON BANK HOLIDAYS**

Whether due from the Buyer or from the Seller, if any payment falls due on a Sunday or bank holiday Monday in New York, such payment shall be made on the first New York banking day following and if any payment falls due on a Saturday or any other bank holiday in New York such payment shall be made on the last preceding banking day in New York.

## 8. INTEREST

- 8.1 If either Party (the “**Paying Party**”) fails to pay in full any sums on the due date for payment, the other Party (the “**Receiving Party**”) shall have the right to require the payment by the Paying Party of interest on any unpaid amount at three (3) percentage points above the London Interbank Offered Rate (“**LIBOR**”) for one month US dollar as administered by the ICE Benchmark Administration (“**IBA**”) or any other entity which takes over the administration of that rate and published on the due date by Thomson Reuters on behalf of the IBA, such interest to run from the due date until the date payment is received by the Receiving Party's bank. Interest shall continue to accrue under this paragraph 8 until payment notwithstanding the termination of the Contract for any cause whatsoever. The amount of interest payable to the Receiving Party shall be engrossed for withholding tax, if any, such that the net amount received by the Receiving Party after the deduction of any such withholding tax shall be equal to the full amount of interest due.
- 8.2 If the cessation of LIBOR has an impact on the operation of this Contract, then upon written notice from either Party, an alternative reference shall be agreed by the Parties for the calculation of the interest rate under this section 8. Both Parties shall use best endeavours to agree an alternative reference and to do so promptly. No Party shall unreasonably withhold its consent with respect to an alternative reference proposed by the other Party.
- 8.3 The provisions of this section 8 shall not be construed as an indication of any willingness on the part of the Receiving Party to provide extended credit as a matter of course, and shall be without prejudice to any rights and remedies which the Receiving Party may have under the Contract or otherwise. Any expenses incurred by the Receiving Party, including reasonable legal fees, court costs and collection agency fees, caused by delayed or non-payment by the Paying Party of the amount due shall be for the account of the Paying Party and payable upon demand with supporting documentation.

## 9. PAYMENT ACCOUNT

Payment shall be made to the Seller's bank, account name and account number as specified in the Sales Confirmation. If at any time either Party sends notice of changed banking information or an invoice containing banking information different from that currently in the other Party's records, the Paying Party may, prior to making any payment then due, require that the other Party provide email or fax confirmation of the new banking information as well as the Paying Party's usual account opening information. The other Party shall provide such information in a timely manner and payment shall not be due until one (1) Business Day after the Paying Party has completed its account opening process (including any “know your customer” verification). The Paying Party shall update its records in a timely manner upon receipt of the confirmation so as to avoid unnecessary further requests for confirmation.

## 10. **NETTING OF INVOICES**

The Parties may net invoices for amounts that are due to each other on the same date. In that case, prior to the due date the Parties shall confirm either orally (to be confirmed in writing) or 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 date due the agreed balance. Notwithstanding the above, payments for any demurrage, quantity, quality or other claims shall not be included in such netting of invoices.

## 11. **CREDIT SUPPORT**

- 11.1 If a form of Credit Support is not already provided for in the Sales Confirmation, or where the Credit Support that has been provided for in the Sales Confirmation (including where such Credit Support has already been provided by the Buyer) becomes unacceptable to the Seller, the Seller shall have the right, on giving the Buyer notice of not less than two (2) Business Days to that effect, to require Credit Support or additional Credit Support of a type acceptable to the Seller to be provided in accordance with the provisions of sections 12 or 13 of this Annex D as applicable and by the time specified in the Seller's notice aforesaid.
- 11.2 Where Credit Support is required in accordance with the Sales Confirmation or paragraph 11.1 of this Annex D, such Credit Support shall not be construed as excluding the Buyer's basic responsibility for paying the Price within the due date for Product delivered hereunder.
- 11.3 Failure by the Buyer to provide Credit Support in accordance with the provisions of sections 12 or 13 of this Annex D as applicable shall be a breach by the Buyer of the Contract entitling the Seller to terminate the Contract and claim damages. Any delay in exercising such a right to terminate the Contract shall not constitute a waiver of that right. In any event, whether the Seller has exercised that right to terminate or not, the Seller:
- (a) shall be under no obligation to commence loading of the Product in question;
  - (b) shall be entitled to give such instructions to the Vessel as it may reasonably think fit; and
  - (c) shall be entitled to claim damages (including demurrage, if any).

