

# ATLANTIC TRADING & MARKETING, INC.

## GENERAL TERMS AND CONDITIONS FOR SHORT TERM AND SPOT PURCHASES AND SALES OF PETROCHEMICALS PRODUCTS (FOB-CFR-CIF) DECEMBER 2017.

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## **INTRODUCTION**

These General Terms and Conditions are designed for use in transactions in which Atlantic Trading & Marketing, Inc. (“ATMI”) or any of its Affiliates is either Seller or Buyer of petrochemicals Products. Product Description, Product Specifications, Quantity, Price, Special Payment Terms, Delivery Point, Delivery Period, Shipment Mode, Shipment Instructions, amendments to these General Terms and Conditions, and other Special Terms and Conditions (the “Special Terms”) have been agreed upon by the Parties in respect of a particular transaction. The Special Terms, together with these General Terms and Conditions, will constitute the Parties’ Agreement of Purchase and Sale (the “Agreement”). In the event any of the terms, provisions or general subject matters contained herein or covered hereby are inconsistent or in conflict with any terms and conditions contained in the Special Terms, then the terms and conditions contained in the Special Terms will control.

If a transaction has been formed in a telephone conversation between the Parties, ATMI’s written confirmation (and the Special Terms contained therein) will be deemed an accurate record of the terms of the transaction unless the counterparty delivers to ATMI a written notice of objection to the confirmation or any of the Special Terms therein on or before the deadline set out in the confirmation. Acceptance (either directly or by failure to make timely objection) of the confirmation of the transaction indicates the counterparty does not object to the Special Terms or to these General Terms and Conditions.

## **SECTION 1 – DEFINITIONS**

As used herein, the following terms shall have the meanings set forth below:

- (a) “Affiliate” means any company, partnership, joint venture, or entity controlled by, controlling or under common control with a Party hereto. For the purposes of this definition, “control” means the direct or indirect beneficial ownership of fifty percent (50%) or more of the stock entitled to vote in the election of directors or, if there is no such stock, fifty percent (50%) or more of the owners’ interest in such company, partnership, joint venture, or entity.
- (b) “API” means American Petroleum Institute.
- (c) “ASTM” means American Society for Testing Materials.
- (d) “Bill of Lading” means the document of title which evidences a contract that the carrier undertakes to deliver the Product to the destination.
- (e) “Business Day” means any day except Saturday, Sunday, or a public holiday in Texas.
- (f) “CFR” means “Cost and Freight”, as defined in Incoterms 2010.
- (g) “CIF” means “Cost, Insurance and Freight”, as defined in Incoterms 2010.
- (h) “Day” means a calendar day.
- (i) “Delivery Period” means the time when the Product has been placed or procured to be placed at the disposal of Buyer at the time and place agreed upon.
- (j) “Discharge Date Range” means the Day, or range of Days, during which Seller’s nominated Vessel must tender NOR at the Discharge Terminal.

- (k) “Discharge Port” means the place in a safe port, safe berth, dock, anchorage, sea terminal, submarine line, alongside vessel or lighter, whether at anchor or underway, or any other place at which Product is to be unloaded, agreed to by the Parties.
- (l) “Discharge Terminal” means the place in a safe port, safe berth or the other receiving facilities at which the Product is discharged or is to be delivered.
- (m) “Dollar” means the currency of the United States of America.
- (n) “ETA” means estimated time of arrival.
- (o) “FOB” means “Free On Board” as defined in Incoterms 2010.
- (p) “Incoterms 2010” means the International Commercial Terms 2010 as issued by the International Chamber of Commerce (“ICC”), as amended to date. In the event of an inconsistency between the Incoterms and the Agreement, the Agreement shall prevail.
- (q) “ISPS Code” means the International Ship and Port Facility Security Code and the relevant amendments to Chapter XI of the International Convention for the Safety of Life at Sea 1974 (as amended, “SOLAS”).
- (r) “Loading Date Range” means the Day, or range of Days, during which Buyer's nominated Vessel must tender NOR at the Loading Terminal.
- (s) “Loading Port” means any berth, dock, anchorage, sea terminal, submarine line, alongside vessel or lighter, whether at anchor or underway, or any other place at which Product is to be loaded for shipment, agreed to by the Parties.
- (t) “Loading Terminal” means the safe port, safe berth or other loading facilities at which the Product is loaded or is to be loaded for shipment, as agreed to by the Parties.
- (u) “Month” means a calendar month.
- (v) “Nominating Party” means the Party nominating a Vessel, Loading Port or Discharge Port to the other Party.
- (w) “NOR” means the valid Notice of Readiness that the Vessel is in all respects ready to load or discharge cargo, as the case may be, as given by the master of the Vessel to Buyer (or its representative) at the Loading Terminal or Discharge Terminal, as applicable.
- (x) “P&I Club” means the applicable Protection and Indemnity Club.
- (y) “Party” means either Buyer or Seller, and “Parties” means Buyer and Seller.
- (z) “Product” the petrochemical product described in the Special Terms.
- (aa) “Shipment” means any specific quantity of Product delivered under this Agreement as one full or part cargo.
- (bb) “Terminal” means the Loading Terminal or the Discharge Terminal, as the context requires.
- (cc) “Vessel” means any tanker or ocean-going barge, inland barge, tow or tanker carrying (or proposed to carry) Product, whether owned or chartered.

## **SECTION 2 – DETERMINATION OF QUANTITY AND QUALITY**

**2.1** Unless otherwise indicated in the Special Terms, the quantity and quality of the Product shall be determined and certified by a mutually agreed independent inspector at the Loading Port, in accordance with the latest ASTM/API standards at the time of the loading. The costs of inspection and certification shall be borne by Seller and Buyer in equal shares. The independent inspector's determinations and the data in the certificates of quantity and quality shall, save in case of fraud or manifest error, be conclusive and binding upon the Parties.

**2.2** The quantity for marine cargoes shall be determined by one of the following methods in descending order of preference:

- (a) Terminal's Proven Meters. If the Loading Terminal's meters are either: (i) unavailable; (ii) not installed, operated, maintained or proven according to API-MPMS standards then in effect; or (iii) determined by the independent inspector in good faith to be not functioning correctly, inaccurate or not to represent the volume delivered by the Vessel; then the quantity shall be determined by using the Loading Terminal's shore tank upgauge;
- (b) Shore Tanks. Shore tanks shall be static and at all times have the floating roofs afloat and above the critical zone. All receiving tanks shall be calibrated for critical measurement as set forth by API and ASTM standards then in effect. The independent inspector shall hand gauge and record static shore tank measurements immediately before and immediately after loading of the Product to determine the volume of the Product delivered; or
- (c) Vessel Measurements. If the independent inspector determines shore quantities to be inaccurate or not representative of the volume of cargo transferred, quantity shall be based on the volumes as determined from measurements of the Vessel before and after loading and adjusted for the Vessel's Vessel Experience Factor ("VEF") determined in accordance with the API standards then in effect.

**2.3** To determine the volume of Product delivered by pipelines, the operator shall read the meters installed on the pipeline at or near the delivery point at the time of delivery.

