

**ATLANTIC TRADING & MARKETING, INC.**

**GENERAL TERMS AND CONDITIONS  
FOR FOB SALES OF CRUDE OIL**

**ATMI-CRUDE-FOB  
2012 edition**

**(Includes supplement 2 for Ex Tank/Into Tank/In Tank and FIP deliveries)**

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**These General Terms and Conditions may be referred to as ATMI-CRUDE-FOB.**

## **SECTION I - DEFINITIONS**

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

- **Adequate Assurance** : Cash, an irrevocable standby L/C (as defined in sub-section IV.7) that is issued or confirmed by an L/C issuer acceptable to Seller and that is in a form and for a term that is acceptable to Seller, a guaranty, or another form of assurance acceptable to Seller.
  
- **Affiliate** : Any company or other legal entity directly or indirectly controlling or controlled by a party to the Agreement or controlled directly or indirectly by any company or other legal entity having direct or indirect control over that party.
  
- **AFRA** : The Average Freight Rate Assessment, as published by the London Tanker Brokers' Panel Limited; the applicable rate shall be the rate published at the beginning of the month in which the Vessel loads, irrespective of the reference period mentioned in the publication.
  
- **Agreement** : The Special Terms and Conditions and the General Terms and Conditions together and any agreed amendment(s) thereto, the Special Terms and Conditions being that part of the Agreement other than the General Terms and Conditions, comprising the written communications evidencing an agreement between Seller and Buyer to an FOB or, as applicable, Ex Tank, Into Tank, In Tank or FIP contract of sale; and the General Terms and Conditions being these General Terms and Conditions for FOB Sales of Crude Oil, reference ATMI-CRUDE-FOB, as supplemented and amended: for Ex Tank, Into Tank, In Tank or FIP deliveries, by the provisions set out in Appendix 2.
  
- **All Fast** : Vessel secured to berth and gangway in place.
  
- **Barrel** : U.S. Barrel of FORTY-TWO (42) U.S. standard gallons.
  
- **Buyer** : The party specified in the Special Terms and Conditions.
  
- **Credit Support Provider** : The guarantor or other person providing credit support for Buyer.
  
- **Designated Event** : (i) The consolidation or amalgamation of a party with, the merger of a party with or into, or the transfer of all or substantially all of a party's assets to, another entity; (ii) the reorganization, reincorporation or reconstitution of a party into or as another entity; (iii) the acquisition by any person directly or indirectly of the majority of the beneficial ownership of the party such that such person may exercise control of the party; or (iv) a substantial change in the capital structure of a party by means of the issuance or guaranty of debt. For purposes of this definition, the term "party" includes Buyer's Credit Support Provider, if any.

- **ETA** : Estimated date and time of arrival.
- **FIP** : Free Into Pipeline.
- **FOB** : As ascribed thereto in Incoterms 2010, except as modified by the Agreement. If there is any inconsistency or conflict between said Incoterms and the Agreement, the Agreement shall prevail.
- **L/C** : Letter of credit.
- **Letter of Credit Default** : The occurrence of any of the following events as to any outstanding L/C: (i) the L/C issuer is no longer acceptable to Seller; (ii) the L/C issuer fails to comply with or perform its obligations under such L/C; (iii) the L/C issuer disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such L/C; (iv) the L/C expires or terminates, or fails or ceases to be in full force and effect at any time during the term of the Agreement or during any period when Seller requires that Buyer maintain the L/C; (v) Buyer fails to cause a renewal or replacement L/C to be delivered to Seller at least FIFTEEN (15) Working Days (or by such other date required by Seller) prior to the expiration of such L/C; or (vi) an event as described in sub-section XIII.1(a)(vi) occurs with respect to the L/C issuer.
- **Loading Terminal** : The loading port or ports and/or the delivery facilities at which the Oil is loaded or is to be loaded.
- **Loading Terminal Operator** : Any legal entity that at the time of loading is the operator of the Loading Terminal.
- **LOI** : Letter of indemnity.
- **NOR** : The Notice of Readiness submitted by the Vessel's master or its agent when the Vessel arrives at the Loading Terminal and is in all respects ready, legally and physically, to proceed to the berth and commence loading. The Vessel will be considered to have arrived at the Loading Terminal when it is at the customary berth, anchorage or fleeting area, and after the Vessel is anchored. If these conditions are not met, the NOR shall be considered invalid and the Vessel must re-tender NOR when the conditions for validity are met.
- **Oil** : Such crude oil(s), and/or condensate(s) as more particularly described in the Special Terms and Conditions and sold or nominated to be sold under the Agreement.
- **Seller** : The party specified in the Special Terms and Conditions.
- **Seller's Supplier** : Any legal entity supplying or expected by Seller to supply to Seller directly or indirectly the Oil or services necessary to deliver the Oil to Buyer.
- **Shipment** : Any specific quantity of Oil delivered or to be delivered under the Agreement as one full or part cargo lot.

- **SOLAS** : The International Convention for the Safety of Life at Sea 1974 (as amended).
- **Taxes** : Any and all foreign, federal, state and local taxes, duties, fees and charges of every description, including all excise, environmental, spill, gross earnings, gross receipts and sales and use taxes, however designated, paid or incurred with respect to the purchase, storage, exchange, use, transportation, resale, importation or handling of the Oil; provided, however, that Taxes shall not include: (i) any tax imposed on or measured by net profits, gross or net income, or gross receipts (excluding, for the avoidance of doubt, any transaction taxes such as sales, use, gross earnings or gross receipts or similar taxes that are based upon gross receipts, gross earnings or gross revenues received only from the sale of crude oil); (ii) any tax measured by capital value or net worth, whether denominated as franchise taxes, doing business taxes, capital stock taxes or the like; and (iii) business license or franchise taxes or registration fees.
- **TBN** : To be named.
- **Ton** : Metric ton or tonne. ONE THOUSAND (1,000) kilograms.
- **U.S. or United States** : Anywhere subject to the jurisdiction of the United States of America.
- **Vessel** : A tankship or barge or other vessel that is adapted for the carriage of Oil.
- **Vessel Presentation Range** : The day or range of days (or part thereof) as specified for delivery in the Special Terms and Conditions or established in accordance with the procedures set out, or referred to, in the Special Terms and Conditions or if not so specified or established, as notified by Seller to Buyer. Neither a nomination nor an ETA notice with an expected arrival date or range different from or outside the Vessel Presentation Range shall be construed to change the Vessel Presentation Range unless agreed by both parties in writing.
- **Working Day** : A day other than a Saturday or Sunday or a bank holiday in New York.
- **Worldscale** : The New Worldwide Tanker Nominal Freight Scale as current on the day of commencement of loading the Vessel in question at the Loading Terminal.

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

**II.1** The Oil shall be delivered to Buyer in bulk FOB at the Loading Terminal, onto Vessel(s) to be provided by Buyer.

Notwithstanding any right of Seller to retain the shipping documents until payment, risk and property in the Oil and all liabilities with respect thereto shall pass to Buyer when the Oil passes the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Loading Terminal.

- II.2** Notwithstanding anything elsewhere in the Agreement to the contrary, if Buyer fails to take delivery of any quantity of Oil made available for delivery, such undelivered quantity shall, at Seller's option, cease to be deliverable to Buyer under the Agreement and, in such event, the undelivered quantity shall be deducted from the total quantity of Oil to be delivered under the Agreement, without prejudice to any other rights or remedies that Seller may have against Buyer. In such case, Seller shall dispose freely of, and may sell or otherwise dispose of, such undelivered quantity of Oil at its sole and absolute discretion. The provisions of this subsection II.2 shall apply whether Buyer is to receive one, or more than one, Shipment hereunder.
- II.3** If, under the Agreement, Buyer is to receive more than one Shipment, then, unless otherwise provided for in the Agreement:
- (a) each Shipment shall constitute a separate contract; and
  - (b) such Shipments shall be evenly spread.
- II.4** No stipulation as to time of delivery, whether specified in the Special Terms and Conditions or determined or established in accordance with the procedures set out, or referred to, in the Special Terms and Conditions, shall form part of the description of the Oil deliverable hereunder and any obligation to effect or complete Shipment by such time is excluded.
- Unless otherwise specifically agreed, any delivery of Oil will be in one full or part cargo lot.
- II.5** Without limiting any other provision of the Agreement, any loss of, or damage to, the Oil occurring before, during or after the loading operations, which is caused by the Vessel, the Vessel's Owner, or Buyer or any of their respective contractors, agents or employees, shall be for the account of Buyer.
- Any claim made against Seller by Seller's Supplier or by the Loading Terminal Operator in respect of damage to any property of Seller's Supplier or any facilities at the Loading Terminal that is caused by the Vessel, the Vessel's Owner, or Buyer or their respective contractors, agents or employees shall be borne by Buyer.
- II.6** In circumstances where the Vessel is loaded prior to the Vessel Presentation Range:
- (a) Buyer shall waive any right Buyer may otherwise have as a result of such early loading; and
  - (b) if the Vessel Presentation Range falls on the first day(s) of a month, then, notwithstanding any request of the Loading Terminal Operator, in circumstances where such early loading occurs without Seller's prior written agreement, Buyer shall indemnify Seller for any market loss incurred as a result.
- II.7** Should the Loading Terminal Operator or Seller's Supplier notify Seller of any change in the scheduled lifting program as originally notified to Seller, which change would result in a change in the Vessel Presentation Range and/or cargo size in respect of any Shipment, then Seller shall promptly pass on such information to Buyer and the contractual cargo size/Vessel Presentation Range shall be deemed amended accordingly.

### **SECTION III - QUALITY**

**III.1** THERE ARE NO REPRESENTATIONS, DUTIES (WHETHER IN NEGLIGENCE OR OTHERWISE), CONDITIONS, GUARANTEES, WARRANTIES OR TERMS, EXPRESS OR IMPLIED, WHETHER IMPLIED BY STATUTE OR OTHERWISE, AS TO THE DESCRIPTION OR SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS OR SUITABILITY OF THE OIL FOR ANY PURPOSE WHATSOEVER, OR OTHERWISE RELATING TO THE QUALITY OF THE OIL, WHICH EXTEND BEYOND THE DESCRIPTION OF THE OIL APPEARING IN THE AGREEMENT.

### **SECTION IV - INVOICING AND PAYMENT**

**IV.1** The price of the Oil and the due date for payment shall be as specified in the Special Terms and Conditions.

Payment of the full amount of Seller's invoice shall be made without any discount, deduction, withholding, abatement, set-off or counterclaim in U.S. Dollars (unless otherwise specified in the Special Terms and Conditions) by wire transfer of immediately available funds ("same day funds") on or before the due date (subject to sub-sections IV.3 and IV.6) to the bank and account designated by Seller, against presentation to Buyer by means of courier, facsimile transmission and/or electronic messaging system, of an invoice and either the documents specified in Section X herein (or as otherwise specified in the Special Terms and Conditions) or an LOI, as provided for in Section X. Notwithstanding the foregoing, if transfer of Oil is made by book, stock or inventory transfer, payment shall be due on the effective date of such transfer.