## 12. **LETTER OF CREDIT**

- 12.1 Where under the Contract or by virtue of the provisions of section 11 of this Annex D the Price is to be paid by means of an irrevocable documentary letter of credit or supported by a standby letter of credit in favour of the Seller (both herein referred to as an "L/C"), the Buyer

shall cause such L/C to be opened with or confirmed by a first-class international bank acceptable to the Seller (the “Bank”) in terms specified in this section 12.

- 12.2 The L/C shall be sufficient to cover the contractual mean value of the Product at the Price (or the provisional price in the invoice, if the contractual mean value of the Product at the price specified in the Sales Confirmation is not known) plus fifteen (15) per cent and a further amount to cover escalation in duties including VAT if appropriate and the Buyer shall cause it to be advised or confirmed in writing by the Bank to the Seller, in a form substantially as set out in the Letter of Credit Format or Standby Letter of Credit Format of this Annex D (whichever is applicable) and in all respects acceptable to the Seller.
- 12.3 The L/C shall be so advised or confirmed by the Bank by not later than 1600 hours (London time) on seven (7) days before:
- (a) the date provided in the Sales Confirmation; or
  - (b) if no date is provided in the Sales Confirmation then either:
    - (i) the first day of the Laydays, where applicable; or
    - (ii) in all other cases, the beginning of the date or range of dates on which loading or delivery, whichever is earlier, is scheduled or indicated to take place under the Contract.
- 12.4 Where the deadline for advising or confirming the L/C by the Bank would fall prior to the date of the Contract, the L/C shall be advised or confirmed as soon as reasonably practicable following the date of the Contract, and in any event no later than 1200 hours on the second (2) Business Day prior to the event specified in paragraph 12.3(b)(i) or 12.3(b)(ii) of this Annex D as applicable.
- 12.5 Pursuant to such L/C the Seller shall present the documents referred to in sections 2 or 3 of this Annex D at the counter of the Bank, or its correspondent bank in London.
- 12.6 All charges in respect of the L/C shall be for the Buyer's account.
- 12.7 The L/C shall take effect in accordance with its terms (including any agreed amendments thereto) but such terms (including any agreed amendments thereto) shall not alter, add to, or in any way affect, the provisions of the Contract (or any of them) unless the Seller and the Buyer expressly agree in writing that any such term shall so alter, add to, or in any way affect, the provisions of the Contract.
- 1.2 If for any reason the loading, as the case may be, of the Vessel will not take place within the period for such loading referred to in the L/C, the Buyer shall either obtain an extension of such period for loading or provide a new L/C in terms acceptable to the Seller.

### 13. **ADVANCE PAYMENT**

- 13.1 Where, under the Contract or by virtue of the provisions of section 11 of this Annex D the Price is to be paid by means of cash in advance, the Seller shall issue and the Buyer shall make payment against a provisional invoice. The provisional invoice shall, unless otherwise agreed between the Parties, be based upon:
- (a) the pricing information available to the Seller at the time it issues such provisional invoice; and
  - (b) one hundred and twenty (120) per cent of the maximum contractual quantity specified in the Sales Confirmation.
- 13.2 The provisional payment shall be made by the date specified in the Sales Confirmation or by the date specified in the Seller's notice pursuant to section 11 of this Annex D.
- 13.3 Payment of any balance due by either Party to the other shall be made on the due date specified in the Sales Confirmation or, where there is no final due date specified in the Sales Confirmation, within three (3) Business Days of receipt of the Seller's final invoice which shall be prepared as soon as practicable after all the relevant pricing and quantity information becomes available to the Seller. No interest shall be due on the difference between the provisional and final invoice.