**2.4** To determine the Bill of Lading volume of Product delivered by tank trucks/tank cars, the operator of the loading facility shall read meters located at or near the delivery point. If meters are not available at or near the delivery point, the driver shall innage/ullage each tank truck or tank car immediately before and immediately after delivery of the Product to determine the volume of Product delivered. These innages/ullages shall be converted to net delivered gallons based on each tank truck's/tank car's official calibration tables.

**2.5** All volumes of delivered Product shall be corrected for temperature to 60 degrees Fahrenheit in accordance with ASTM standards then in effect. The term "barrel" means 42 U.S. gallons of 231 cubic inches per gallon. All measurements and tests shall be made in accordance with the latest standards or guidelines published by the API or ASTM; provided, however, that in the event a governmental agency with jurisdiction requires a certain standard of measurement to be utilized in a given situation, that standard shall be used. All meters used for measurements shall be proven within thirty (30) Days immediately prior to the time of each delivery. The meter operator shall, upon request, allow the other Party to review and copy relevant meter proving records.

**2.6** On completion of verification and measurement of the Product, Seller shall instruct the inspector to (i) prepare and sign certificates stating the quantity and quality determined for the Product, (ii) furnish Buyer and Seller each with a copy of such certificates, and (iii) expeditiously advise in writing to Buyer and Seller the determined quantity and quality.

**2.7** Claims as to shortage in quantity or failure to meet Product specifications shall be made by written notice within ninety (90) Days after the loading in question. OTHERWISE, ANY SUCH CLAIMS SHALL BE

DEEMED TO HAVE BEEN WAIVED. Every notice of claim shall set forth fully the facts upon which the claim is based and shall include full documentation in support of the claim.

**2.8 SELLER WARRANTS THAT THE PRODUCT DELIVERED PURSUANT TO THE SPECIAL TERMS SHALL CONFORM TO THE DESCRIPTIONS AND SPECIFICATIONS CONTAINED THEREIN AS WELL AS ANY DESCRIPTIONS AND SPECIFICATIONS CONTAINED HEREIN AND THAT, EXCEPT AS STATED ABOVE OR IN THE SPECIAL TERMS, SELLER MAKES NO OTHER GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE DESCRIPTION OR SATISFACTORY QUALITY OF THE PRODUCT, FITNESS, CONDITION, OR SUITABILITY OF THE PRODUCT FOR ANY PARTICULAR PURPOSE OR OTHERWISE, THAT EXTEND BEYOND THE DESCRIPTION AND SPECIFICATIONS OF THE PRODUCT CONTAINED IN THE SPECIAL TERMS.**

### **SECTION 3 –NOMINATION AND DELIVERY FOR FOB DELIVERIES**

**3.1** In the case of FOB deliveries, the Product shall be delivered to Buyer in bulk FOB within the Loading Date Range and at the Loading Terminal set forth in the Special Terms.

**3.2** Loading shall be within the Loading Date Range as specified in the Special Terms or established in accordance with the procedure(s) specified in the Special Terms; and further narrowed down in the Vessel Nomination.

**3.3** Unless otherwise provided in the Special Terms, Buyer shall nominate each Vessel it intends to use, in writing, at least five (5) Business Days prior to the ETA of such Vessel at the Loading Port, subject to both Seller's and Loading Terminal's final acceptance. Each nomination will specify (or, as applicable, verify), at minimum:

- (a) Confirmation number as per the Special Terms;
- (b) Vessel name, registration number, and the date built;
- (c) Quantity in MT (in Vacuum/air) and identification of Product requested to load;
- (d) Q88 duly completed (except for Inland Barges);
- (e) Proposed Loading Date Range;
- (f) ETA of Vessel at the Loading Terminal;
- (g) Compliance with the requirements of the ISPS Code;
- (h) Details of other cargoes that will be on board;
- (i) The product carried on the Vessel on each of its three (3) previous voyages;
- (j) The Vessel/charterer's agent at the Terminal; and
- (k) Chartering terms and conditions including allowed laytime and the applicable demurrage rate.

**3.4** Buyer's nominated Vessel is subject to both Seller and Loading Terminal operator's acceptance. Seller shall have the right to refuse, on reasonable grounds, any Vessel nominated by Buyer pursuant to this Section 3. Such right of refusal must be exercised and written notice of exercise provided by Seller within forty-eight (48) hours of the nomination of the Vessel or the nomination of a substitute Vessel. If the right of refusal is not exercised within forty-eight (48) hours of the nomination, the nomination shall be deemed accepted. Seller shall not be liable for any loss or damage, direct or indirect, which Buyer may suffer as a result of Seller's timely rejection of a Vessel.

**3.5** Notwithstanding any prior acceptance of the Vessel, Seller shall have the right (which right may only be exercised prior to the passing of risk and property hereunder) to reject the Vessel or its substitute (i) if the Loading Terminal operator or Seller, as the case may be, rejects the Vessel on the basis of information not previously

disclosed at the time of nomination or (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 prior to such acceptance.

**3.6** In respect of any Vessel named in the nomination, Buyer may, or if necessary to perform its obligation under the Agreement must, substitute another Vessel provided that the Loading Date Range which would have applied in respect of the Vessel originally nominated shall apply to the substitute Vessel and the size of the substitute Vessel and the quantity to be discharged shall not differ materially from the size previously named and the quantity specified in the nomination. Buyer shall give to Seller notice, in writing, of the name of the substitute Vessel as soon as reasonably possible. Buyer's substitute Vessel is subject to both Seller and Loading Terminal operator's acceptance.

**3.7** Seller shall make reasonable efforts to provide a safe berth to which Vessels may proceed, at which they may safely lie, and from which they may depart safely afloat. Seller shall procure that the Terminal attempt to berth all Vessels on an equal basis with all other Vessels arriving at the port to load or discharge in order of rotation by receipt of NOR by the Terminal. Notwithstanding anything to the contrary herein, Seller shall not be deemed to warrant the safety or draft of public channels, fairways, approaches, anchorages thereto, or other publicly maintained areas inside or outside the port area where the Vessel may be directed. It shall be the absolute responsibility of the Buyer to acquaint itself, and comply, with the requirements of the port then in effect.

#### **SECTION 4 – NOMINATION AND DELIVERY FOR CFR AND CIF DELIVERIES**

**4.1** In the case of CFR and CIF deliveries, the Product shall be delivered to Buyer in bulk within the Loading Date Range and at the Loading Terminal and shipped by Seller CFR or CIF (as applicable) to the agreed destination under Bill of Lading, which may incorporate charter party conditions.

- (a) Buyer shall designate the Discharge Port to Seller, in writing, a minimum of five (5) Days prior to the first Day of the proposed Loading Date Range, or as soon as reasonably possible if loading will take place before five (5) Days of Buyer's Loading Port designation.
- (b) Seller shall nominate each Vessel it intends to use, in writing, at least five (5) Business Days prior to the ETA of such Vessel at the Loading Port. Each nomination will specify (or, as applicable, verify), at minimum:
  - 1. Vessel name, registration number, and the date built;
  - 2. Q88 duly completed (except for inland barges);
  - 3. Proposed Loading Date Range;
  - 4. ETA of Vessel at the Loading Terminal;
  - 5. Compliance with the requirements of the ISPS Code;
  - 6. Details of other cargoes that will be on board;
  - 7. The product carried on the Vessel on each of its three (3) previous voyages;
  - 8. The Vessel/charterer's agent at the Terminal; and
  - 9. Chartering terms and conditions including allowed laytime and the applicable demurrage rate.