**IV.2** Unless otherwise agreed, the payment of any other costs, expenses or charges that arise under the terms of the Agreement shall be made against presentation of Seller's invoice and shall be for immediate settlement by Buyer on or by the date advised thereon.

Buyer's obligation to pay shall survive the term of the Agreement and shall not be deemed fulfilled for so long as the price of the Oil and any other costs, expenses and charges have not been credited in full into Seller's bank account.

**IV.3** When the due date falls on a Saturday or on a weekday, other than a Monday, that is not a Working Day, then any such payment shall be made on the nearest preceding Working Day. When the due date falls on a Sunday or a Monday that is not a Working Day, then any such payment shall be made on the next following Working Day.

**IV.4** Any delay in effecting any payment by the due date shall entitle Seller to receive payment of interest for each day of delay at an annual rate (based on a 360-day year) equal to TWO (2) percentage points above the prime rate of interest effective for the payment due date as published in *The Wall Street Journal* under "Money Rates," such interest being in no circumstances to be construed as an agreement by Seller to provide extended credit, and is in addition to any other rights of Seller arising out of such delay.

In addition to any other rights of Seller, all expenses incurred by Seller, including but not limited to reasonable legal fees, court costs and collection agency fees, caused by delayed payment or non-payment by Buyer of the full amount of Seller's invoice for each Shipment shall be for the account of Buyer and payable upon demand with supporting documentation.

- IV.5** Where the pricing or quantity information available to Seller does not allow for the preparation of a final invoice, Seller may issue a provisional invoice, against which Buyer shall make payment. The provisional price or quantity shall, unless otherwise agreed between the parties, be based upon the pricing or quantity information available to Seller at the time it issues such provisional invoice. Payment of any balance due by either party shall be made immediately upon receipt of Seller's final invoice, which shall be prepared as soon as practicable after all the relevant information becomes available to Seller.
- IV.6** If security for payment by means of an irrevocable standby L/C is not already provided for in the Special Terms and Conditions, Seller shall be entitled at any time before the due date to demand payment to be secured by an irrevocable standby L/C or by payment in advance notwithstanding the method of payment as described in the Special Terms and Conditions. Nothing in this sub-section IV.6 shall relieve Buyer of its obligation to pay the total price of each Shipment as and when due under the Agreement.
- IV.7** When, under the Agreement, or as a consequence of the provisions of sub-section IV.6, payment is to be made by means of an irrevocable standby L/C, the following provisions shall apply unless otherwise specified in the Special Terms and Conditions:
- (a) the L/C shall be issued and/or confirmed by a bank and in a format both of which must be acceptable to Seller, not later than TEN (10) days prior to the first day of the Vessel Presentation Range, or on such other date and at such time as Seller may in writing require;
  - (b) all fees, commissions, costs and expenses incurred with respect to such payment or L/C shall be borne by Buyer;
  - (c) the L/C shall cover the value of the Shipment at the contract price (including, if applicable, any Taxes or duty) plus TEN (10) per cent and shall at all times be valid for shipment at least THREE (3) days before the Vessel Presentation Range and SEVEN (7) Working Days after the payment due date;
 

If at the time of executing the L/C the price of the Shipment is not fixed, the L/C shall be opened with sufficient value to cover the aggregate contractual volume plus TEN (10) per cent times the estimated price calculated in accordance with sub-section IV.5. If, after the price of a Shipment is fixed, the value of the L/C is not sufficient to cover the aggregate contractual volume plus TEN (10) per cent times the aggregate price, then Seller may request that Buyer amend the L/C with sufficient value not later than the next Working Day following the date on which Seller requests the amended L/C.
  - (d) if for any reason the loading will not take place within the period for such loading referred to in the L/C, Buyer shall either obtain an extension of such period or provide a new L/C in terms acceptable to Seller; and
  - (e) no term of the L/C (nor any agreed amendment thereto) shall amend, alter, add to, or in any way affect the terms of the Agreement (or any of them) unless Seller and Buyer expressly agree in writing to amend the Agreement accordingly.
- IV.8** It is a condition of the Agreement that Buyer complies with its payment obligations under the Agreement (including any obligation to provide security or a payment undertaking in the form specified by Seller as well as any and all obligations under this Section IV) within the time prescribed by Seller and/or by the Agreement. Any failure either in whole or in part by Buyer to comply with any such obligation shall be a breach of condition.



In addition to any other remedies that may be available to Seller, on the occurrence of such breach and for so long as such breach is continuing:

- (a) if the Oil has been delivered on board Buyer's Vessel, then, at Seller's option exercisable at any time by written notice of Seller to Buyer, title, but not risk, in the Oil shall revert to and/or remain with Seller and Buyer undertakes at its own cost to order the discharge of the Vessel exclusively to a party notified to Buyer by Seller; and
- (b) in all cases, Seller may at any time by notice to Buyer, without prejudice to any other legal remedies Seller may have and without any liability whatsoever for any cost, loss or damage (including liabilities to third parties) incurred by Buyer, forthwith:
  - (i) cancel delivery of all or any Shipments; or
  - (ii) without prejudice to any other rights of Seller, withhold delivery of Oil under the Agreement and/or release of shipping documents or LOI.

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

**IV. 9** Seller may, in its sole discretion and upon notice to Buyer or its Credit Support Provider, if any, require that Buyer or its Credit Support Provider provide it with Adequate Assurance of Buyer's or its Credit Support Provider's ability to perform any of its obligations under the Agreement, under any guaranty or any credit support agreement, respectively, in an amount determined by Seller in a commercially reasonable manner. Unless Seller specifies a different time period, Buyer or its Credit Support Provider shall furnish Adequate Assurance within TWO (2) Working Days following receipt of Seller's written demand. If the security is cash, then Buyer shall deliver the cash to Seller as a deposit, which shall become the property of Seller once delivered.

**IV.10** Subject to prior mutual agreement and the provisions of this Section IV, the parties may agree to net the invoice or invoices resulting from the Agreement with invoices resulting from other contracts between the parties for amounts due to each other on the same date. Prior to the due date, the parties shall confirm the invoice amounts and the amount remaining, if any, after netout. Any remaining balance shall be paid by the party owing such amount to the other party on the date the gross amounts are due. Any such netout shall be effective upon receipt of the balance due after netout to the party owed such balance. The parties expressly agree that netting of invoices shall strictly apply only to the amounts due from the sale and purchase of commodities between the parties. Netting of other invoices, including but not limited to quality and demurrage claims, is strictly prohibited unless such netting is expressly set forth in the Agreement or otherwise agreed in writing.

## **SECTION V - DESTINATION AND IMPORTER/EXPORTER OF RECORD**

**V.1** Buyer undertakes, and it is a condition of the Agreement, that the Oil shall not:

- (a) be shipped directly or indirectly through; or

- (b) be disposed of, directly or indirectly and irrespective of means, by way of resale, exchange, loan or other arrangement for the supply of the Oil to any buyer and/or receiver in,

any country that is subject to a prohibition by the governmental authorities of the country in which the Oil has been produced or loaded or to any country or government to which such shipment or disposal would constitute a violation of U.S. law applicable to Seller or Buyer.

If Buyer is, or is likely to be, prevented by any law, policy, demand or request to which Buyer is subject or any governmental policy, demand or request by which Buyer is bound, from complying with the above, Seller and Buyer shall meet and discuss the implications for Buyer and Seller and, pending resolution of any difficulty that such event causes or is likely to cause, Seller may at its discretion suspend in whole or in part supplies hereunder.

At any time, Seller may require Buyer to provide any relevant documents for the purpose of verifying the final destination of the Oil, and Buyer undertakes to provide such documents upon request.

**V.2** Buyer undertakes that the Oil deliverable hereunder shall not:

- (a) be shipped on any Vessel that: (i) appears on the List of Specially Designated Nationals and Blocked Persons published by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), as such list may be amended from time to time (the "**SDN List**"); (ii) is owned, operated, chartered (by or to), or controlled, directly or indirectly, by any entity or person appearing on the SDN List; (iii) is beneficially owned or controlled by any person or entity that appears on the SDN List; (iv) is registered in or flagged by any country that is a Restricted Jurisdiction (as defined below); or (v) is owned, operated, controlled by or acting or purporting to act for and on behalf of, directly or indirectly, a targeted country, person or entity within a Restricted Jurisdiction;
- (b) be exported to any Restricted Jurisdiction (as defined below);
- (c) be sold or supplied to any natural or legal person in any Restricted Jurisdiction; or
- (d) be sold or supplied to any natural or legal person or entity for the purpose of any commercial activity carried out in or from any such Restricted Jurisdiction.

For the purposes of this sub-section V.2, "**Restricted Jurisdiction**" shall mean any country, state, territory or region against which there are economic sanctions imposed by the United Nations or the United States, and any other economic sanctions to which Seller or the performance of the Agreement is subject as may be specified in the Special Terms and Conditions.

**V.3** Should Buyer be in breach of any provisions of this Section V, Seller may at any time thereafter immediately terminate the Agreement, without being liable for any indemnity to Buyer.

Moreover, Buyer agrees to hold Seller harmless from, and indemnify Seller for, any losses, costs, damages, fines and/or penalties incurred by Seller resulting from any such breach.

## SECTION VI - VESSEL

**VI.1** Unless otherwise specified in the Special Terms and Conditions, for each Vessel, Buyer shall notify Seller in writing no later than TEN (10) days prior to the first day of the Vessel Presentation Range (or such earlier date as may be prescribed in the procedure in force at the Loading Terminal) of the following (the “**Loading Information**”):

- (a) the expected date of Vessel’s arrival at the Loading Terminal;
- (b) the quantity and grade of the Oil to be loaded and details of the cargo on board or to be co-loaded if the Vessel is to load a part cargo;
- (c) the Vessel’s name and pertinent characteristics in compliance with sub-section VI.3 below; when notifying under this sub-section VI.1, Buyer may mention “TBN” in place of the Vessel’s name; in such a case, unless otherwise agreed, the Vessel’s name and pertinent characteristics shall be given by Buyer to Seller no later than:
  - (i) the date specified in the Special Terms and Conditions; or
  - (ii) FIVE (5) days prior to the first day of the Vessel Presentation Range (or such earlier date as may be prescribed in the procedure in force at the Loading Terminal);

whichever is the earlier;

- (d) the port(s) of discharge and country(ies) of destination;
- (e) the instructions needed by Seller to issue documents in accordance with regulations, including but not limited to any export regulations in force; and
- (f) the charter party demurrage rate of the performing Vessel, unless the Loading Information mentions “TBN”, in which case such rate shall be notified to Seller upon Buyer making the Vessel’s nomination.