14. **PURCHASE CONFIRMATION**

If requested by the Seller, the Buyer shall provide the Seller's bank with a letter confirming the existence of the Contract and that, subject to the terms of the Contract, the Buyer shall make payment to the account specified in the Seller's invoice against the documents specified in sections 2 or 3 of this Annex D.

15. **CURRENCY OF PAYMENT**

Notwithstanding the currency of payment specified in the Sales Confirmation, it is a condition of this Contract that the Product nominated by the Seller shall be Product for which payment of the Price can be freely made and received in US Dollars via standard banking channels.

## LETTER OF CREDIT FORMAT

Format of Irrevocable Documentary Letter of Credit as required pursuant to section 12 of Annex D:

Please urgently advise [FULL NAME OF THE SELLER], [ADDRESS], that we [BANK] hereby issue our irrevocable documentary letter of credit number [L/C NUMBER], in their favour for account of [FULL NAME OF THE BUYER], [ADDRESS] for an amount of US Dollars [US DOLLAR AMOUNT] (say [US DOLLAR AMOUNT IN WORDS]) +/-15% available at our counters or the counters of the Advising Bank (as determined by the Seller) [DAYS] days [FROM/AFTER] [PAYMENT TERMS] against presentation of the following documents in one original and [NUMBER OF] copies unless otherwise stated:-

1. One or more signed commercial invoices.
2. One or more full sets of 3/3 original clean on board ocean bills of lading issued or endorsed to the order of.....
3. One or more certificates of quality.
4. One or more certificates of quantity.
5. \*[One or more certificates of origin].

\*Amend as appropriate

Evidencing [SHIPMENT/DELIVERY] of [QUANTITY] [UNIT OF MEASURE] +/-15% of [PRODUCT]

[INCOTERM] [LOAD TERMINAL] between [DATE] and [DATE] (both dates inclusive). PRICE CLAUSE [Here insert text of Price Clause as per the Contract]

This credit expires on [DATE]

In the event that the above documents are unavailable at the time of presentation, payment will be made against document number one above (the Invoice) and a letter of indemnity issued by beneficiary in the following format:-

QUOTE

To:

[here insert text of Indemnity as per Annex E]

UNQUOTE

SPECIAL CONDITIONS

1. This letter of credit shall take effect in accordance with its terms but such terms shall not alter, add to or in any way affect the provisions of the Contract between [THE BUYER] and [THE SELLER] to which this letter of credit relates.
2. Charterparty bills of lading/vessel bills of lading/bills of lading signed by the Master or agent and not indicating that they have been issued by a named carrier are acceptable.
3. Documents presented later than twenty-one (21) days after the [BILL OF LADING/NOTICE OF READINESS] date but within the validity of this credit are acceptable.
4. Transshipment [ALLOWED/PROHIBITED].
5. Partial shipment [ALLOWED/PROHIBITED].
6. Photocopies in lieu of copy documents acceptable.
7. Swift invoice and letter of indemnity acceptable.
8. All banking charges are for the account of the applicant.
9. The construction, validity and performance of this letter of credit shall be governed by and construed in accordance with English law. Any dispute or claim arising out of or in connection with this letter of credit shall be subject to the exclusive jurisdiction of the English courts.
10. Typographical errors that do not affect the meaning of a word or the sentence in which it occurs will not be considered as a discrepancy save that typographical errors relating to the quantity, the amount, the Price, the bill of lading date, or the NOR date shall not be acceptable.
11. The value of this letter of credit may escalate/de-escalate above or below the tolerances allowed without any amendment on our behalf.
12. Except as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credits 2007 Revision, (ICC publication no. 600).
13. Multiple/partial drawings allowed.
14. [Original documents stating grade name different to LC acceptable.]
15. Any discrepancy resulting from the invoiced quantity exceeding or falling below the quantity range allowed in this letter of credit is acceptable. Payment will be effected on the invoiced quantity in case the maximum quantity allowed in this letter of credit is not exceeded. In case the invoiced quantity exceeds the maximum quantity allowed in this letter of credit the bank will pay on the maximum quantity allowed in this letter of credit.
16. Beneficiary may discount this LC at own cost and request.
17. Documents named as different but servicing the same purpose are acceptable.
18. Price clause and calculation not stated on the commercial invoice is acceptable.