**4.2** Seller's nominated Vessel is subject to both Buyer and Discharging Terminal operator's acceptance. Buyer shall have the right to refuse, on reasonable grounds, any Vessel nominated by Seller pursuant to this Section 3. Such right of refusal must be exercised, and written notice of exercise provided by Buyer within forty-eight (48) hours of the nomination of the Vessel or the nomination of a substitute Vessel. If the right of refusal is not exercised within forty-eight (48) hours of the nomination, the nomination shall be deemed accepted. Buyer shall not be liable for any loss or damage, direct or indirect, which Seller may suffer as a result of Buyer's timely rejection of a Vessel.

**4.3** Notwithstanding any prior acceptance of the Vessel, Buyer shall have the right (which right may only be exercised prior to the passing of risk and property hereunder) to reject the Vessel or its substitute (i) if the Discharge Terminal operator or the Buyer, as the case may be, rejects the Vessel on the basis of information not previously disclosed at the time of nomination or (ii) on any reasonable ground if the Vessel is involved in any incident or more recent information regarding the Vessel becomes available to Buyer at any time prior to such acceptance.

**4.4** In respect of any Vessel named in the nomination, Seller may substitute the Vessel originally nominated provided that the Loading Date Range which would have applied in respect of the Vessel originally nominated shall apply to the substitute Vessels and the size, capacity and loading quantity are equivalent to those of the Vessel originally nominated.

**4.5** Delivery shall be within the Delivery Period as specified in the Special Terms or established in accordance with the procedure(s) specified in the Special Terms; and further narrowed down in the Vessel Nomination.

**4.6** Buyer shall have the option to nominate an alternative or additional Discharge Port provided always that such nomination accords in all respects with these General Terms and Conditions, the Special Terms and Conditions and the terms of the relevant charter party available to Seller. No change to the Discharge Terminal shall be made without Seller's prior consent. Any deviation costs actually incurred by Seller as a result of Buyer exercising such option shall be paid by Buyer to Seller.

**4.7** Buyer shall make reasonable efforts to provide a safe berth to which Vessels may proceed, at which they may safely lie, and from which they may depart safely afloat. Buyer shall procure that the Terminal attempt to berth all Vessels on an equal basis with all other Vessels arriving at the port to load or discharge in order of rotation by receipt of NOR by the Terminal. Notwithstanding anything to the contrary herein, Buyer shall not be deemed to warrant the safety or draft of public channels, fairways, approaches, anchorages thereto, or other publicly maintained areas inside or outside the port area where the Vessel may be directed. It shall be the absolute responsibility of the Seller to acquaint itself, and comply, with the requirements of the port then in effect.

**4.8** All duties and other charges owed by Seller at the Discharge Terminal, other than those defined by Asbatankvoy Charter Party Form as being for the Vessel owners' account, shall be borne by Buyer. Fees caused by unreasonable delays of the Vessel, however, will be borne by Seller. Fees for wharfage or dockage of the Vessel shall be borne by Buyer. All duties and other charges on the Vessel including, those incurred for pilots and tugs, hold-in tugs, and other port costs and taxes on freight shall be for Buyer's account.

## **SECTION 5 – VESSEL**

**5.1** For each Vessel specified in, or nominated under the Agreement:

- (a) The Nominating Party 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 Product at the Discharge Port(s)) by a member of the International Tanker Owners Pollution Federation Limited (“ITOPFL”).
- (b) The Nominating Party shall exercise reasonable efforts to ensure that:
  - (i) The Vessel carries on board a valid certificate of insurance as described in the 1969 Civil Liability Convention for Oil Pollution or 1992 protocols thereto (as and when in force);
  - (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 Product at the Discharge Port(s) in a P&I Club which is a member of the International Group of P&I Clubs; and

- (iii) The Vessel has in place (throughout the entire period of the voyage to and from the Loading Terminal and up to discharge of the Product at the Discharge Port(s)) insurance coverage for oil pollution in an amount no less than the highest standard oil pollution coverage available under the rules of the International Group of P&I Clubs.
- (c) The Nominating Party shall ensure that:
- (i) The Vessel shall comply with the requirements of the International Safety Management (“ISM”) code, the ISPS code and, if the Loading or Discharge Port, as applicable, is located within the U.S. or U.S. territories, with the U.S. Maritime Transportation Security Act of 2002 (“MTSA”), and shall have on board a valid safety management certificate for the Vessel, a copy of the Vessel's manager's document of compliance, an international ship security certificate as well as any other required valid certificates and documents issued pursuant to the ISM code, the ISPS code, the SOLAS Convention of 1974, as amended, as well as, if applicable, the MTSA;
  - (ii) The Vessel shall, when required, submit a Declaration of Security (“DOS”) to the appropriate authorities prior to arrival at the Discharge Port;
  - (iii) The Vessel has on board all records, compliance letters, contingency plans or other documents required by law, regulation or statute;
  - (iv) The Vessel has a Drug and Alcohol Policy, which meets or exceeds the U.S. Coast Guard’s rules and regulations governing drugs and alcohol related testing or the Oil Companies International Marine Forum (“OCIMF”) Guidelines;
  - (v) The Vessel is in full compliance with all laws, rules and regulations pertaining to handling of hazardous materials; and
  - (vi) The Vessel has a fully operational closed loading and vapor recovery system that is in good working order and condition and approved by the U.S. Coast Guard.

**5.2** Any Vessel with an Inert Gas System (“IGS”), regardless of products aboard or to be loaded, will not be permitted to berth and conduct loading unless the IGS is fully operational. Any delays as a result of the Vessel failing to comply with this Section shall not count as used laytime or as time on demurrage.

**5.3** Notwithstanding any prior acceptance of the Vessel by the non-Nominating Party, if at any time the Vessel fails to comply with any of the requirements set out in sub-clauses (a), (b), and (c) in Section 5.1, the non-Nominating Party may at any time refuse to berth or load or discharge or continue to load or discharge the Vessel and all time lost or spent as a result thereof shall not count against laytime, or if the Vessel is on demurrage, for demurrage, and Nominating Party shall be obliged to substitute the Vessel with a Vessel complying with such requirements.

**5.4** In the event of an escape or discharge of Product from the Vessel which causes or threatens to cause pollution or damage, the Vessel and Vessel owner will promptly take whatever measures are necessary to prevent, stop and or mitigate such damage, remove the threat to the local ecology, clean-up and remove the pollution and pollution damage. The Vessel may authorize the Terminal, or its nominee, to undertake, at the Terminal’s option, such measures as are reasonably necessary to prevent, stop or mitigate the pollution, the pollution damage, remove the threat or to clean-up and remove the pollution or pollution damage. The Terminal, or its nominee, shall keep the Vessel advised of the nature and results of such measures taken, and if time permits, the nature of the measures intended to be taken. Any of the aforementioned measures shall be for the Vessel’s account, provided if the Terminal caused or contributed to such escape or discharge, the



expense of the aforementioned measures shall be borne by the Terminal in proportion to its negligence in causing or contributing to the escape or discharge. If the Vessel reasonably believes such measures should be discontinued, the Vessel shall so notify the Terminal, or its nominee, and thereafter the Terminal, or its nominee, shall have no right to continue said measures at the Vessel's authority or expense unless directed to do so by a governmental agency. These provisions shall be applicable only between the Parties hereto, each of whom shall procure the Vessel or Terminal's agreement to these provisions as applicable, and shall not affect any liability of the Vessel to third parties, including but not limited to governmental authorities.