If Buyer fails to notify the Loading Information in compliance with the notice period as specified above, Seller shall use reasonable efforts to obtain acceptance of such late notification (and of Vessel’s nomination referred to in sub-section VI.3 below) by the Loading Terminal or Seller’s Supplier. Notwithstanding the above, Buyer shall be liable for all costs resulting from any delays in loading the Oil under the Agreement due to failure by Buyer to supply the Loading Information in a timely manner, and any such delays shall not count as used laytime, or if the Vessel is on demurrage, as demurrage.

**VI.2** Buyer may, or if necessary to perform its obligations hereunder must, nominate as a substitute for the Vessel previously nominated and/or agreed, another Vessel whose size and capacity are equivalent to those of the Vessel originally nominated or agreed.

The loading quantity and the Vessel Presentation Range in respect of the Vessel originally nominated or agreed shall apply to the substitute Vessel.

**VI.3** Each Vessel which is to load Oil under the Agreement (including, for the avoidance of doubt, any substituted Vessel) shall be nominated in writing by Buyer to Seller (the “**Vessel’s Nomination**”), such nomination to include the Vessel’s name and pertinent characteristics,

including but not limited to the Vessel's flag, date built, IMO number, length overall, beam, draught and summer deadweight. Each Vessel's Nomination shall be subject to Seller's acceptance. Unless otherwise specified in the Special Terms and Conditions, Seller shall notify Buyer no later than TWO (2) Working Days after receipt of the Vessel's Nomination whether Seller accepts or refuses such nomination; Seller's acceptance not to be unreasonably withheld. In case of rejection, Buyer shall promptly nominate to Seller an alternative Vessel for Seller's prompt acceptance or rejection. The acceptance of the Vessel's Nomination shall not entail acceptance of the demurrage rate indicated by Buyer and shall be without prejudice to the provisions of sub-sections VI.4 and VI.5.

Notwithstanding any prior acceptance of the Vessel, Seller shall have the right to reject the Vessel: (i) if the Loading Terminal or Seller's supplier rejects the Vessel; (ii) on any reasonable ground if the Vessel is involved in any incident or more recent information regarding the Vessel becomes available to Seller at any time after such prior acceptance; or (iii) upon failure of the Vessel's safety or environmental systems. In case of rejection, Buyer shall not, unless otherwise agreed, be relieved of its responsibility to perform its obligations.

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

- VI.4** Buyer confirms that (for each Vessel nominated to load a Shipment) it is familiar with the latest vessel size limitations/restrictions, including but not limited to deadweight, draught, beam, overall length and any other vessel limitations/restrictions in force at the Loading Terminal at the time of delivery, and Buyer is solely responsible to ensure that the Vessel will not exceed, or otherwise fail to comply with, such limitations/restrictions.
- VI.5** All applicable governmental, local and port authority laws and/or regulations, Seller's, Seller Supplier's and/or Loading Terminal Operator's regulations, procedures and any other requirement of any nature whatsoever in force at the Loading Terminal at the time of delivery shall apply to Buyer's Vessel (including for determining at what time and date any NOR tendered by the master or his representative is effective).
- VI.6** For each Vessel specified in, or nominated under, the Agreement:
- (a) Buyer warrants that the Vessel is owned or demise chartered (throughout the entire period of the voyage to and from the Loading Terminal and up to discharge of the Oil at the discharge port(s)) by a member of the International Tanker Owners Pollution Federation Limited (ITOPF).
  - (b) Where Loading Terminal is in the United States, Buyer warrants that the Vessel fully complies or holds necessary waivers with all applicable U.S. Coast Guard regulations in effect as of the date Vessel gives NOR. Any delay resulting from the Vessel's non-compliance shall not count as used laytime or as time on demurrage, even if already on demurrage.
  - (c) Buyer warrants that the Vessel complies with all local, state, and federal environmental laws and regulations while berthed at the Loading Terminal or in the vicinity of the

Loading Terminal. If the Vessel fails to comply with such laws and regulations, the Vessel may be required to leave the Loading Terminal at the Vessel's expense. Any delay caused by the Vessel's failure to meet such laws and regulations shall not count as used laytime or as time on demurrage, even if already on demurrage.

Buyer is responsible for providing safety equipment to the crew of the Vessel when the Oil is high in sulfur content (ten parts per million or more) or is otherwise dangerous to health.

Buyer warrants that in the event that the Vessel is equipped with a vapor recovery system, the entire vapor system including piping and cargo compartments shall be free of rust scale and particulate matter. Any delays and costs associated with collection of particulate matter in the terminal's vapor control system shall be for Buyer's account. Seller may reject any Vessel that is not free of particulate matter in the vapor system.

- (d) Where Loading Terminal is in the United States, Buyer warrants that the Vessel complies with the U.S. Federal Water Pollution Control Act, as amended and the Oil Pollution Act of 1990, and has secured and carries onboard the Vessel a current U.S. Coast Guard Certificate of Financial Responsibility (Water Pollution). The Vessel shall also have onboard any other Federal and/or State proof of financial responsibility certificate that may be required at locations where the Oil is to be loaded or discharged. All expenses, losses and delays incurred to obtain or maintain certificates shall be for the account of Buyer and any delay resulting from failure to obtain or maintain the certificate shall not count as used laytime or as time on demurrage, even if already on demurrage.
- (e) In the event an escape or discharge of Oil occurs from the Vessel and causes or threatens to cause pollution damage, Buyer shall promptly notify Seller and all appropriate governmental authorities and shall procure that Vessel shall promptly take whatever measures are necessary to prevent or mitigate such damage, keeping Seller and all appropriate governmental authorities apprised of all such measures as promptly as possible. Should Buyer's receiver or the shore installations require Vessel to undertake measures that are reasonably necessary to prevent or mitigate the pollution damage, Buyer shall ensure that Vessel undertakes such measures. Should Vessel fail to do so and Buyer's receiver or the shore installations take said measures, Buyers shall indemnify Seller should costs be claimed against Seller. This provision shall not affect any liability of the Vessel to Seller or to third parties, including but not limited to governments. **THIS PROVISION IS NOT INTENDED TO, AND DOES NOT, EXPAND THE RIGHTS AND OBLIGATIONS OF EITHER PARTY UNDER APPLICABLE LAW AGAINST OR TO THE OTHER PARTY IN CONNECTION WITH LIABILITY FOR COSTS, DAMAGES, FINES AND PENALTIES ARISING FROM OR IN CONNECTION WITH ENVIRONMENTAL POLLUTION.**
- (f) Buyer warrants that the Vessel has a policy on drug and alcohol abuse ("Policy") applicable to the Vessel that meets or exceeds the standards in the Oil Companies International Marine Forum (OCIMF) Guidelines for Control of Drugs and Alcohol Onboard Ship, dated June 1995. Buyer further warrants that this Policy will remain in effect throughout the life of the Agreement and that the Vessel shall exercise due diligence to ensure that the policy is complied with.

- (g) All Vessels fitted with an Inert Gas System (“IGS”), regardless of Oil aboard or Oil to be loaded, will not be permitted to berth unless the IGS is fully operational and all Oil tanks are inerted with an oxygen level at or below EIGHT (8) per cent. Vessels intending to handle products or chemicals that could be adversely affected by inert gas, in circumstances where such products or chemicals do not require inert gas blanketing, should request an exemption from this clause at least THREE (3) Working Days prior to entering the Loading Terminal. For Vessels engaged in crude oil trade operations, positive inert gas pressure shall be maintained on all Oil and slop tanks throughout the transfer and any Crude Oil Washing (“COW”) operation. If required and if agreed by the Loading Terminal, manual gauging/sampling of Onboard Quantity or Remaining on Board may be accomplished per American Petroleum Institute (“API”) in the Manual of Petroleum Measurement Standards (“MPMS”) Chapter 17.2 and all applicable API bulletins and standard publications, and applicable International Safety Guide for Oil Tankers and Terminals guidelines. Should the IGS fail after the Vessel has berthed, the Oil transfer operation or COW shall be terminated immediately and the Vessel may be ordered to clear the berth until the IGS is fully operational and tanks are inerted to the pre-arrival condition. The use of temporary or substitute equipment or procedures to correct IGS malfunctions must be accepted by the Loading Terminal prior to readmittance to the Loading Terminal, or for continuation of Vessel loading/discharging at the Loading Terminal. Any Vessel time lost as a result of the Vessel not complying with all of the provisions in this Section VI and any time associated with Vessel movement for IGS repair shall not count as used laytime or as time on demurrage and all related costs shall be for Buyer’s account.
- (h) If Vessel is equipped to crude oil wash (“COW”), Buyer warrants that the Vessel complies with all international, national and local requirements applicable to COW. The Vessel must inform Seller of its intention to COW at least FORTY-EIGHT (48) hours prior to berthing. The number of tanks to be crude oil washed shall be limited to the minimum required by applicable law, unless Seller agrees or orders otherwise. In the event COW operations occur at Seller’s request, the maximum warranted pumping time shall be increased by SIX (6) hours if all cargo tanks are crude oil washed, or by the pro rated portion thereof if fewer than all cargo tanks are crude oil washed.
- (i) All flanges, fittings, spool pieces and/or reducers must be of steel construction.
- (j) Where Loading Terminal is in the United States, Buyer warrants that the bill of lading issuer shall have a standard carrier alpha code required by the U.S. Customs Regulations (19 C.F.R. Part 4), and that the master of the Vessel will, before issuance, place on each set of bills of lading a unique identifier code, and otherwise fully comply with the foregoing regulations. Any delay, expense or other consequence of any failure to comply with the subject regulations shall be for Buyer’s sole account. It is further expressly understood that no delay or other difficulty in performing the Agreement by Buyer that is caused by a failure to comply with said Regulations shall be considered to be due to Force Majeure or to any cause beyond the control of Buyer.
- (k) Buyer shall exercise reasonable efforts to ensure that:
- (i) the Vessel carries on board a valid certificate of insurance as described in the International Convention on Civil Liability for Oil Pollution Damage (“CLC”), 1969 or, if in force, the 1992 Protocol thereto, as amended;
  - (ii) the Vessel is entered in and shall remain throughout the entire period of the voyage to and from the Loading Terminal and up to discharge of the Oil at the

discharge port(s), in a P&I Club that is a member of the International Group of P&I Clubs;

- (iii) the Vessel and/or inland barge has in place (throughout the entire period of the voyage to and from the Loading Terminal and up to discharge of the Oil at the discharge port(s)) insurance cover for oil pollution in an amount of no less than the highest standard oil pollution cover available under the rules of the International Group of P&I Clubs;
  - (iv) if requested to do so at any time prior to delivery, Buyer shall promptly furnish to Seller reasonable evidence of the foregoing requirements. Buyer shall notify Seller immediately of any change or threatened change in the foregoing requirements. The foregoing obligations of Buyer are an essential part of the Agreement. The obligations of Seller under the Agreement are conditioned on such insurance obligations. Any breach of such insurance obligations shall entitle Seller to terminate the relevant Shipment without limiting its right to recover damages; and
  - (v) the Vessel shall comply with the requirements of the International Safety Management (“**ISM**”) Code and has on board a valid ISM Code Safety Management Certificate for the Vessel and a copy of the Vessel Manager’s Document of Compliance as required by the ISM Code and SOLAS.
- (l) Buyer shall procure that:
- (i) the Vessel shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities (“**ISPS Code**”) and the relevant amendments to chapter XI of SOLAS or, if the Loading Terminal is located within the United States, with the U.S. Maritime Transportation Security Act 2002 (“**MTSA**”) and shall have on board a valid International Ship Security Certificate as well as any other required valid certificates and documents, issued pursuant to the ISPS Code as well as, if applicable, the MTSA; and
  - (ii) the Vessel shall when required submit a declaration of security to the appropriate authorities prior to arrival at the Loading Terminal.