19. [In event that payment due date falls on a Saturday or a New York bank holiday, except Monday, payment will be effected on the last banking day prior. If the payment due date falls on a Sunday or Monday bank holiday in New York payment will be made on the next business day].
20. [Beneficiary may draw under this letter of credit against provisional invoice based on price quotation on [NOR/BL] date. If no quotation is published on the date of [NOR/BL] date. If no quotation is published on the date of [NOR/BL], the provisional invoice to be based on the quotation published immediately preceding the date of [NOR/BL]. Balance payment to be effected under this L/C within three (3) New York banking days against presentation of final invoice if the amount owed is in beneficiary's favour. If the balance of the payment is in the applicant's favour payment to be effected outside of the letter of credit].
21. [NOR date to count as delivery date and to appear on invoice only].
22. [Ports of discharge other than mentioned are acceptable].
23. [Presentation of a Tax invoice acceptable].
24. PDF copies acceptable.
25. Documents showing different density to invoice is acceptable.
26. Any discrepancy resulting from the invoice value exceeding or falling below the US dollar range allowed in this letter of credit is acceptable. In the event that the invoice amount does not exceed the LC value, payment will be effected on the invoice amount. In the event that the invoice value exceeds the maximum value of the LC, the bank will pay on the maximum value allowed under this Letter of Credit.

## STANDBY LETTER OF CREDIT FORMAT

Format of Standby Letter of credit as required pursuant to section 12 of Annex D:

Irrevocable Standby Letter of Credit No. [NUMBER].

BENEFICIARY

APPLICANT

[name and address]

[name and address]

At the request of the above applicant, and for its account, we [FULL NAME AND ADDRESS OF BANK] hereby open in your favour our Irrevocable Standby Letter of Credit No. [L/C NUMBER].

This Standby Letter of Credit is for an amount of [AMOUNT IN FIGURES/WORDS] and is available for payment at our counters or the counters of the Advising Bank (as determined by the Seller) at sight against the following documents.

1. Copy of unpaid invoice.
2. Beneficiary's certificate purporting to be signed by an official of the Beneficiary certifying that "the amount demanded represents a payment which has not been made to [FULL NAME OF BENEFICIARY] by [FULL NAME OF APPLICANT] within the terms of the contract in respect of invoice number [NUMBER] which is legally and properly past due".

Covering: [SHIPMENT/DELIVERY] of [QUANTITY] [UNIT OF MEASURE] +/-15% of [PRODUCT]

[INCOTERM] [LOAD TERMINAL] between [DATE] and [DATE] (both dates inclusive). Multiple drawings are permitted.

The expiration of this Letter of Credit is [DATE].

We hereby agree with you that presentation of the documents in compliance with the terms of this Standby Letter of Credit will be duly honoured on presentation to us no later than the expiry date of this Credit.

Special Conditions:

1. All bank charges are for the account of the Applicant.
2. Above documents presented by SWIFT acceptable.
3. This Standby Letter of Credit shall take effect in accordance with its terms but such terms shall not alter, add to or in any way affect the Contract between [THE SELLER] and [THE BUYER] to which this Standby Letter of Credit relates.
4. The construction, validity and performance of this Standby Letter of Credit shall be governed by and construed in accordance with English law. Any dispute or claim arising out of or in

connection with this Standby Letter of Credit shall be subject to the exclusive jurisdiction of the English courts.