## **SECTION 6 – DISCHARGE AND LAYTIME FOR FOB DELIVERIES**

**6.1** Buyer shall procure that, upon arrival of the performing Vessel at the Loading Port or at the customary anchorage of the Loading Port, the performing Vessel shall tender NOR within the Loading Date Range.

**6.2** Seller shall be further notified of the ETA seventy-two (72), forty-eight (48), twenty-four (24) and six (6) hours in advance of arrival or otherwise in accordance with the standard reporting procedure at the Loading Terminal. After the twenty-four (24) hour ETA notice is issued, the Loading Terminal shall be immediately notified when a scheduled arrival time changes by plus or minus six (6) hours or more. After the 6-hour ETA notice, the Loading Terminal shall immediately be notified when a scheduled arrival time changes by plus or minus two (2) hours or more.

**6.3** Notwithstanding the provisions of Section 6.2, with respect to inland barges only, Seller shall be notified of the ETA five (5) Business Days in advance of arrival. Seller shall be further notified of the ETA forty-eight (48), twenty-four (24) and six (6) hours in advance of arrival.

**6.4** The Vessel may be required to send the Loading Terminal answers to critical pre-berthing questions at least forty-eight (48) hours prior to the ETA. The Loading Terminal will provide these pre-berthing questions so as to allow the Vessel a reasonable time to respond.

**6.5** After the Vessel has arrived at the customary anchorage or other place of waiting and is in all respects ready to proceed to the berth and commence loading, the master or the agent shall tender NOR to the Loading Terminal by telex, wireless or telephone or other agreed upon electronic means of communication. Such notice shall not be given until after the Vessel has received all port clearances. The Loading Terminal shall attempt to assign a berth in order of Vessel arrival, as determined by the receipt of NOR. Seller shall not be under any obligation to commence loading prior to 0600 hours (local time) on the first Day of the laytime.

**6.6** The laytime allowed to Seller shall be as per the governing charter party.

Laytime shall start running:

- (a) if a valid NOR is tendered within the Loading Date Range,
  - (i) berth or no berth, six (6) hours after NOR is tendered at the Loading Terminal by Vessel to Buyer or its representative; or
  - (ii) upon the completion of berthing of the Vessel when Vessel is all fast, if this occurs less than six (6) hours after tendering NOR at the Loading Terminal.
- (b) if a valid NOR is tendered before the Loading Date Range,
  - (i) at 00:01 AM local time on the first Day of the agreed Loading Date Range; or
  - (ii) upon the completion of berthing of the Vessel when Vessel is all fast, whichever comes first.

(c) if a valid NOR is tendered after the Loading Date, upon commencement of discharging the Product.

**6.7** Any delay in reaching or clearing the berth caused by conditions not reasonably within the Loading Terminal's control, including weather delays caused by fog, waves, swells, storms, wind or lightning shall be considered one-half time on allowed laytime or one-half time on demurrage.

**6.8** Time for Loading shall cease at hoses off.

## **SECTION 7 – DISCHARGE AND LAYTIME FOR CFR AND CIF DELIVERIES**

**7.1** Seller shall procure that, upon arrival of the performing Vessel at the Discharge Port or at the customary anchorage of the Discharge Port, the performing Vessel shall tender NOR within the Delivery Period.

**7.2** Buyer shall be further notified of the ETA seventy-two (72), forty-eight (48), twenty-four (24) and six (6) hours in advance of arrival or otherwise in accordance with the standard reporting procedure at the Discharge Terminal. After the twenty-four (24) hour ETA notice is issued, the Discharge Terminal shall be immediately notified when a scheduled arrival time changes by plus or minus six (6) hours or more. After the 6-hour ETA notice, the Discharge Terminal shall immediately be notified when a scheduled arrival time changes by plus or minus two (2) hours or more.

**7.3** Notwithstanding the provisions of Section 7.2, with respect to inland barges only, Buyer shall be notified of the ETA five (5) Business Days in advance of arrival. Buyer shall be further notified of the ETA forty-eight (48), twenty-four (24) and six (6) hours in advance of arrival.

**7.4** The Vessel may be required to send the Discharge Terminal answers to critical pre-berthing questions at least forty-eight (48) hours prior to the ETA. The Discharge Terminal will provide these pre-berthing questions so as to allow the Vessel a reasonable time to respond.

**7.5** After the Vessel has arrived at the customary anchorage or other place of waiting and is in all respects ready to proceed to the berth and commence discharging, the master or the agent shall tender NOR to the Discharge Terminal by telex, wireless or telephone or other agreed upon electronic means of communication. Such notice shall not be given until after the Vessel has received all port clearances. The Discharge Terminal shall attempt to assign a berth in order of Vessel arrival, as determined by the receipt of NOR. Buyer shall not be under any obligation to commence unloading prior to 0600 hours (local time) on the first Day of the laytime.

**7.6** Except as provided for elsewhere in the Agreement, the laytime allowed to Buyer shall be as per the governing charter party.

Laytime shall start running:

(a) if a valid NOR is tendered within the Discharge Date Range,

(iii) berth or no berth, six (6) hours after NOR is tendered at the Discharge Terminal by Vessel to Buyer or its representative; or

(iv) upon the completion of berthing of the Vessel when Vessel is all fast, if this occurs less than six (6) hours after tendering NOR at the Discharge Terminal.

(b) if a valid NOR is tendered before the Discharge Date Range,

(iii) at 00:01 AM local time on the first Day of the agreed Discharge Date Range; or

(iv) upon the completion of berthing of the Vessel when Vessel is all fast, whichever comes first.

(c) if a valid NOR is tendered after the Discharge Date, upon commencement of discharging the Product.

**7.7** Any delay in reaching or clearing the berth caused by conditions not reasonably within the Terminal's control, including weather delays caused by fog, waves, swells, storms, wind or lightning shall be considered one-half time on allowed laytime or one-half time on demurrage.

**7.8** Time for discharging shall cease at hoses off.

## **SECTION 8 – DEMURRAGE**

**8.1** Except as provided for elsewhere in the Agreement, demurrage rate to be as per the governing charter party, in case of time-chartered equipment, demurrage to be as per Vessel owner's invoice showing daily hired rate.

**8.2** Any claim for demurrage must be received by the other Party in writing with full supporting documents as specified below within ninety (90) Days after completion of discharge, failing which, such claim shall be considered waived and time-barred.

**8.3** Required supporting documents for demurrage claims are:

- (a) Demurrage invoice and time-computation;
- (b) All letters of protest, if any;
- (c) Receiving Terminal time statement, as the case may be;
- (d) Governing charter party or fixture recap;
- (e) NOR signed; and
- (f) In case of time chartered equipment, owner's invoice showing daily hired rate.