**VI.7** Notwithstanding any prior acceptance of the Vessel by Seller and notwithstanding anything to the contrary express or implied in this Section VI or in Sections VII and VIII, if at any time the Vessel fails to comply with any of the requirements set out in sub-sections VI.5 and VI.6 above, then: (i) Seller or Seller’s Supplier may at any time refuse to berth or load or continue to load the Vessel and all time lost or spent as a result thereof shall not count as used laytime, or if the Vessel is on demurrage, as demurrage; (ii) Buyer shall be deemed not to have complied with sub-section VII.2 below; and (iii) Buyer shall be obliged to substitute the Vessel with a Vessel whose size and capacity are equivalent to those of the Vessel originally nominated and complying with such requirements. Any resulting delay or expenses shall be for Buyer’s account (including but not limited to any time lost or demurrage incurred in respect of Buyer’s Vessel and any demurrage incurred by Seller or Seller’s Supplier in respect of other Vessels waiting at the Loading Terminal).

**VI.8** Seller shall procure that the Loading Terminal shall comply with the requirements of the ISPS Code and, if the Loading Terminal is in the United States, with the MTSA.

Any costs or expenses in respect of the Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at the Loading Terminal and actually incurred by Buyer

resulting directly from the failure of the Loading Terminal to comply with the ISPS Code or the MTSA (if applicable), shall be for the account of Seller, including but not limited to the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS Code or the MTSA.

Save where the Vessel has failed to comply with the requirements of the ISPS Code or the MTSA (if applicable), Seller shall be responsible for any demurrage actually incurred by Buyer arising from delay to the Vessel at the Loading Terminal resulting directly from the Vessel being required by the Loading Terminal Operator, the port authority or any relevant authority to take any action or any special or additional security measures or undergo additional inspections by virtue of the Vessel's previous ports of call.

Seller's liability to Buyer under the Agreement for any costs, losses or expenses incurred by the Vessel, the charterers or the Vessel owners resulting from the failure of the Loading Terminal to comply with the ISPS Code or the MTSA (if applicable) shall be limited to the payment of demurrage and costs actually incurred by Buyer in accordance with the provisions of this sub-section VI.8.

- VI.9** If the date of the Agreement is later than any of the dates for notification specified in the Special Terms and Conditions or this Section VI, then both parties shall use best efforts to complete within ONE (1) Working Day of the date of the Agreement all procedures that would have preceded the date of the Agreement aforesaid.

## **SECTION VII - ARRIVAL AND LOADING OF VESSEL AT THE LOADING TERMINAL**

- VII.1** Buyer shall cause the Loading Terminal Operator (with a copy to Seller) to be advised of the ETA of the Vessel at the Loading Terminal at least SEVENTY-TWO (72), FORTY-EIGHT (48), and TWENTY-FOUR (24) hours before arrival, or as otherwise required by the rules and regulations applicable at the Loading Terminal.

Failure to give each or any one of the above ETAs shall increase the laytime allowed to Seller under the Agreement by the number of hours by which the actual notice is less than the required notice, but the total increase in laytime shall not exceed TWENTY-FOUR (24) hours.

- VII.2** Buyer shall ensure that the Vessel shall, within the Vessel Presentation Range and within any time limit prescribed in the regulations, procedures and requirements referred to in sub-sections VI.5 and VI.6 above: (i) arrive at the Loading Terminal, complete formalities and in all respects be ready to load the Shipment; and (ii) tender an effective NOR.

- VII.3** Subject to compliance by Buyer and its nominated Vessel with all other requirements (including but not limited to characteristics, dimensions and draught) of the Loading Terminal at the time in question, the loading berth indicated by Seller or its representative shall enable that Vessel to proceed thereto, lie thereat, load the Oil and depart therefrom, always safely afloat.

Seller may require the Vessel to shift berth, in which case the costs of shifting berth shall be for the account of Seller and the shifting time shall be counted as used laytime or as demurrage if the Vessel is on demurrage. Otherwise, any shifting costs and/or time shall be for the account of Buyer.

- VII.4** Seller may order the Vessel to vacate its berth if it appears that the Vessel will not, because of the Vessel's disability, be able to complete loading of cargo within THIRTY-SIX 36 hours (or such shorter period as may be provided in the Special Terms and Conditions) of Vessel's



arrival in berth. Seller retains the right to order the Vessel to vacate its berth in order to prevent damage to the Vessel or Seller's berth due to weather-related events, or any event or circumstance that Seller, in its sole opinion, determines to be a safety or environmental hazard. All expenses, losses and delays incurred between disconnection of the hoses until reconnection of hoses shall be for the account of Buyer and any delay relating thereto shall not count as used laytime or as time on demurrage, even if already on demurrage.

- VII.5** If the Loading Terminal has ballast water and/or slops facilities, the Vessel may discharge ballast water and/or cargo slops up to the maximum capacity available. All time used during ballasting, deballasting or offloading slop, and any charges for such services, shall be for Buyer's account. Any time lost by delay in furnishing such facilities shall be for Buyer's account. Any delay relating to shifting to and/or from such facilities shall not count as used laytime or as time on demurrage, even if already on demurrage, and the shifting expenses such as costs for tugs, mooring and pilots shall be for the account of Buyer.
- VII.6** Seller shall be notified at least THREE (3) Working Days in advance of discharge of foreign cargo slops when a Vessel desires to discharge foreign cargo slops. Such notification shall include the following information regarding the foreign cargo slops: identity, description or chemical properties of components, country of origin, estimated value and estimated quantity. All expenses, including customs fees, expenses associated with the clearing of foreign cargo slops through U.S. Customs and Border Protection, the testing of the cargo slops, and the removal and proper disposal of the cargo slops shall be for the account of Buyer.
- VII.7** In the event there is Vessel-generated waste, fees associated with the testing, removal or reception of Vessel-generated waste, including fuel and lube oil sludge and oil bilge water, shall be for Buyer's account. Any delay in furnishing reception facilities at a terminal for Vessel-generated waste shall be for Buyer's account. If the Vessel must shift to or from such facilities, time consumed by the Vessel shifting shall not count as used laytime or as time on demurrage, even if already on demurrage, and shifting expenses such as for tugs, mooring and pilots shall be for the account of Buyer. Buyer shall retain title to the waste material until it is tested and commingled with terminal waste or, alternatively, delivered to a waste disposal company possessing a valid permit.
- VII.8** Seller may, at its option, place Pollution Control Representatives ("PCRs") on board the Vessel to observe loading of cargo and related operations during the period that the Vessel is at the Loading Terminal. In addition, either party may, at its option, place a PCR on any Vessel involved in a lightering, topping-off or other ship-to-ship loading operations. PCRs will advise each Vessel master or mooring master about avoidance of pollution, unsafe acts or violations of terminal regulations. However, the PCRs are not authorized to and shall not, under any circumstances, order or direct the undertaking of any particular action or interfere in any way with the master's exercise of authority. The responsibility and liability for any pollution, unsafe act or violation of terminal regulations remains solely with Buyer, the Vessel and its master.
- VII.9** All taxes, duties, imposts, fees, charges and dues (including, without limitation, pilotage, mooring, towage expenses and quay dues) in respect of the Vessel incurred at the Loading Terminal shall be for the account of Buyer.

Buyer shall likewise assume and be responsible for payment of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or port authority on, or applicable, attributable or related to the Oil or its export, delivery,

transportation, ownership, sale or use, in respect of any stage after the risk in such Oil has passed to Buyer and the amount of the same shall be for the account of Buyer.

**VII.10** Subject to Buyer complying with the provisions of sub-section VII.2 above, Seller, having regard to the regulations, procedures and requirements referred to in sub-sections VI.5 and VI.6 above and the time when Buyer complied with the provisions of sub-sections VII.1 and VII.2 above, shall commence loading as soon as reasonably practicable, even if this means that loading is effected or completed outside the Vessel Presentation Range or outside any other period specified in the Special Terms and Conditions.

**VII.11** Notwithstanding anything elsewhere in the Agreement to the contrary and in addition to any other rights of Seller, in the event of:

- (a) any breach by Buyer of the obligations set out in Section VI or sub-section VII.2 above; or
- (b) any withdrawal of a Vessel already scheduled and accepted; or
- (c) Seller's availability of the Oil being lost or curtailed due to any breach of Buyer's contractual obligations;

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

## **SECTION VIII - LAYTIME AND DEMURRAGE**

**VIII.1** Seller shall be allowed as laytime at each Loading Terminal THIRTY-SIX (36) running hours full or part cargo, Sundays, holidays and nights included, unless loading on Sundays, holidays or during the night is prohibited by the laws, regulations or procedures in force at the Loading Terminal.

Allowed laytime shall be increased:

- (a) in accordance with the provisions of sub-section VII.1; and
- (b) by an additional FOUR (4) hours for each additional grade of Oil loaded by Seller on the Vessel at the same berth, subject to other conditions in force at the Loading Terminal.

**VIII.2** Subject to the regulations, procedures and requirements referred to in sub-sections VI.5 and VI.6 above and strict compliance by Buyer and Vessel with all provisions of the Agreement, laytime shall start running:

- (a) If effective NOR is tendered within the Vessel Presentation Range:
  - (i) SIX (6) hours after NOR is tendered; or

- (ii) upon commencement of loading if loading has commenced before the expiration of the SIX (6)-hour period.
- (b) If effective NOR is tendered before the beginning of the Vessel Presentation Range:
  - (i) at 6:00 a.m. local time on the first day of the Vessel Presentation Range; or
  - (ii) upon commencement of loading;
 whichever occurs first.
- (c) If Vessel is loaded at a public dock or terminal, when the Vessel is all fast.