5. Except as otherwise expressly provided herein, this Standby Letter of Credit is subject to the [Uniform Customs and Practices for Documentary Credits 2007 Revision (ICC Publication No. 600)] [International Standby Practices 1998 (ISP98)].
6. The value of this Standby Letter of Credit may escalate/de-escalate above or below the tolerances allowed without any amendment on our behalf.
7. Partial and multiple drawings are permitted.
8. Beneficiary may draw under this Standby Letter of Credit against provisional invoice based on price quotation on [NOR/BL] date. If no quotation is published on the date of [NOR/BL], the provisional invoice to be based on the quotation published immediately preceding the date of [NOR/BL]. Balance payment to be effected under this L/C within three (3) New York banking days against presentation of final invoice if the amount owed is in beneficiary's favour. If the balance of the payment is in the applicant's favour payment to be effected outside of the Standby Letter of Credit.
9. Any discrepancy resulting from the invoiced quantity exceeding or falling below the quantity range allowed in this Standby Letter of Credit is acceptable. Payment will be effected on the invoiced quantity in case the maximum quantity allowed in this letter of credit is not exceeded. In case the invoiced quantity exceeds the maximum quantity allowed in this Standby Letter of Credit the bank will pay on the maximum quantity allowed in this Standby Letter of Credit.
10. Price clause and calculation not stated on the commercial invoice is acceptable.
11. [In event that payment due date falls on a Saturday or a New York bank holiday, except Monday, payment will be effected on the last banking day prior. If the payment due date falls on a Sunday or Monday bank holiday in New York payment will be made on the next business day].
12. [NOR date to count as delivery date and to appear on invoice only].
13. [Ports of discharge other than mentioned are acceptable].
14. [Presentation of a Tax invoice acceptable].
15. Price clause and calculation not stated on the commercial invoice is acceptable.

## ANNEX E

### SELLER'S INDEMNITY FORMAT

The indemnity referred to section 3 of Annex D (or any equivalent provision in the Sales Confirmation) shall be in the following format:

#### QUOTE

We refer to our Contract dated [DATE] (the “**Contract**”) in respect of your purchase from us of [QUANTITY] BBL of [PRODUCT](the “**Product**”).

In consideration of your making payment of US dollars [USD AMOUNT] for [QUANTITY] BBL of Product in accordance with the Contract and accepting delivery of the Product without having been provided with a full set(s) of clean original negotiable bills of lading [HERE INSERT ANY OTHER CONTRACTUALLY REQUIRED ORIGINAL DOCUMENTS], (the “**Documents**”), we hereby represent and warrant that:

- (i) the Documents exist and conform with the requirements of the Contract;
- (ii) we are entitled to possession of the Documents;
- (iii) we were entitled to possession of the Product;
- (iv) we had good title to such Product;
- (v) title in the Product has been passed, as provided in the Contract, to you free of all liens, charges or encumbrances of whatever kind;
- (vi) you will have the benefit of the warranty as to enjoyment of quiet possession implied by law in the Contract but without prejudice to any other warranty so implied.

Without prejudice to your rights under the Contract we hereby agree to protect, indemnify and hold you harmless from and against any and all damages, losses, liabilities, costs, claims and reasonable expenses which you may suffer by reason of

- (a) our failure to present the Documents to you in accordance with the Contract, except to the extent that such liability could have been avoided or minimised by the exercise of due diligence by you, your servants or agents.
- (b) any action or proceeding brought or threatened against you by reason of our said failure and any breach of our above express representations and warranties in connection with questions of title to or the right to possession of the Documents or the Cargo or the proceeds of either; or any liens, charges or encumbrances asserted on the documents or the Cargo or any other claims arising out of or in connection with the Documents.

Our obligation to indemnify you is subject to the conditions that you give us prompt notice if the assertion of any claim and full opportunity to conduct the defense thereof and that you do not settle any such claim without our approval.

Our liability hereunder shall cease one year from the date of issue of this letter or on the date that we provide you with the Documents whichever is earlier. We agree to provide the Documents to you after they have come into our possession.

No term of this indemnity is intended to, or does, confer a benefit or remedy on any party other than you whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or howsoever.

This indemnity shall be governed by and construed in accordance with English law and any dispute, controversy or claim arising out of or in connection with this indemnity shall be subject to, and finally resolved by, arbitration in accordance with the rules of arbitration of the International Chamber of Commerce applicable at the time of conclusion of the Agreement and shall cease to have effect upon the Documents being provided to you. The arbitration shall be conducted in the English language and the seat of the arbitration shall be in London, England.

Signed by: .....

Title: .....

of: [COMPANY NAME]

UNQUOTE