**8.4** Any disagreement pertaining to a demurrage claim, shall be communicated not later than ninety (90) Days after the date of sending of the demurrage claim duly accompanied by all required supporting documents listed in Section 8.3, failing which the demurrage claim shall be considered accepted and the receiving party shall be deemed to have waived its rights to contest the amount claimed.

**8.5** Any instance of demurrage incurred that is less than 500 Dollars for Vessels other than barges, or 250 Dollars for barges, will be deemed as waived.

## **SECTION 9 – TITLE AND RISK**

**9.1** For FOB deliveries, delivery shall be deemed completed and title and risk shall pass to Buyer as the Product passes Buyer's first inlet flange connection between the delivery hose and the permanent hose connection of the Vessel at the Loading Terminal, at which point Seller's responsibility and liability as to the condition, quality and quantity of the Product shall cease and Buyer shall assume all risk of loss, damage, deterioration, or evaporation as to Product so delivered. It is expressly understood that the passage of title and risk is not conditional on delivery of Bills of Lading.

**9.2** For CFR and CIF deliveries, when delivery is from Seller's Vessel, delivery shall be deemed completed and title and risk shall pass at the delivery point as the Product passes the last permanent outlet flange of Seller's delivering Vessel when receiving from any Vessel with hoses or at the Vessel's permanent discharge pipe flange when receiving from any Vessel without hoses, at which point Seller's responsibility and liability as to the

condition, quality and quantity of the Product shall cease and Buyer shall assume all risk of loss, damage, deterioration, or evaporation as to Product so delivered. It is expressly understood that the passage of title and risk is not conditional on delivery of Bills of Lading.

**9.3** In the event Seller or Buyer causes loss or damage to the Product during delivery or receipt, the preceding title and risk of loss provisions shall not apply. Instead, (i) the Party causing the loss or damage shall pay for any loss or damage to the Product, regardless of the physical location or timing of the loss or damage and (ii) Seller shall always pay for the expense of pumping Product to or from a delivery system or common carrier. Delivery shall occur when title to the Product passes to Buyer.

**9.4** Seller warrants that (i) Seller had good and defensible title, free and clear of liens, security interests, taxes and encumbrances on the Product at time of delivery and transfer of title; (ii) Seller has the full right and authority to transfer such title and to affect delivery of such Product to Buyer; and, (iii) the Product will be produced and delivered in full compliance with all applicable governmental laws and regulations.

## **SECTION 10 – PAYMENT**

**10.1** Buyer shall pay for each delivery of Product at the price set out in the Special Terms, without deduction, discount, set off or counter claim. Payment shall be made by bank wire transfer in immediately available Dollar funds to a bank account designated by Seller. Payment is due not later than thirty (30) Days after completion of Discharge ("COD", with COD being "day zero" for purposes of calculating the payment due date).

**10.2** Payment for the Product on the basis of quantity and quality determined under Section 2 shall be made in full against presentation of the following documents:

- (a) Bill of Lading (if applicable);
- (b) Seller's commercial invoice; and
- (c) Original or a copy of the certificates of quantity and quality referred to in Section 2.

**10.3** Invoices may be provided by facsimile or other written communication.

**10.4** Seller shall deliver the documents stipulated in Section 10.2 at least three (3) Business Days before the payment falls due.

**10.5** In the event the due date falls on a Saturday or a bank holiday for Seller's designated bank other than a Monday bank holiday, then payment may be made on the immediately preceding bank Business Day. If the due date falls on a Sunday or a Monday bank holiday, then payment may be made on the next succeeding bank Business Day.

**10.6** Any amount not paid when due shall bear interest from the due date (inclusive) until the date full payment is received by Seller (exclusive) at a rate equal to the lesser of (a) two percent (2%) above the prime rate in effect at the opening of business on the due date at the major lending institutions as quoted in the "Money Rates" section of the Wall Street Journal, and (b) the maximum rate of interest permitted under applicable law. Buyer shall pay such interest within five (5) Days following Buyer's receipt of Seller's invoice for such interest. Buyer shall pay all of Seller's costs (including, but not limited to, attorney's fees and court costs) of collecting past due payments.

## **SECTION 11 – CREDIT**

**11.1** Prior to each delivery of Product under the terms of the Agreement, at Seller's option, Buyer shall (1) make prepayment to Seller, (2) cause a letter of credit to be issued in favor of Seller in a form, in an amount, and from a bank which is acceptable to Seller's Credit Department from time to time in Seller's sole discretion, or (3) give other security to Seller in a manner, of a type, in a form, and in an amount which may be deemed satisfactory to Seller's Credit Department in its sole discretion. Buyer's compliance with this provision shall be a condition

precedent to Seller's obligation to deliver Product under the terms of the Agreement.

**11.2** The security requirements made of Buyer by Seller's Credit Department from time to time and any communications with Seller's Credit Department from time to time shall in no way amend the Agreement or waive any rights Seller may have at law, in equity, or under the terms of the Agreement.

## **SECTION 12 – FINANCIAL RESPONSIBILITY, NON-PERFORMANCE, LIQUIDATION**

**12.1** If Seller, in its reasonable opinion, determines that the financial responsibility of the Buyer or its guarantor (if applicable) has become impaired, or that financial assurances from Buyer are necessary, then Seller may require:

- (a) cash payment in advance; or
- (b) security in a form and amount acceptable to Seller, including a standby letter of credit issued by a bank acceptable to Seller.

**12.2** Failure by Buyer to provide security within the time frame specified in Seller's notice requesting financial assurances shall be grounds for Seller to terminate the Agreement with immediate effect on written notice to Buyer or suspend delivery (immediately upon written notice) until acceptable financial assurances are put in place and Seller may claim such failure as an "Event of Default" under the terms of the Agreement. All liabilities, costs and expenses incurred by reason of Seller's request for acceptable financial assurances in accordance with this Section shall be solely for Buyer's account.

**12.3** An "Event of Default" will be deemed to occur upon one or more of the following events:

- (a) A Party fails to make a payment when due under the Agreement within one (1) Business Day following receipt of the other Party's demand;
- (b) A Party fails to perform or repudiates any material obligation to the other Party under the Agreement or 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 the other Party in its sole discretion, within two (2) Business Days following receipt of notice to such Party that corrective action is needed; or
- (c) A Party (i) fails to make payment when due under any other commodity agreement between the Parties within the cure period for payment defaults specified therein, or, if no period is specified, within two (2) Business Days following receipt for demand of payment by the other Party, or (ii) fails to perform or repudiates any material obligation to the other Party under any other commodity agreement between the Parties and such breach, if capable of being cured, is not cured to the satisfaction of the other Party in its sole discretion, within the cure period for such defaults specified therein, or if no period is provided, within two (2) Business Days following receipt of notice that corrective action is needed.

**12.4** If an Event of Default occurs, then the performing Party may, in its sole discretion, withhold or refuse additional deliveries without notice, designate an early termination date by giving written notice of same to the defaulting Party and, upon such designation, will terminate, liquidate, accelerate and otherwise close out all transactions under the Agreement or that otherwise reference or incorporate these General Terms and Conditions (all of which transactions will be deemed to be a single agreement for purposes of this Section 12.4). The performing Party's rights under this Section 12 are in addition to, and not in limitation or exclusion of, any rights of setoff, recoupment, combination of accounts, lien or right to damages, which it may have whether by agreement, operation of law or otherwise. No delay or failure by the performing Party to exercise any right or remedy shall constitute an abandonment of such right or remedy at any time after an Event of Default has

occurred or is continuing.