Without prejudice to any other rights of Seller under the Agreement, if the NOR is tendered or is effective (by application of the regulations, procedures and requirements referred to in sub-sections VI.5 and VI.6 above) after the last day of the Vessel Presentation Range, then Seller shall be under no obligation to supply the Oil that would have been loaded on Buyer's Vessel unless Seller specifically agrees to do so, in which case laytime shall begin upon commencement of loading.

**VIII.3** Laytime or time on demurrage shall end on disconnection of loading hoses after completion of loading.

The Vessel shall vacate her loading berth as soon as loading hoses have been disconnected after completion of loading. In the event of failure to do so, Buyer shall pay Seller for any resultant demurrage, losses, damages, costs and/or expenses that Seller may incur including, without limitation, any demurrage as may be incurred by Seller or Seller's Supplier due to resulting delay to other vessels awaiting their turn to load.

**VIII.4** Any time spent and/or lost due to any of the following events shall not count as used laytime or, if on demurrage, as demurrage:

- (a) the inward passage to the loading berth;
- (b) any delay in the Vessel reaching or clearing her berth that is caused by reasons beyond Seller's control;
- (c) awaiting tide, tugboats, pilot or daylight;
- (d) delay caused by the Vessel, including, without limitation, delay due to the inability of the Vessel to safely load the Shipment within the time allowed;
- (e) Buyer, owner, charterer or master of the Vessel or any government, local or port authorities at the Loading Terminal prohibiting loading at any time;
- (f) delay on account of weather or sea conditions or strike;
- (g) awaiting customs, immigration clearance, pratique or other local administrative requirements;
- (h) cleaning, inerting or inspecting the Vessel's cargo tanks, pumps or pipelines;

- (i) delay due to the priority given to another Vessel loading at the Loading Terminal for local market requirements;
- (j) delays due to the Vessel's failure to have the required certificate of financial responsibility (subject to sub-section VI.6(d)), or failure to be in compliance with U.S. Coast Guard regulations or other port state regulations (or hold the necessary waiver if not in compliance), or failure to have any other required documentation;
- (k) due to the Vessel requiring separate and/or additional shore tank gauges for any reason or the Vessel's failure to comply with terminal regulations, or interruption of transfer operations as a result of Buyer's requests for line fill checks by comparing intermediate ship and shore gauges;
- (l) as a result of a boycott arising in connection with the business of the Vessel or Buyer, the terms or conditions of employment of the Vessel's crew or agents, employment, trades, or cargoes of the Vessel;
- (m) due to restraint or interference in the Vessel's operation by any governmental authority in connection with the ownership, registration, or obligations of Buyer or the Vessel, or in connection with stowaways or with smuggling or other prohibited activities of the Vessel's crew or agents;
- (n) due to cargo contamination or damage caused by unseaworthiness of the Vessel or negligence of the Vessel or the Vessel's crew or agents; or
- (o) due to Vessel's unclean tanks, or inability to maintain heating or pumping warranties, or the need for Vessel repairs.

**VIII.5** Seller shall pay to Buyer demurrage per running hour and pro rata for a part thereof for all time used in excess of the allowed laytime as provided for in the Agreement.

Unless a demurrage rate is specified in the Special Terms and Conditions, the applicable demurrage rate shall be determined as follows:

- (a) Where the Shipment actually loaded on board the Vessel constitutes a full cargo for the loading Vessel, demurrage shall be calculated at the lesser of:
  - (i) the demurrage rate per day provided for in the charter party entered into for the loading Vessel; or
  - (ii) the demurrage rate per day, as published in Worldscale and corrected by AFRA, which applies for a Vessel of the same type, size and capacity.

The demurrage rate referred to in the above paragraph (ii) of this sub-section VIII.5(a) shall be used when the Vessel is owned, demise chartered or time chartered by Buyer.

- (b) Where the Shipment actually loaded on board the Vessel does not constitute a full cargo for the loading Vessel, demurrage shall be calculated at the lesser of:

- (i) the demurrage rate per day provided for in the charter party (or overtime rate/additional freight rate if a contract of affreightment) entered into for the loading Vessel; or
- (ii) the demurrage rate per day, as published in Worldscale and corrected by AFRA, which applies for a Vessel of the same type with a size and capacity equivalent to a summer deadweight equal to the weight of the Shipment plus FIVE (5) per cent.

The demurrage rate referred to in the above paragraph (ii) of this sub-section VIII.5(b) shall be used when the Vessel is owned, demise chartered or time chartered by Buyer.

If the Shipment is co-loaded with crude oil being delivered to Buyer by another supplier at the same berth or berths, Seller shall be liable only for that proportion of the demurrage equal to the ratio of the volume delivered by Seller to the total volume loaded onto the Vessel at the concerned berth(s).

- VIII. 6** (a) The right of Buyer to demurrage in accordance with the provisions of the Agreement shall constitute Buyer's sole remedy in respect of any failure of Seller to provide a berth, as provided for under the Agreement, and/or complete the loading within the allowed laytime, and Seller shall not be liable for any other direct or indirect costs, damages and/or losses whatsoever.

Notwithstanding any other provision of this Section VIII, time shall not count as used laytime, or if the Vessel is on demurrage, as demurrage, in the following events:

- (i) if Seller is prevented from, or delayed in, delivering all or part of the Oil by any reason as provided for in Section XII;
  - (ii) if delay in loading is occasioned by Buyer's failure to timely comply with the provisions of Section IV and all other requirements regarding payment under the Agreement; or
  - (iii) if Seller has the right or option under any other provisions of the Agreement not to load or to cease or suspend loading the Vessel.
- (b) Any demurrage claim must be notified to Seller in writing within NINETY (90) days from the date of the bill of lading, with full supporting documentation (including, but not exclusively, invoice and time computation, NOR, Vessel's port log, statement of facts, evidence of nomination and charter party rate), together with any other documentation that Seller may reasonably require. Should Buyer fail to give such notice or provide such documentation within the above respective time limits, then Buyer's claim shall be deemed to have been waived and any liability of Seller for demurrage shall be extinguished.
- (c) Buyer shall not be entitled to recover demurrage from Seller except to the extent that Seller is able to recover, and does recover, such demurrage from Seller's Supplier, and Seller shall not be obligated to pay any amount in excess thereof. Seller shall use reasonable endeavors to recover demurrage from Seller's Supplier for which Buyer has presented a claim in accordance with the Agreement.

- (d) In no event shall Seller pay any amount in respect of demurrage in excess of that amount actually paid by Buyer in respect of the Vessel's voyage and that relates to the Oil delivered by Seller. Buyer shall provide Seller with supporting documentation evidencing the amount actually paid by Buyer.

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

- IX.1** The quantity and quality of the Oil delivered under the Agreement shall be determined for each Shipment in accordance with the standard practice in use at the Loading Terminal at the time of loading save if otherwise provided for specifically in the Special Terms and Conditions. For invoicing purposes, all volumes shall be net volumes with full deduction for all base sediment and water, and free water content shall be made according to the API/ASTM Standard Method then in effect. The quantity shall be adjusted to SIXTY (60) degrees Fahrenheit using the appropriate tables.
- IX.2** The quantity of Oil determined pursuant to sub-section IX.1 above (or, where applicable, the Special Terms and Conditions) shall be inserted in the certificate of quantity and bill of lading for the cargo as per the standard practice in use at the Loading Terminal at the time of loading and that quantity shall be used to calculate Seller's invoice.
- IX.3** Where the Special Terms and Conditions provide for the appointment of an independent inspector at the Loading Terminal, the quantity and/or the quality of the Oil as ascertained or witnessed by such independent inspector shall, except in case of fraud or manifest error, be final and binding on both parties. Unless otherwise provided for in the Special Terms and Conditions, the cost of services of the inspector shall be borne equally by both parties.
- IX.4** In no event shall Seller be liable: (i) for the first ZERO POINT FIVE (0.5) per cent short delivery of the invoice quantity; and/or (ii) for any claim regarding the quantity and/or quality of any Shipment, unless such claim has been submitted by Buyer to Seller in writing, with full details of the specific facts on which the claim is based and supporting documentation, within SIXTY (60) days of the date of the relevant bill of lading or such lesser number of days as imposed by Seller's Supplier.

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

Any claims in respect of quantity and/or quality costs, losses or damages shall be recoverable only in accordance with the usual terms applicable for the purchase of the Oil at the Loading Terminal. Whenever Buyer is entitled to recover quantity and/or quality costs, losses or damages from Seller, Buyer shall be entitled to recover such costs, losses or damages from Seller only to the extent that Seller is able to recover, and does recover, such costs, losses or damages from Seller's Supplier, and Seller shall not be obliged to pay any amount to Buyer in excess thereof. Seller shall, however, use reasonable endeavors to recover from Seller's Supplier such costs, losses or damages for which Buyer has presented a claim in accordance herewith.

- IX.5** Buyer shall have no right to reject any Oil hereunder because it does not meet any minimum specifications set forth in the Special Terms and Conditions or for any other reason related to quality. Subject to sub-section IX.4 above and sub-section XXIII.3 hereunder, Buyer's exclusive remedy with respect to any material difference in the quality of any Shipment

compared with the minimum specifications of the Oil set forth in the Agreement shall be a quality adjustment payment due from Seller calculated in accordance with normal industry practice for any such material difference between the specification of the Oil and the minimum quality specification.

## **SECTION X - DOCUMENTS**

**X.1** Except as provided in the Special Terms and Conditions, Seller shall deliver to Buyer original bills of lading, certificates of quantity, quality and origin and an invoice, which may be by means of courier, facsimile transmission and/or electronic messaging system. In the event that the original bills of lading or other contractual shipping documents are not delivered to Buyer on or before the due date for payment, Buyer undertakes to pay Seller upon presentation, by means of courier, facsimile transmission or electronic messaging system, of an invoice and of Seller's LOI substantially in the form set out in Appendix 1.

## **SECTION XI - GOVERNMENT TAKE, NEW OR CHANGED REGULATIONS**

### **XI.1 Government Take**

This sub-section XI.1 applies solely if Buyer is to receive more than one Shipment under the Agreement.