**12.5** The Parties understand and agree that each of the transactions contemplated by these General Terms and Conditions are “forward contracts” as defined in the United States Bankruptcy Code. In the event a Party is the subject of a voluntary or involuntary bankruptcy filing in United States bankruptcy courts, the other Party (“Liquidating Party”) will have the immediate right to withhold or refuse additional deliveries without notice, liquidate and close out the Agreement and all other forward contracts between the Parties regardless of whether the Liquidating Party is Seller or Buyer, by calculating the difference in price for Product sold under the Agreement and the prevailing market price for the Product or the commercially reasonable equivalent for the Product as published in an industry publication multiplied by the remaining quantities to be delivered. The liquidation balances will be netted to a single sum. The defaulting Party will pay the Liquidating Party in Dollars by wire transfer in immediately available funds within twenty-four (24) hours after receiving notice of the results of the calculation.

**12.6** The Parties may net invoices for amounts that are due to each other on the same date. In that case, prior to the due date, the Parties shall confirm, in writing, the invoice amounts and the balance due, if any, after netting (being the excess of the larger aggregate amount owed over the smaller aggregate amount owed). When the balance due has been confirmed, each Party’s obligation to make payments to the other will be automatically satisfied and discharged and replaced by an obligation upon the Party by whom the larger aggregate amount would have been payable to the other Party, on the date the agreed balance is due. Notwithstanding the above, payments for any demurrage, quantity, quality or other claims shall not be included in such netting of invoices.

**12.7** The exercise by either Party of any right reserved under this Section 12 shall be without prejudice to any claim for damages or any other right under the Agreement or applicable law.

### **SECTION 13 – TAXES AND DUTIES**

**13.1** Seller shall pay any and all taxes (except for property taxes, which taxes are governed by the state law applicable thereto), fees, or other charges (with the exception of the product excise taxes noted below) imposed or assessed by governmental or regulatory bodies, with respect to Product delivered under the Agreement, the taxable incident of which occurs before the transfer of title to the Product to Buyer.

**13.2** Buyer shall pay any and all taxes (except for property taxes, which taxes are governed by the state law applicable thereto), fees, or other charges imposed or assessed by governmental or regulatory bodies, with respect to Product delivered under the Agreement, the taxable incident of which occurs after the transfer of the title to the Product to Buyer.

**13.3** In the event either Party represents that it is a producer of petroleum products or as a gasoline registrant within the meaning of the federal and state tax regulations, or, if either Party is otherwise exempt from paying excise taxes, then the Party that makes such representations shall execute appropriate exemption certificates and provide the other Party with such certificates and other necessary documents to verify such exemption with respect to the federal and state petroleum taxes, as the law and regulations permit or require. Any Party that fails to promptly supply such exemption certificates and other verifying documents shall be deemed to not be exempt from the federal and state petroleum products taxes and shall be responsible for any taxes accruing by virtue of such non-exemption.

**13.4** All applicable Superfund and federal excise taxes will be charged on any sale of gasoline blendstock, even if assessed retroactively.

### **SECTION 14 – INDEMNIFICATION**

**14.1** Except as otherwise limited by other provisions herein, each Party agrees to indemnify, defend, and hold harmless the other Party, its Affiliates, and their respective equity holders, directors, managers, officers,

employees, representatives, and agents (collectively the “Indemnified Parties”) from any and all causes of action, claims, demands, costs, fines, penalties, liabilities, expenses, damages, judicial or administrative proceedings, settlements, losses, and expenses (including those demanded or asserted by third parties, and reasonable attorneys’ fees, court costs, and other litigation related expenses) actually incurred, and that arise out of, or in conjunction with, any claim: (a) for injury to or death of any person, or for damage to any real, personal, or intellectual property, arising out of or in connection with the Product purchased, sold, stored or transferred, or services performed under the Agreement to the extent such injury or damage arises as a result of the negligent acts or omissions, willful misconduct, or other wrongdoing of the indemnifying Party, its Affiliates, and their respective equity holders, directors, managers, officers, employees, representatives, or agents (collectively, the “Indemnitors”); or (b) for any breach of the representations, warranties or covenants of the Indemnitors in the Agreement. If the Parties are found to be jointly or concurrently negligent by a court of competent jurisdiction, each Party shall indemnify the other’s Indemnified Parties only to the extent of its own negligent acts or omissions or its willful misconduct. Each Party agrees to notify the other Party as soon as practicable after receiving notice of any claim that could result in a suit brought against it for which it may seek indemnity under the Agreement and each Party shall provide to the other Party all material details within its knowledge and render all reasonable assistance requested by the other Party for its defense. Each Party shall have the right, but not the duty, to participate, at its own expense, with counsel of its own selection, in the defense and settlement thereof without relieving the other Party of any obligation under the Agreement.

## **SECTION 15 – LIABILITIES**

**15.1 EXCEPT AS EXPRESSLY PROVIDED FOR IN THE AGREEMENT, NEITHER PARTY SHALL IN ANY EVENT, INCLUDING BUT NOT LIMITED TO, ANY NEGLIGENT ACT OR OMISSION ON ITS PART, BE LIABLE TO THE OTHER IN AGREEMENT, TORT, BREACH OF STATUTORY DUTY OR OTHERWISE, IN RESPECT OF ANY CONSEQUENTIAL, INDIRECT OR SPECIAL LOSSES, EXPENSES OR DAMAGES OF ANY KIND WHATSOEVER, INCLUDING (WITHOUT LIMITATION) ANY LOSS OF PROFIT OR ANTICIPATED PROFIT, USE, GOODWILL, BUSINESS RECEIPTS, AGREEMENTS OR COMMERCIAL OPPORTUNITIES, MARKET REPUTATION, OR LOSS RESULTING FROM SHUT-DOWN OF ANY PLANT OF EITHER PARTY, WHETHER OR NOT FORESEEABLE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE CONCLUSION, THE PERFORMANCE, THE FAILURE TO PERFORM OR THE TERMINATION OF THE AGREEMENT; PROVIDED, HOWEVER, SUCH LIMITATION SHALL NOT APPLY TO DAMAGES AND LIABILITIES TO THE EXTENT CAUSED BY GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD OR TO ONE PARTY’S OBLIGATION TO INDEMNIFY THE OTHER PARTY HEREUNDER. IN ADDITION, WITH RESPECT TO CLAIMS IN RESPECT TO LOSS OF OR DEFECTS OR DEFICIENCIES IN PRODUCT, NEITHER PARTY SHALL IN ANY CIRCUMSTANCES BE LIABLE FOR MORE THAN THE DIFFERENCE BETWEEN THE MARKET PRICE AND THE AGREEMENT PRICE WITH RESPECT TO THE RELEVANT QUANTITY OF PRODUCT LIMITED IN ALL CASES TO THE AGREEMENT PRICE APPLICABLE TO SUCH RELEVANT QUANTITY OF PRODUCT, INCREASED BY THE MAXIMUM OF THE TOTAL FREIGHT VALUE FOR WHICH A CLAIM IS FILED.**