- (a) For the purpose of this Section XI, "**Government Take**" shall mean the total of monetary payments and value of other benefits accruing to, or received by, the government(s) of any country(ies) arising or attributable, directly or indirectly, out of or to the production, storage, transportation, delivery, sale or export of the Oil or by any agency, instrumentality, authority or entity established or controlled by government(s) or any person purporting to act therefor, and shall include (but without limitation) all costs and expenses incurred directly or indirectly in purchasing the Oil, royalties, rentals, duties, income and other Taxes, participation payments or benefits, whether in the form of dividends, crude oil payments or other rights.
- (b) Any amount equal to any and all new or increased Government Take (as defined below) directly or indirectly imposed on the price of, or attributable to, the Oil that occurs, whether prospectively or retrospectively, after the date of Seller's offer or from time to time during the term of the Agreement, shall be added to the price of the Oil pursuant to sub-section XI.1(c).
- (c) Seller shall give Buyer written notice of any and all new or increased Government Take and of its effective date (whether retroactive or not) and shall be entitled to add the amount thereof to the price per barrel of the Oil from such effective date, and Buyer shall pay the new adjusted price.

### **XI.2 New or Changed Regulations**

- (a) For the purpose of this sub-section XI.2, the term "**Regulations**" shall mean the laws, rules, regulations, decrees of, and the agreements, concessions and arrangements with, government(s), or any agency, instrumentality, authority or entity established or controlled by government(s), or any person purporting to act therefor, in effect on the date the Agreement is entered into, in respect of, or directly or indirectly affecting, the

Oil, including, but without limitation, the production, acquisition, gathering, selling, transportation, supply and delivery thereof insofar as such Regulations affect Seller or Seller's Supplier.

- (b) If, at any time after the date of Seller's offer or from time to time during the term of the Agreement, any of such Regulations are changed or new Regulations become effective whether by law, decree or regulation or in response to the insistence or request of any government or any agency, instrumentality, authority or entity established or controlled by government(s) or any person purporting to act therefor and the effect of such new or changed Regulations:
- (i) is not covered by any other provision of the Agreement; and
  - (ii) has an adverse economic effect upon Seller and/or Seller's Supplier,

then Seller shall have the option to request renegotiation of the terms and conditions provided for in the Agreement. Such option may be exercised by written notice from Seller to Buyer at any time after such new or changed Regulations are published.

Such notice shall contain the effective date of such new or changed Regulations and the terms and conditions under which Seller is prepared to continue delivering the Oil under the Agreement.

If the parties do not reach agreement within FIFTEEN (15) days after the date of Seller's renegotiation request, Seller shall have the right to terminate the Agreement, without any liability whatsoever, by giving to Buyer at least FIFTEEN (15) days' prior written notice thereof.

Any Oil that is loaded after receipt of Seller's renegotiation request or after the effective date of the new or changed Regulations (whichever is the later) and prior to termination as provided for herein shall be sold and purchased under the terms and conditions specified by Seller in its renegotiation request to Buyer. However, in such event, Buyer has the right by written notice to Seller to refuse the loading of any Shipment.

## **SECTION XII - EXCEPTIONS - FORCE MAJEURE**

**XII.1** Neither party shall be deemed in breach of the Agreement as a result of, or be liable to the other for, any failure, omission or delay in its performance in whole or in part of any of the terms or conditions of the Agreement (except in relation to obligations to make payments or provide security for payment under the Agreement) if such failure, omission or delay arises or results from any cause whether foreseeable or unforeseeable reasonably beyond, or to be treated as reasonably beyond, the control of that party (any such event being herein referred to as "**Force Majeure**").

**XII.2** For the purposes of this Section XII, and without limitation to the generality of sub-section XII.1, a cause shall be treated as being reasonably beyond the control of Seller if it arises or results from, or in connection with:

- (a) compliance, voluntary or involuntary, with a direction or request (including any obligation arising out of the exercise of a requirement to deliver crude oil of the grade deliverable hereunder by way of royalty-in-kind) of any international, national, port,



transportation, local government or other authority or person purporting to act with such authority; or

- (b) any natural calamity, earthquake, storm, flood, fire, explosion or other Act of God; or
- (c) any war, hostilities declared or undeclared, embargo, blockade, riots, terrorism, civil unrest and any consequence thereof; or
- (d) any strike, lockout, stoppage, restraint of work or other labor difficulty from whatever cause arising, even in the event that the same could be settled by acceding to the demands of a labor group; or
- (e) any curtailment of, hindrance to, interference with, or delay to the availability, delivery or transportation of:
  - (i) the Oil or the grade of crude oil deliverable under the Agreement; or
  - (ii) any crude oil, whether or not of the grade to be delivered under the Agreement, if this results in insufficient crude oil being available to Seller on a regular and reliable basis to enable it, or renders it clearly uneconomic for Seller, to supply its Affiliates with both their reasonable and notified requirements for crude oil and to supply fully its other purchasers of crude oil; or
  - (iii) any crude oil, whether or not of the grade to be delivered under the Agreement, as a result of Seller's actions based on, or arising in connection with, compliance with a request to, or requirement of, a relevant government, made by, or through, the International Energy Agency;

from any one or part of Seller's sources or its anticipated sources of supply in whatever country situated (whether or not such source is a source or anticipated source for the purposes of the Agreement or such country is referred to in the Agreement).

For the purposes of this sub-section XII.2, the availability to Seller on the spot market of any quantity of crude oil, whether or not of the grade deliverable under the Agreement, shall not be taken into account in determining whether or not a Force Majeure event has occurred.

**XII.3** If any Force Majeure event occurs, then at any time thereafter and for so long as the effect of that event continues, Seller shall be entitled to withhold, suspend, reduce or cancel delivery hereunder to such extent as Seller shall in its absolute discretion determine. For the avoidance of doubt, in a Force Majeure event, Seller has absolute discretion to determine which of the demands for crude oil on Seller, including from its Affiliates, it meets first, and the extent to which it meets each such demand.

In such event, Seller shall not be bound to acquire by purchase or otherwise additional quantities of crude oil from any sources or anticipated sources of supply or other suppliers to satisfy Buyer's requirements hereunder. However, should Seller purchase or otherwise acquire additional crude oil, Seller shall not be required to allocate any to Buyer.

**XII.4** Prompt written notice of any event of Force Majeure and, so far as possible, of its extent and anticipated duration shall be given by the party so affected. That party shall also give prompt written notice when the effects of the Force Majeure event come to an end.

**XII.5** If any failure, omission or delay in performance in relation to a Shipment under this Section XII continues for more than THIRTY (30) consecutive days after the day the notice of Force

Majeure has been sent, then either party shall be entitled after said duration to cancel delivery of the Shipment(s) affected by the event of Force Majeure by written notice to the other party, without any liability on either side save that such cancellation shall be without prejudice to any other accrued rights and (if applicable) to other deliveries under the Agreement. Performance under the Agreement shall resume to the extent made possible by the end of the effects of the Force Majeure event pursuant to this Section XII.

**XII.6** Where, under the Agreement, Buyer is to receive more than one Shipment:

- (a) no withholding, suspension, delay, reduction or cancellation of delivery shall operate to extend the duration of the Agreement; and
- (b) any quantities of Oil deliverable under the Agreement that would, but for any reduction or cancellation pursuant to this Section XII, have been delivered during the period of the Agreement shall cease to be deliverable by Seller.

### **SECTION XIII - DEFAULT AND TERMINATION**

**XIII.1** (a) An “**Event of Default**” shall be deemed to occur upon one or more of the following events:

- (i) Buyer fails to make payment when due under the Agreement within ONE (1) Working Day following receipt of the other party’s demand for payment.
  - (ii) Buyer: (1) fails to take receipt, during a period or at an agreed date, of any quantity of Oil as provided for in the Agreement; or (2) breaches any representation, covenant or warranty in any material respect under the Agreement that, if capable of being cured, is not cured to the satisfaction of Seller in its sole discretion, within FIVE (5) Working Days following receipt of notice of Seller that corrective action is needed.
  - (iii) Either party, or Buyer’s Credit Support Provider, if any, files a petition or otherwise commences or authorizes the commencement of a proceeding or case under any bankruptcy, reorganization or similar law for the protection of creditors or relief of debtors or has any such petition filed or proceeding commenced against it, or otherwise becomes bankrupt or insolvent (however evidenced), or is unable to pay its debts as such debts become due.
  - (iv) A Designated Event occurs with respect to a party, Buyer’s Credit Support Provider, and the creditworthiness of the party or Buyer’s Credit Support Provider or, if applicable, the successor, surviving or transferee entity of such party or Buyer’s Credit Support Provider (as applicable) is materially weaker than that of the party or Buyer’s Credit Support Provider immediately prior to such Designated Event.
- (b) If an Event of Default occurs in respect of Buyer, then, notwithstanding any other provision of the Agreement to the contrary, including any provision of Section XIV below, Seller shall be free to assign to any third party any and all of Seller’s rights under the Agreement, whether present or future, actual or contingent, including, without limitation:
- (i) any and all rights to require the due and punctual observance, discharge and

performance by Buyer of all its obligations and liabilities under the Agreement;

- (ii) all rights to moneys received or receivable by Seller from Buyer under the Agreement, whether as a payment, compensation, damages or an indemnity; and
- (iii) the right to claim for any sums payable or that become payable under the Agreement.

- XIII.2** (a) Upon an Event of Default with respect to a party (“**Defaulting Party**”), the other party (“**Performing Party**”) may, in addition to any other rights it may have, whether by agreement, operation of law or otherwise, withhold or suspend performance under the Agreement and/or, upon ONE (1) Working Day’s notice (which shall not be required for an Event of Default described in clause XIII.1(a)(iii)) to the Defaulting Party, immediately terminate, liquidate and accelerate all transactions under the Agreement. The Performing Party shall notify the Defaulting Party of the date (“**Early Termination Date**”) on which all such transactions shall terminate and shall calculate the final amount due between the parties (“**Termination Payment**”) as of the Early Termination Date by closing out all transactions at an amount equal to the difference between the then prevailing market value and the value specified in the Special Terms and Conditions, determining any damages or costs resulting from such early termination, and netting or aggregating the foregoing into a single amount. The Performing Party shall notify the Defaulting Party of the termination payment due to or from the Defaulting Party, which shall be paid within ONE (1) Working Day after delivery or receipt of the calculation, as applicable.
- (b) If the Performing Party elects to designate an Early Termination Date under sub-section XIII.2(a), if Seller is the Performing Party, upon the occurrence and continuance of an Event of Default in respect of Buyer, the Performing Party shall be entitled, at its option and in its discretion (and without prior notice to the Defaulting Party), to set off any or all amounts that the Defaulting Party owes to the Performing Party or any of its Affiliates under any agreements between the Defaulting Party and the Performing Party (whether or not arising under the Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation) against any amounts payable by the Defaulting Party to the Performing Party or any of its Affiliates under any agreements between the Defaulting Party and the Performing Party (whether or not arising under the Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation); provided that any amount not then due that is included in such set-off shall be discounted to present value as at the time of set-off (to take account of the period between the date of set-off and the date on which such amount would have otherwise been due). For this purpose, any amounts may be converted by the Performing Party into the currency in which the other is denominated at the rate of exchange at which the Performing Party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency. If an obligation is unascertained, the Performing Party may, in good faith, estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained. To the extent that any amounts are so set off, those amounts will be discharged promptly and in all respects. The Performing Party will give notice to the other party of any set-off effected under this sub-section XIII.2(b).
- (c) The Performing Party’s rights under this sub-section XIII.2 are in addition to, and not in limitation or exclusion of, any other rights of set-off, recoupment, combination of

accounts, lien or other right that it may have, whether by agreement, operation of law or otherwise. No delay or failure on the part of a Performing Party to exercise any right or remedy shall constitute an abandonment of such right or remedy and the Performing Party shall be entitled to exercise such right or remedy at any time after an Event of Default has occurred and is continuing. The Defaulting Party shall reimburse the Performing Party for its costs and expenses, including reasonable attorneys' fees, incurred in connection with the enforcement of, suing for or collecting any amounts payable by the Defaulting Party under the Agreement. The Defaulting Party shall indemnify and hold harmless the Performing Party for any damages, losses and expenses incurred by the Performing Party as a result of the Event of Default, including any damages, losses and expenses incurred in connection with the liquidation of hedges related to Oil sold hereunder.