**15.2 ANY ACTION ARISING FROM THE AGREEMENT MUST BE FILED IN WRITING WITHIN TWO (2) YEARS FROM THE DATE OF INCIDENT FOR WHICH SUCH ACTION ARISES OR IT SHALL BE DEEMED TO BE WAIVED.**

## **SECTION 16 – EXCEPTION - FORCE MAJEURE**

**16.1 Seller and Buyer shall be released from any claim to the extent that they are unable to perform any obligation under the Agreement (other than the payment of money) due to Force Majeure.**

**16.2 For the purposes of the Agreement “Force Majeure” shall comprise any events or circumstances beyond the reasonable control of a Party which prevent or impede the Party’s due performance of the Agreement and which**

by the exercise of all reasonable diligence such party is unable to prevent or overcome, including but not limited to, acts of war, sabotage, act of piracy, terrorism, riots, rebellion or civil commotion, floods, earthquakes, lightning or other natural physical disaster, explosion, fire, expropriation, nationalization, requisition or other interference by any governmental authority, compliance with any statute, order, by-law or other rule or regulation having the force of law, accident of navigation, strikes, lockouts, breakdown of or accident or injury in or about the plant of Seller or Buyer, machinery, facilities or Vessels and failure or interference with the manufacturing, receiving, handling or delivery of feedstock of Product as well as the inability to obtain or the curtailment of electric power, water, or fuel. The mere shortage of labor, materials, equipment or supplies shall not constitute Force Majeure unless caused by events or circumstances which are themselves Force Majeure. For the avoidance of doubt, Force Majeure affecting Seller's plant or Seller's supplier's plant producing the Product shall be deemed to be a Force Majeure affecting Seller.

**16.3** If either Party is prevented or delayed from or in performing any of its obligations under the Agreement by Force Majeure it shall promptly give written notice to that effect to the other Party, stating the particulars of such Force Majeure and of the obligations thereby affected. A Party so affected by Force Majeure shall use every reasonable effort to minimize the effects of Force Majeure upon the performance of the Agreement and shall promptly resume performance as soon as reasonably possible after removal of the circumstances of Force Majeure. Notwithstanding the foregoing, any Party which is a government oil company or other agency or entity controlled by the government, shall not be entitled to invoke any action, order, decree, rule, regulation, or directive of such government as Force Majeure in order to relieve itself of any obligation under the Agreement.

**16.4** If any Force Majeure event occurs with respect to Seller, then, at any time thereafter and for so long as the effect of that event continues, Seller shall be entitled to withhold, suspend, reduce or cancel delivery hereunder to such extent as Seller shall in its absolute discretion determine. However to the extent that part of the Product remains available from Seller's producing plant affected by the Force Majeure, Seller will endeavor to apportion available Product among itself and its purchasers on a reasonable and equitable basis, without incurring any liability for failure to perform under the Agreement. Notwithstanding anything to the contrary, under no circumstances shall Seller be required to purchase or acquire Product to replace all or part of the Product supplies disrupted by a Force Majeure event.

**16.5** Any additional quantity of Product deliverable hereunder that would, but for any withholding, reduction suspension or cancellation pursuant to the foregoing provisions, have been delivered during the period thereof shall cease to be deliverable under the Agreement.

**16.6** Notwithstanding anything to the contrary, if the Force Majeure continues for a period of more than fifteen (15) Days, either Party shall be entitled to terminate the affected transaction by giving written notice to the other Party without any liability save that such termination shall be without prejudice to any other accrued rights and (if applicable) to any other deliveries or transactions.

**16.7** No withholding, reduction, suspension or cancellation of delivery by Seller shall operate to extend the duration of the Agreement.

**16.8** Nothing contained in this Section 16 shall: (i) relieve Buyer of its obligations to pay for Product delivered by Seller, or (ii) affect the rights and liabilities of Buyer and Seller with respect to laytime and demurrage described in Sections 6, 7 and 8.

## **SECTION 17 – HAZARDOUS MATERIAL ACKNOWLEDGMENT**

**17.1** Buyer acknowledges the hazards associated with the handling, unloading, discharge, storage, transportation, use, disposition, processing, admixture, or reaction (the "use") of the products supplied hereunder and assumes the responsibility of advising those of its employees, agents, contractors, and customers who will use, work or come in contact with the products of the hazards to human health or human or environmental safety, whether such products are used singly or in combination with other substances or in any processes or otherwise and for



the use of such products. Seller will supply Buyer on a timely basis with material safety data sheets (“MSDS”) for the product, which MSDS will be complete and accurate in disclosing risks and dangers of the product and handling or processing the same. In addition, if Buyer believes or has reason to believe the information provided to Buyer by Seller is inaccurate or in any way insufficient for any purpose, Buyer will immediately inform Seller of same, and provide Seller a reasonable opportunity to supplement or correct the information.

## **SECTION 18 – APPLICABLE LAW, JURISDICTION AND ARBITRATION**

**18.1** The Agreement 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.

**18.2** 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”) including its interim emergency relief, dispositive motions and appellate procedures.

**18.3** The arbitration panel shall be composed of three (3) arbitrators, one (1) whom shall be nominated by each of the respective Parties, and the remaining arbitrator, who shall be the chairman, shall be appointed by the AAA in accordance with its commercial arbitration rules. All three (3) 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.

**18.4** Any arbitration award by the majority of the panel of three (3) arbitrators may include costs, including reasonable attorneys’ 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 18 shall be governed by the Federal Arbitration Act. The Parties agree that all information exchanged in connection with any proceeding as described herein shall be deemed confidential.

**18.5** 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 18 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 Agreements for the International Sale of Goods 1980 is hereby excluded pursuant to Section 6 of the Convention.

**18.6** Each Party hereby warrants that (i) it has entered into the Agreement in a commercial capacity and (ii) 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.

**18.7** Should any provisions hereof be finally determined to be inconsistent with or contrary to applicable law, such provisions shall be deemed amended or omitted to conform therewith without affecting any other provisions or the validity of the Agreement.

## **SECTION 19 – NEW OR CHANGED REGULATIONS**

**19.1** Seller and Buyer enter into the Agreement relying upon (1) the applicable laws and regulations in effect on the effective date of the Agreement and (2) any applicable agreements, arrangements and concessions entered into with the government, agencies or governmental instrumentalities in effect on such date (collectively referred to as "Regulations"). If at any time during the term of the Agreement, any Regulations are changed and the change has a material adverse economic effect on Seller or Buyer under the Agreement and such change is not addressed by any other provision of the Agreement, then the affected Party, at its option, may provide written notice to the other Party of proposed adjustments to the Agreement terms to reflect the change(s), listing the reason(s) for such change(s). If the Parties fail to agree to new terms within fifteen (15) Days of the notice, either Party may terminate the Agreement without liability to the other Party; provided however, that any such termination shall not affect the rights and obligations of the Parties that accrued prior to such termination, including, but not limited to, the payment of any sums due under the Agreement. Any deliveries made during the fifteen (15) Day period shall be at the originally agreed terms.

## **SECTION 20 – ANTI-CORRUPTION**

**20.1** Buyer and Seller each warrant to the other that (i) in connection with the Agreement and the performance thereof, it will comply with any laws, regulations, rules, decrees and official government orders applicable to such party relating to anti-bribery or anti-money laundering and (ii) it will take no action that would subject the other to fines or penalties under such laws, regulations, rules or requirements.

**20.2** Buyer and Seller each represent and warrant 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 governmental 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; (v) any director, officer, employee or agent/representative of an actual or prospective counterparty, supplier or customer of buyer or seller; or (vi) 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.

**20.3** In particular, Seller represents and warrants to Buyer that it has not made any payments or given anything of value to officials, officers or employees of the government of the country in which the Product originated or any agency, department or instrumentality of such government in connection with the Product that is the subject of the Agreement that would be inconsistent with or contravene any of the above-referenced legislation.

**20.4** All payments by one Party to the other shall be made in accordance with the terms of payment specified in the Agreement. The payment indications notified in the invoices shall be deemed to constitute a representation and warranty by such Party that the bank account so notified is owned solely by that Party and that no person other than such Party has any ownership of or interest in such account.

**20.5** Buyer further agrees to comply with and assist Seller in complying with all applicable U.S. and other economic sanctions and export control laws and regulations. Buyer shall not, whether directly or indirectly, export, reexport, or otherwise dispose of any of the Product received in connection with the Agreement to or via any person, entity, or destination, or for any use prohibited under applicable U.S. or other laws, without obtaining prior authorization from the competent governmental authorities.

**20.6** Without prejudice to any other rights or remedies which it may have hereunder or at law, Buyer or Seller may either (i) suspend or (ii) terminate the Agreement forthwith upon written notice to the other at any time, if in its reasonable judgment the other Party is in breach of any of the above representations or warranties.

**20.7** Notwithstanding anything to the contrary herein or related hereto, nothing in the Agreement shall, or shall be interpreted or construed to, induce or require either Party hereto to act in any manner (including taking or failing to take any actions in connection with a transaction) which such Party in good faith believes to be inconsistent with, penalized or prohibited under any applicable U.S. or other laws, regulations or other official governmental rules or requirements.

## **SECTION 21 – TRADE RESTRICTIONS**

**21.1** Buyer agrees that the Product delivered hereunder will not (i) be exported or transshipped to or through any Restricted Jurisdiction (as defined below); (ii) be sold or supplied to any natural or legal person in any Restricted Jurisdiction; (iii) 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 Restricted Jurisdiction; or (iv) be shipped on any Vessel that appears on the List of Specially Designated Nationals and Blocked Persons published by the United States Department of Treasury’s Office of Foreign Assets Control as such list may be amended from time to time (SDN List), is registered in or flagged by a country that is a Restricted Jurisdiction, or is owned, operated or controlled by a person or entity within a Restricted Jurisdiction. For purposes of this Section 21.1, a “Restricted Jurisdiction” shall mean any country, state, territory or region against which there are economic sanctions imposed by the United States or United Nations. Should Buyer be in breach of this Section 21.1, Seller may at any time terminate the Agreement without any liability to Buyer. Buyer will hold Seller harmless from and indemnify Seller for any losses, costs, damages and penalties incurred by Seller as a result of a breach by Buyer of this Section 21.1.

## **SECTION 22 – WAIVER**

**22.1** The delay or failure on the part of either Party to insist, in any one instance or more, upon strict performance of any of the terms or conditions of the Agreement, or to exercise any right or privilege herein conferred shall not be construed as a waiver of any such terms, conditions, rights or privileges, but the same shall continue and remain in full force and effect. All rights and remedies are cumulative.

## **SECTION 23 – AMENDMENTS**

**23.1** All amendments, modifications or waivers of the Agreement shall be effected or become effective only in a writing signed by the Parties or by an exchange of emails or facsimiles wherein both Parties agree to the amendment, modification or waiver.

## **SECTION 24 – ASSIGNMENT**

**24.1** The Agreement shall extend to and be binding upon the successors and assigns of the Parties, but neither Party shall assign its rights or obligations under the Agreement, in whole or in part, without the prior written consent of the other Party, including whether by either operation of law, merger or otherwise. Any assignment made in violation of this Section 24.1 shall be prohibited and void; provided, however, that Seller shall be free to assign its rights and obligations under the Agreement to any of its Affiliates or controlling person and may, without Buyer’s consent, assign all or a portion of its rights to receive and obtain payment under the Agreement in connection with any finance, securitization or bank funding arrangements or decree binding upon Buyer. If consent for an assignment 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. Any such assignment will not detract from seller's obligations under this agreement, excepting any obligation of confidentiality related to such rights. Seller or its assignee shall have the right to set-off any of its receivables with any amount due by seller or its assignee against buyer.

## **SECTION 25 - ENTIRE AGREEMENT, INVALIDITY**

**25.1** The Agreement sets forth the entire understanding and agreement between the Parties as to matters covered herein and supersedes any prior understanding, agreement, or statement (written or oral) of intent among the Parties with respect to the subject matter hereof.

**25.2** The Agreement has been jointly prepared by both Parties to the Agreement and there shall be no presumptions regarding such preparation which will be used against either Party in connection with any subsequent judicial construction of the Agreement.

**25.3** A facsimile transmission or .pdf of a signed copy of the Agreement will be deemed an original and has the same valid and binding effect.

**25.4** Those provisions which by their nature continue in effect (such as, but not limited to, Indemnification and Liabilities) shall survive the expiration or termination of the Agreement.

**25.5** The section headings and captions are for convenience only and shall not affect the construction or interpretation of any of the terms and or conditions of the Agreement. The invalidity, illegality or unenforceability of any one or more of the terms of the Agreement shall in no way affect or impair the validity, interpretation and enforceability of the other terms of the Agreement.

**25.6** If any part of the Agreement is declared invalid for any reason, this ruling shall not affect the validity of the rest of the Agreement or any other part thereof.

## **SECTION 26 – THIRD-PARTY RIGHTS**

**26.1** The Agreement is for the sole benefit of the Parties hereto and their successors and permitted assigns and nothing herein express or implied shall give or be construed to give to any person, other than the Parties hereto and such successors and permitted assigns, any legal or equitable rights hereunder.

## **SECTION 27 – NOTICES**

**27.1** Notices required or permitted to be given by any Party under the Agreement shall be deemed sufficient if given in writing and delivered in person, by reputable courier service, facsimile, electronic document transfer (“EDT”), or by certified or registered U.S. mail, to the addresses set forth in the relevant Special Terms or such address as one party may in the future provide to the other Party. Delivery of notice shall be deemed to have been given (i) upon delivery (as evidenced by the hand receipt) when delivery is in person or courier service, (ii) three (3) Business Days after delivery to the U.S. Postal Service when delivery is by U.S. mail, and (iii) upon receipt (as evidenced by the facsimile page or EDT date) when delivery is by facsimile or EDT unless such receipt is outside of business hours on a Business Day, in which event, delivery shall be deemed to have been given the next Business Day.

**27.2** A Party may change its designated recipient(s) of notices and address(es) for notices under this provision by written notice to the other Party.

**27.3** In any case in which a Party is required or permitted to respond to a notice hereunder within a specified period, such period shall run from the date on which the notice was deemed received as provided above and, and the response shall be considered timely given if deemed given as above and provided by the last Day of such period.