- (d) The parties intend that the Agreement constitutes a forward contract under Section 101(25) and a swap agreement under Section 101(53B) of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended from time to time (the “**Bankruptcy Code**”) protected by, inter alia, Sections 556 and 560 of the Bankruptcy Code, and a master netting agreement under Section 101(38A) of the Bankruptcy Code, and that the rights in this Section XIII include the rights referred to in Section 561(a) of the Bankruptcy Code (and any other applicable sections therein).

#### **SECTION XIV - ASSIGNMENT**

- XIV.1** Neither party shall assign its rights and obligations under the Agreement, in whole or in part, without the prior written consent of the other party, provided, however, that Seller shall be free to assign its rights and obligations under the Agreement to any of its Affiliates.
- XIV.2** If such written consent is given and wherever the assignment is made, the assigning party shall remain jointly and severally liable with the assignee for the full performance of its obligations under the Agreement.

#### **SECTION XV - WAIVER**

- XV.1** Except as expressly provided herein, no delay or omission by either party to exercise any right or privilege herein conferred or to enforce any of the terms and conditions of the Agreement shall be construed as a waiver of any such right, privilege, terms or conditions.
- XV.2** No waiver or omission by either party to require performance by the other party of any of the terms and conditions of the Agreement and no forbearance or indulgence granted or shown by either party to the other shall release, discharge or in any manner affect or prejudice the right of a party at any time to require strict and full performance by the other of any or all of the terms and conditions of the Agreement to be performed subsequent to any such waiver, omission, forbearance or indulgence.

#### **SECTION XVI - NOTICES**

- XVI.1** Any notice or other communication or document in respect of the Agreement may be given in any manner set forth below (except for the NOR in respect of any Vessel) to the address details provided in the Special Terms and Conditions or otherwise previously communicated by the other party and will be deemed effective as indicated below:

- (a) if in writing and delivered in person or by courier, on the date it is delivered and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer;
- (b) if sent by facsimile transmission, on the date that transmission is received by the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender) and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer;
- (c) if sent by electronic messaging system, on the date that transmission is received by the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender) at the electronic address specified by the recipient and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer; or
- (d) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer.

**XVI.2** Either party, by giving not less than FIFTEEN (15) days' notice as per the provisions of this Section XVI to the other party, may from time to time change its address.

## **SECTION XVII - HEALTH, SAFETY AND ENVIRONMENTAL INFORMATION**

**XVII.1** Seller has provided or shall provide Buyer upon Buyer's request with copies of, or website links to, Material Safety Data Sheets ("MSDS") for the Oil to be delivered hereunder. Nothing herein shall excuse Buyer from complying with applicable law that may require Buyer to provide its employees, agents, contractors, users and customers who may come into contact with the Oil with a copy of the MSDS and any other safety information provided to it by Seller or that require Buyer to ensure that the recommendations relating to the handling of the Oil are followed. Compliance with any recommendation contained in the MSDS or other safety information shall not excuse Buyer from complying with all applicable law.

## **SECTION XVIII - APPLICABLE LAW AND ARBITRATION**

**XVIII.1** The Agreement (and Seller's offer) is made under, and shall be governed by, and be construed in all respects in accordance with, the laws of the State of New York to the exclusion of any other legal system and excluding any conflicts of law rules that may direct the particular application of the laws of another jurisdiction.

**XVIII.2** The parties expressly agree that all disputes and claims arising out of or relating to the Agreement or the alleged breach thereof shall be settled by arbitration conducted in the English language in the Borough of Manhattan, New York, in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA").

**XVIII.3** The arbitration panel shall be composed of THREE (3) arbitrators, TWO (2) of whom shall be nominated by the respective parties, and the remaining arbitrator, who shall be the chairman, to be appointed by the AAA in accordance with its commercial arbitration rules. All three arbitrators shall be lawyers with significant experience in the oil trading activity.

Notice of appointment and the name and address of the arbitrators, except any arbitrator appointed by the AAA, shall be filed with the AAA. None of the arbitrators shall have been previously employed by either party or have any direct pecuniary interest in either party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by both parties.

**XVIII.4** Any arbitration award by the majority of the panel of three arbitrators may include costs, including reasonable attorney fees, and shall be final and binding upon the parties. Judgment upon any arbitration award rendered may be entered in any court of any country having jurisdiction. The arbitrators shall have no authority to award consequential, treble, exemplary or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. Each party shall bear the compensation, costs and expenses of its own arbitrator and the parties shall split equally the compensation, costs and expenses of the third arbitrator. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this Section XVIII shall be governed by the Federal Arbitration Act. The parties agree that all information exchanged in connection with of any proceeding as described herein shall be deemed confidential.

**XVIII.5** With respect to all other matters relating to any arbitration hereunder (and with respect to any claim or controversy arising or relating to the Agreement or the breach thereof, in the event this Section XVIII is alleged to be invalid or unenforceable for any reason), the parties expressly submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York or, if such court declines to exercise or does not have jurisdiction, the Supreme Court of the State of New York, County of New York, and to the personal jurisdiction by any such court and to the service of process by registered mail.

Moreover, the parties hereto expressly agree that the application of the United Nations Convention on Contracts for the International Sale of Goods 1980 is hereby excluded pursuant to article 6 of the Convention.

**XVIII.6** Each party hereby warrants that it has entered into the Agreement in a commercial capacity and each party hereby warrants that it is, in all respects relevant to the Agreement, subject to civil and commercial law. Each party hereby irrevocably waives any immunity from suit, execution or attachment in respect of itself or its assets to the fullest extent permitted by law.

## **SECTION XIX - REPRESENTATIONS**

**XIX.1** Each party represents and warrants to the other party, as of the date of the Agreement and as of the date of each transaction under the Agreement, that:

- (a) It is: (i) an “eligible commercial entity” and an “eligible contract participant” as defined in Sections 1a(11) and 1a(12) of the Commodity Exchange Act, as amended; and (ii) a “forward contract merchant,” a “commodity broker” or a “financial participant” and a “master netting agreement participant” each as defined under the Bankruptcy Code.
- (b) It has the corporate, governmental or other legal capacity, authority and power to execute, deliver and perform the Agreement, and each transaction under the Agreement, and has taken all necessary action to duly authorize the foregoing.

- (c) Its obligations pursuant to the Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law).

**XIX.2** Seller represents and warrants to Buyer that, as of the date of delivery of Oil under the Agreement, it has marketable title to the Oil sold and delivered pursuant to the Agreement, free and clear of any liens or encumbrances, and that it has full right and authority to transfer such title and effect delivery of such Oil to Buyer.

## **SECTION XX - BOOKOUTS**

**XX.1** If the parties enter into TWO (2) or more transactions under the Agreement whereby each party has agreed to sell to the other party the same Oil at the same delivery location during the same delivery period, they may agree to bookout and cancel all or a portion of such transactions and replace the physical delivery required in such transactions with a cash settlement. The bookout shall be set forth in a confirmation that indicates the details of the transactions being terminated, the settlement amount and the payor. The settlement amount shall be the excess of the larger aggregate amount owed by one party minus the smaller aggregate amount owed by the other party. The identified transactions shall be terminated to the extent specified in the bookout and each party shall be released from all liabilities arising from such transactions to the extent they are terminated, except for the obligation to pay the settlement amount. This Section XX shall apply notwithstanding that either party may fail to: (i) send out a confirmation in respect of such bookout transaction; or (ii) make changes on its books as a result of any such bookout transaction.

## **SECTION XXI - ANTI-CORRUPTION**

**XXI.1** Buyer and Seller each warrant and undertake to the other that in connection with the Agreement and the performance thereof, they will each respectively comply with all applicable laws, regulations, rules and requirements of the United States or any other relevant jurisdiction relating to anti-bribery or anti-money laundering and that they shall each respectively take no action that would subject the other to fines or penalties under such laws, regulations, rules or requirements.

**XXI.2** Buyer and Seller each represent, warrant and undertake to the other that they shall not, directly or indirectly pay, offer, give or promise to pay or authorize the payment of, any monies or other things of value to: (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 organization; (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 organization; (iv) any political party or official thereof, or any candidate for political office; or (v) any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities.

**XXI.3** In particular, Seller represents and warrants to Buyer that it has not made any payments or given anything of value to officials, officers or employees of the government of the country in

which the Oil originated or any agency, department or instrumentality of such government in connection with the Oil that is the subject of the Agreement that would be inconsistent with or contravene any of the above-referenced legislation.

- XXI.4** Buyer or Seller may terminate the Agreement forthwith upon written notice to the other at any time, if in their reasonable judgment the other is in breach of any of the above representations, warranties or undertakings.

## **SECTION XXII - TAXES**

- XXII.1** Except as provided in sub-section VII.10, Buyer shall reimburse and indemnify Seller for all Taxes paid or incurred by Seller, together with all penalties and interest thereon, upon receipt of Seller's invoice. If Buyer is entitled to any exemption, Buyer shall provide Seller with the appropriate evidence thereof as required or permitted by applicable law prior to the time of transfer of title to the Oil. Buyer's obligation to reimburse Seller includes any Taxes that Seller is assessed due to subsequent discovery of taxability or under audit by any taxing authority until expiration of the relevant statute of limitations.
- XXII.2** If applicable, each party shall provide to the other party a properly executed IRS Form W-9, W-8BEN or W-8ECI (or successor form), as appropriate, upon the execution of the Agreement and subsequently if the information in such form becomes materially inaccurate or such form expires or becomes obsolete. Each party further agrees to promptly deliver to the other party any other tax form or certificate reasonably requested by such other party.

## **SECTION XXIII - GENERAL**

- XXIII.1** Buyer undertakes to comply with all applicable laws and regulations insofar as these affect the implementation of the Agreement. However, neither Buyer nor Seller shall be required, as a result of the Agreement, to participate in, or co-operate with, any boycott, or to take any related action that would violate the provisions of any applicable law or result in penalties of any kind under such law.

Notwithstanding anything to the contrary herein, nothing in the Agreement is intended, and nothing herein should be interpreted or construed, to induce or require either party hereto to act in any manner (including failing to take any actions in connection with a transaction under the Agreement) that is inconsistent with, penalized or prohibited under any applicable law, including any U.S. laws, regulations or rules or requirements applicable to such party that relate to foreign trade controls, export controls, embargoes or international boycotts of any type.

- XXIII.2** Buyer shall be responsible for obtaining all consents, authorizations, approvals and assurances of whatsoever nature to give effect to the provisions of the Agreement.
- XXIII.3** **EXCEPT AS EXPRESSLY PROVIDED FOR IN THE AGREEMENT, NEITHER SELLER NOR BUYER SHALL IN ANY EVENT, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENT ACT OR OMISSION ON ITS PART, BE LIABLE IN CONTRACT, TORT, BREACH OF STATUTORY DUTY OR OTHERWISE, IN RESPECT OF ANY CONSEQUENTIAL, INDIRECT OR SPECIAL LOSSES, EXPENSES OR DAMAGES OF ANY KIND, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE CONCLUSION, THE PERFORMANCE, THE FAILURE TO PERFORM OR THE TERMINATION OF**



**THE AGREEMENT. IN ADDITION, SELLER SHALL IN NO CIRCUMSTANCES BE LIABLE FOR MORE THAN THE DIFFERENCE BETWEEN THE MARKET PRICE AND THE CONTRACT PRICE WITH RESPECT TO THE RELEVANT QUANTITY OF OIL, NOR BE LIABLE FOR ANY LOSS OF PROFIT OR ANTICIPATED PROFIT, USE, GOODWILL, BUSINESS RECEIPTS, CONTRACTS OR COMMERCIAL OPPORTUNITIES, MARKET REPUTATION, COST OF OVERHEADS THROWN AWAY OR LOSS RESULTING FROM SHUT-DOWN OF ANY PLANT OF BUYER OR OF THE RECEIVER OF THE OIL, WHETHER OR NOT FORESEEABLE. EACH PARTY ACKNOWLEDGES THE DUTY TO MITIGATE DAMAGES.**

Without prejudice to the provisions of sub-sections VIII.6 and IX.4 above, any claim of Buyer shall be deemed to be waived and any liability of Seller shall be extinguished unless a claim accompanied with evidence fully supporting the claim is received by Seller within ONE (1) year after the date of the occurrence giving rise to the claim.

- XXIII.4** Buyer agrees to indemnify, defend and hold Seller and its Affiliates harmless from liability for any and all demands or claims arising from injuries sustained or damages suffered following the passage of risk and property in the Oil as hereinabove provided, and that may arise in connection with the transportation, use or handling of any Oil or admixture thereof, whether delivery is made to Buyer, its assigns or nominees.
- XXIII.5** For the avoidance of doubt, any repetition in the Special Terms and Conditions of any section or sub-section of these General Terms and Conditions or any part of the same shall be for emphasis only and shall not, by reason of such repetition, exclude any other provision of these General Terms and Conditions.
- XXIII.6** The Special Terms and Conditions and these General Terms and Conditions together form the entire agreement between the parties, and no additional terms, conditions, representations or warranties shall be incorporated into the Agreement in the absence of express written consent of each party. In the event of a conflict between the terms of the Special Terms and Conditions and these General Terms and Conditions, the Special Terms and Conditions shall prevail.
- XXIII.7** Where not used to identify the provisions applicable to each type of delivery (e.g. FOB, Ex Tank, etc.), the section headings are for convenience only and shall not be interpreted in any way to limit or change the subject matter of the Agreement.
- XXIII.8** These General Terms and Conditions shall apply from the date of Seller's offer.
- XXIII.9** Except as otherwise expressly stated, nothing expressed or implied in the Agreement is intended to create any rights, interests, obligations or benefits under the Agreement in any person other than Buyer, Seller and their successors and permitted assigns.
- XXIII.10** Termination or expiration of the Agreement shall not affect any rights or obligations that may have accrued prior to termination, including any in respect of antecedent breaches. The obligations of each party that expressly survive termination are required to take effect on or give effect to termination or the consequences of termination or that by their very nature must survive termination, shall continue in full force and effect notwithstanding termination of the Agreement.
- XXIII.11** Should any court of competent jurisdiction hold any terms or condition of the Agreement invalid or enforceable, the remaining terms and conditions shall remain in full force and effect.

**XXIII.12** Unless provided otherwise, when a party's response is required hereunder within a specific time period following receipt of notice or documentation, as applicable, the day of receipt thereof by such party shall be considered day zero.

**XXIII.13** Each party consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording.

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**APPENDIX 1**

**Letter of Indemnity**

From: (Seller)  
To: (Consignee or Buyer of Shipment)

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

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

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

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

This Letter of Indemnity shall be governed by and be construed in all respects in accordance with the laws of the State of New York, to the exclusion of any other legal system and excluding any conflicts of law rules that may direct the particular application of the laws of another jurisdiction.

The parties expressly agree that all disputes and claims arising out of or relating hereto or the alleged breach hereof shall be settled by arbitration conducted in the English language in the City of New York, in accordance with the commercial arbitration rules of the American Arbitration Association (“AAA”) as per the terms of the above mentioned contract.

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

For and on behalf of (Seller)

Name  
Title  
Authorized signature

## APPENDIX 2

### Supplement in respect of deliveries Ex Tank, Into Tank, In Tank and FIP

Where the Agreement is to sell and deliver Product on Ex Tank, Into Tank, In Tank or FIP terms, the provisions of the General Terms and Conditions shall apply, subject to the additions and amendments set out below.

#### A - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY

**A.1** - Sub-section II.1 shall be replaced by the wording set out below such that it reads as follows:

“**II.1** (a) In the case of Ex Tank deliveries:

The Oil shall be delivered to Buyer in bulk at the storage tank designated by Seller.

Risk and property in the Oil and all liabilities with respect thereto shall pass to Buyer when the Oil passes the outlet flange of the above storage tank.

(b) In the case of Into Tank deliveries:

The Oil shall be delivered to Buyer in bulk at the storage tank designated by Buyer.

Risk and property in the Oil and all liabilities with respect thereto shall pass to Buyer when the Oil passes the inlet flange of the above storage tank.

(c) In the case of In Tank deliveries:

The Oil shall be delivered to Buyer in bulk by way of stock transfer at the storage tank(s) specified in the Special Terms and Conditions.

Risk and property in the Oil and all liabilities with respect thereto shall pass to Buyer in the above tank(s) at such time and day as shall be specified in the Special Terms and Conditions.

(d) In the case of FIP deliveries:

The Oil shall be delivered to Buyer in bulk at the place specified in the Special Terms and Conditions.

Risk and property in the Oil and all liabilities with respect thereto shall pass to Buyer when the Oil passes the inlet flange of the receiving pipeline at the above place.”

**A.2** - The second sentence of sub-section II.4 shall be replaced by the wording set out below such that it reads as follows:

“Unless otherwise specifically agreed, any delivery of Oil will be in one lot.”

**B - INVOICING AND PAYMENT**

Sub-section IV.1 shall be replaced by the wording set out below such that it reads as follows:

**“IV.1** The price of the Oil and the due date for payment shall be as specified in the Special Terms and Conditions.

Payment of the full amount of Seller’s invoice shall be made without any discount, deduction, withholding, abatement, set-off or counterclaim in U.S. Dollars (unless otherwise specified in the Special Terms and Conditions) by wire transfer of immediately available funds (“same day funds”) on or before the due date (subject to sub-sections IV.3 and IV.6) to the bank and account designated by Seller, against presentation to Buyer by means of courier, facsimile transmission and/or electronic messaging system, of an invoice, the documentation specified below and any supporting documents specified in the Special Terms and Conditions.

- (a) for In Tank or Ex Tank deliveries, the transfer documentation of the independent inspector;
- (b) for In Tank delivery, the transfer documentation from Seller or the terminal; and
- (c) for FIP delivery, the pipeline meter ticket.”

**C - NOMINATIONS**

Section VI shall be replaced by the wording set out below such that it reads as follows:

**“SECTION VI - NOMINATIONS**

**VI.1** In respect of deliveries Ex Tank, Into Tank or In Tank, nominations shall be made pursuant to the standard operating procedures of the relevant storage company, in use at the time of delivery.

**VI.2** In respect of FIP deliveries, nominations shall be made pursuant to the standard operating procedures of the relevant pipeline operating company, in use at the time and point of delivery.”

**D - QUANTITY AND QUALITY DETERMINATION**

Section IX shall be replaced by the wording set out below such that it reads as follows:

**“SECTION IX - QUANTITY AND QUALITY DETERMINATION**

**IX.1** The quantity and quality of the Oil delivered under the Agreement shall be determined for each lot in accordance with the standard practice in use at the relevant storage company (for deliveries Ex Tank, Into Tank or In Tank) or the relevant pipeline operating company (for FIP deliveries) at the time and point of delivery, save if otherwise provided for specifically in the Special Terms and Conditions.

- IX.2** The quantity of Oil determined pursuant to sub-section IX.1 above (or, where applicable, the Special Terms and Conditions) shall be used to calculate Seller's invoice.
- IX.3** Where the Special Terms and Conditions provide for the appointment of an independent inspector, the cost of services of the inspector shall be borne equally by both parties (unless otherwise provided for in the Special Terms and Conditions).
- IX.4** In no event shall Seller be liable for any claim regarding the quantity and/or quality of any lot unless such claim has been submitted by Buyer to Seller in writing, with full details of the specific facts on which the claim is based and supporting documentation, within THIRTY (30) days of the date of completion of discharge of the Vessel from which the Oil is delivered (where applicable) or FORTY-FIVE (45) days of the date of the relevant delivery, whichever is the earlier, or within such lesser number of days as imposed by Seller's Supplier.

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

Buyer shall be entitled to recover quantity and/or quality costs, losses or damages from Seller only to the extent that Seller is able to recover, and does recover, such costs, losses or damages from Seller's Supplier, and Seller shall not be obliged to pay any amount to Buyer in excess thereof. Seller shall, however, use reasonable endeavors to recover from Seller's Supplier such costs, losses or damages for which Buyer has presented a claim in accordance herewith."

## **E - MISCELLANEOUS**

**E1** - Sub-sections II.5, II.6 and II.7 and Sections VII, VIII and X are not applicable.

**E2** - "**Shipment**" shall mean the quantity of Oil agreed to be delivered as one lot.